The Churches of Our Government:
Parishes, Property, and Power in the Colonial and Early National Chesapeake

by

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The ruins of old St. Peter's Parish Church, Talbot County, MD. Photograph by Alyssa Penick.

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DEDICATION

For my mom, who loved hearing other peoples' stories and met every challenge with spirit and determination,
and for my dad, who has always been there with a smile.

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So many teachers, scholars, archivists, colleagues, mentors, friends, and loved ones have made this dissertation possible. I can only acknowledge my profound sense of gratitude as I look back on the past seven years.

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LIST OF ABBREVIATIONS

Acts VA	*Acts Passed at a General Assembly of the Commonwealth of Virginia*
Archives of Maryland Online	William Hand Browne, Edward C. Papenfuse, et. al. eds., *Archives of Maryland*, 215+ volumes, (Baltimore and Annapolis, Md., 1883-).available online at http://aomol.msa.maryland.gov/.
EDMA	Episcopal Diocese of Maryland Archives, Baltimore, Maryland
EEBO	Early English Books Online
Hening	William Walter Hening, ed., *The Statutes At Large; Being A Collection of All The Laws of Virginia From The First Session Of The Legislature In The Year 1619*, 13 vols. (Richmond: 1819-1823).
LPDC	Legislative Petitions Digital Collection, Library of Virginia, available online at available online at http://www.virginiamemory.com/collections/petitions.
LVA	The Library of Virginia, Richmond, Virginia.
Meade	William Meade, Old Churches, Ministers and Families of Virginia, 2 vols. (Philadelphia, Lippincott, 1857).
MPA	Archives of the Maryland Province of the Society of Jesus, Georgetown University Library, Washington, DC.
MSA	Maryland State Archives, Annapolis, Maryland.
VHS	Virginia Historical Society, Richmond, Virginia.
VTS	Virginia Theological Seminary, Alexandria, Virginia.

ABSTRACT

A blend of legal, religious, and social history, this dissertation, "The Churches of Our Government: Parishes, Property, and Power in the Colonial and Early National Chesapeake," explores the relationship between church and state over a century of profound change. I focus on Maryland and Virginia, where the Anglican Church was established by law in the eighteenth century. Both states dismantled their religious establishments during the American Revolution.

I offer a new perspective on church and state by shifting the focus to Anglican parishes. The importance of Anglicanism to daily life in the Chesapeake only becomes apparent when the many administrative duties of parishes are understood as part of religious orthodoxy. Parishes were not only spiritual communities but busy civic administrators and an arm of the colonial state. These local bodies enforced religious conformity and policed public morality, but they also imposed taxes, kept vital statistics, distributed poor relief, and appointed tobacco inspectors. These wide-ranging public duties reflected the established church's spiritual prerogative to oversee moral order and promote the public good. Parishes enforced and executed the law and consequently sanctified the status quo.

Anglican parishes held a significant amount of property, including churches, libraries, silver, and furnishings. All parishes also owned glebes, farms of at least 200 acres, and at least half of Virginia's parishes owned enslaved people. Parishes secured their extensive property by exercising powerful corporate rights under common law. Corporations were rare in the colonial Chesapeake, and this unique status allowed the established church to hold, transfer,

and amass wealth from one generation to the next. Without incorporation, non-conformist religious communities struggled to secure their property.

I follow events after American independence as Maryland and Virginia took steps to dismantle their established churches. Scholars often refer to this movement as "disestablishment," but revolutionaries did not possess a single word or phrase to express their ambition of reforming the relationship between church and state. Instead, they overturned the church's legal powers one by one, and this piecemeal process led the two states to impose conflicting legal polices. The question of church property – how to secure it and to whom it ought to belong – drove the divergence between the two states. Maryland offered incorporation to all Christian denominations while also allowing parishes to retain their property. Virginia revoked the Anglican Church's incorporation and confiscated a tremendous amount of wealth from the formerly established church. I have traced the seizure of property belonging to Virginia's 95 parishes, which amounted to more than 35,000 acres of land, scores of enslaved persons, church buildings, and objects worth thousands of pounds sterling. Real property shaped the demands for religious liberty in both states, and I approach disestablishment as a material process. While reformers in Maryland and Virginia both claimed to have established religious freedom, the two states had enacted different definitions of religious establishment in their laws.

Ultimately, disestablishment must be understood in the broader context of post-Revolutionary debates about how best to secure liberty and property. Though often told as an individual rights narrative, disestablishment reshaped communal life as Americans fought to control public resources and debated the future of republican institutions. These debates over church and state reflected the contested meaning of the Revolution.

INTRODUCTION

Rogue Rectors and Swamp Men

In 1771, the churchwardens and vestry of Upper Parish in Nansemond County, Virginia were desperate to get rid of their rector, Rev. Patrick Lunan. Over his decade-long tenure, the minister had failed in his "parochial duties of performing divine service, preaching and administering the sacrament." He was "much addicted to drunkenness" and appeared so "often drunk at church" that he was "unable to go through divine service, or to baptize or marry" his parishioners. He "officiated in ridiculous apparel unbecoming a priest" and was known for "swearing, quarreling, and fighting." Indeed, the churchwardens reported that on July 10, 1767, Lunan "exposed his private parts to view in public companies, and solicited a negro and other women to fornication and adultery with him." Perhaps most damning was their accusation that the rector had publicly "declared he did not believe in the revealed religion of Christ and cared not of what religion he was so [long as] he got the tobacco, nor what became of the flock, so that he could get the fleece." The churchwardens and vestry thus accused the minister of transgressing every moral, racial, and religious norm of Virginian society. However, Lunan was the legally inducted rector, and the community was still required to pay him a salary of 16,000 pounds of tobacco each year and provide him with a home on the glebe, a plantation owned by the parish. The flock had had enough; they decided it was high time to fight back. [1]

[1] *Godwin v. Lunan*, Jeff. 96 (Va. 1771).

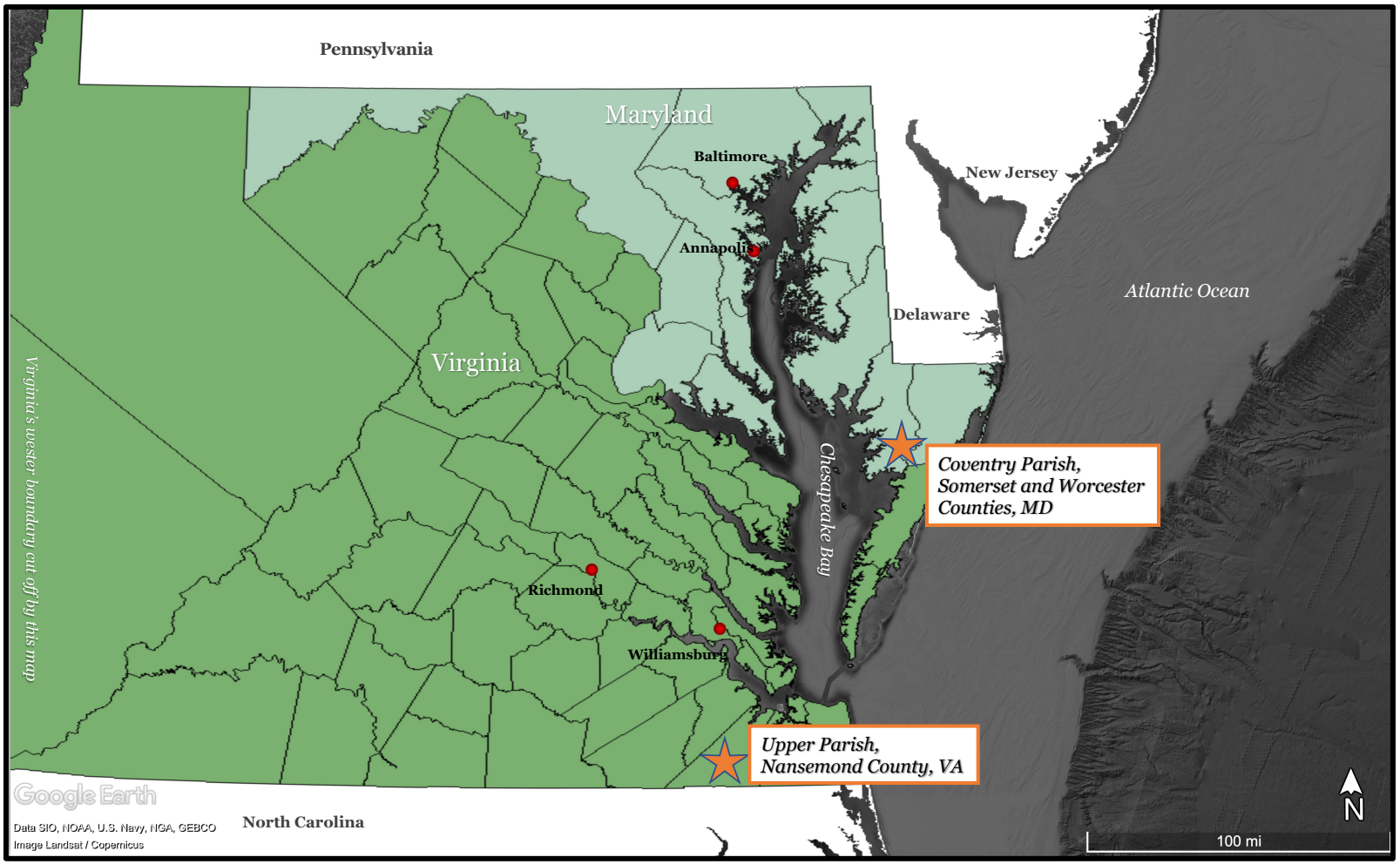


Figure i. Map of locations discussed in the Introduction. Map created by Alyssa Penick using data from the *Atlas of Historical County Boundaries*, The Newberry Library, last accessed May 15, 2020, https://publications.newberry.org/ahcbp/index.html.

The parish churchwardens and vestry filed a lawsuit to dismiss the unrepentant Lunan and hired three of Virginia's leading legal minds to represent them: George Wythe, Richard Bland, and Thomas Jefferson.[2] The colony's highest court, the General Court of Virginia, heard the case. In their arguments, neither the lawyers for Upper Parish nor the lawyer representing Lunan mentioned the accusations against the minister. His degenerate ways, lack of faith, and dereliction of duty were not under scrutiny. The attorneys focused solely on whether the General Court had the power to remove an inducted parish rector. Induction was a vested property right, and the power of the General Court to revoke a minister's "corporal possession" was the only question at hand.[3] This standoff between the minister and the vestry of Upper Parish cues us to reexamine the Anglican establishment from the ground up.

In his arguments before the court, the young Jefferson referred to Virginia's religious establishment as "the churches of our government."[4] This phrase cut to the heart of established religion in the Chesapeake; every parish acted as an agent of the transatlantic state but expressed its power on a local scale. Jefferson's choice of words underscored that Virginians experienced religious establishment not through a hierarchical, unified church but through communal institutions that exercised tremendous authority. And yet, for all their clout, parishes still lacked the power to remove a lewd, drunken, and atheist rector. The established church executed and enforced laws, but it was also bound by law.

The General Court affirmed their jurisdiction to "censure or deprive the defendant" but did not immediately remove Lunan. After a second hearing of the case, the churchwardens ultimately settled with the minister. He "relinquishe[d] all Right, Title & Claim as Rector" for

[2] The General Court's records were lost to fire, and the only record of the case comes from Jefferson's notes.
[3] *Godwin et. al. v. Lunan*, 106.
[4] *Godwin et al. v. Lunan*, 103.

the sum of 300 pounds of Virginia Current Money in 1775, and the vestry hired a new rector.[5] This payoff suggests that the Court's final ruling had not allowed the parish to dismiss their disgraceful minister outright.

A parish in Maryland found itself in similarly turbulent waters on the eve of American independence over many of the same issues – popular demands for the spiritual care required by law, ambiguity over supervising the colonial church, and the high cost of supporting the minister. On December 5, 1767, Maryland's Governor Horatio Sharpe appointed the Reverend Philip Hughes as the new rector of Coventry Parish on Maryland's Eastern shore. Before arriving in Worcester, Hughes had "hear[d] of the factious Spirit, which did prevail among some of the Parishioners," but he hoped "to have Peace restored on the sound Basis of Harmony."[6] Instead, the first six months of Hughes' tenure were a complete disaster.

When Hughes first met with Coventry's vestry on December 21, they refused to let him inside the church. They had hidden the keys weeks earlier and "secured" the building against his entry with "boults and nails."[7] The vestry had good reason to prevent Hughes from entering the sanctuary. Only upon reading his "induction" inside the church would Hughes legally be installed as the parish rector. This liturgical rite secured his legal rights. So, the vestry forced Hughes to wait outside in the December cold while they offered him a deal. The vestry would accept Hughes only on the condition that he acknowledged the people's right to elect him as rector. This invocation of popular sovereignty directly attacked the prerogative of the proprietor and the Governor as his representative. The minister refused.

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[5] Wilmer L. Hall, ed., *Vestry Book of Upper Parish, Nansemond County, Virginia* (Richmond, VA: 1949), 229.
[6] "The Remonstrance of the Reverend Philip Hughes Rector of Coventry," April 29, 1768, *Proceedings of the Council of Maryland, 1761-1769*, reproduced in William Hand Browne, Edward C. Papenfuse, et. al. eds., *Archives of Maryland*, 215+ volumes, (Baltimore and Annapolis, Md., 1883-), 32: 222 (hereafter cited as *Archives of Maryland Online)*, available online at http://aomol.msa.maryland.gov/.
[7] Ibid.

Somehow, Hughes managed to break into the church on Christmas Day accompanied by a group of armed supporters. Once inside, Hughes was able to "read his Induction, then Prayers and Preached before Sufficient Evidence, and the next day took the Oaths by Law required."[8] The language of Hughes' description underscored his careful attention to legal procedure. His listeners constituted a form of evidence, and this holy ritual endowed him with civic and legal authority. Whether the vestry liked it or not, Hughes had been installed as Coventry's rector.

The parishioners refused to concede, though, and more than two hundred people gathered on January 11 to vote against accepting Hughes as their rector.[9] The crowd threatened to drag Hughes' few supporters into a fire burning in the churchyard, and one man was carried off to a nearby pond for a ducking. The assembled parishioners vowed that if Hughes came to preach at any of the parish churches or chapels, they would "shoot him down."[10] These words were no empty threat. According to the minister, "all the Vestry Men and the Church Wardens in Arms, (to the Terror of some Honest Men and Familys,) with Swamp Men and Shingle Makers, and the rest of their Banditti… oppose[d] his Entrance into either Church."[11] Outbreaks of violence persisted as anyone publicly sympathetic to Hughes endured threats of their homes being torched or "pulled down," and the minister had to dodge gunfire on his way to preach.[12] Hughes complained that "well disposed" parishioners "groan under such Tyranny, and Oppression, and lament that they are debarred of their Christian Liberty by these Swamp Men and Bullies."[13]

[8] The Remonstrance of the Reverend Philip Hughes Rector of Coventry," *Archives of Maryland Online,* 32: 222.
[9] "Advertisement," *Proceedings of the Council of Maryland, 1761-1769*, *Archives of Maryland Online*, 32: 224.
[10] The Remonstrance of the Reverend Philip Hughes Rector of Coventry," *Proceedings of the Council of Maryland, 1761-1769*, *Archives of Maryland Online*, 32:223.
[11] Ibid.
[12] Ibid.
[13] "The Remonstrance of the Reverend Philip Hughes Rector of Coventry," *Archives of Maryland Online,* 32: 224.

Hughes had the support of the Maryland Council, who balked at this popular revolt and called the protesters "Usurpers of his Lordship's Rights, and the Disturbers of the Public Peace."[14]

Scholars cite Hughes' fight with the parishioners of Coventry as an example of growing anti-monarchial sentiment and popular violence against the proprietary government.[15] While this event certainly exuded revolutionary spirit, the dispute also exposed decades of pent up frustration with the failures of religious establishment. For the twenty-five years before Hughes' appointment, Coventry Parish had been saddled with a widely reviled rector, the Reverend Nathaniel Whitaker, who had spent the greater part of his tenure in jail for crimes ranging from violent assault to libel and debt. However, the inducted rector still collected "near fifty Thousand Pounds of Tobacco" as his annual salary.[16] Indeed, "under this deplorable situation," the vestry explained, "the People of the Parish" also had to raise subscriptions to hire outside ministers to come and preach.[17] Sharpe's decision to appoint Hughes in 1768 compounded decades of resentment by yet again denying the community the chance to choose their rector. Unable to sway Hughes to resign and let them vote to induct him, the parishioners' anger hardened into violent and armed protest against the newly arrived priest. The Governor proved unrelenting. "The Reins of Government are not to be surrendered into the Hands of any Vestry," proclaimed Daniel Dulany, a member of the Maryland Council, who urged the Governor to stand firm against the parish.[18]

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[14] Daniel Dulany, "Opinion," *Proceedings of the Council of Maryland, 1761-1769*, *Archives of Maryland Online*, 32: 227.
[15] David Curtis Skaggs, "Maryland's Impulse Toward Social Revolution, 1750-1776," *Journal of American History* 54 (1968):778-9.
[16] "The Vestry of Coventry Parish to Horatio Sharpe," *Proceedings of the Council of Maryland, 1761-1769, Archives of Maryland Online*, 32: 229.
[17] Ibid.
[18] Daniel Dulany, "Opinion," *Archives of Maryland Online*, 32: 227.

These stories, one from Virginia, the other from Maryland, are a useful barometer of the established church on the eve of the Revolution. To be sure, they affirm longstanding impressions of the colonial Anglican Church – its venal priests, ineffectual organization, power struggles between the laity and the clergy, and parishioners who became disaffected as their spiritual needs went unmet.[19] We are reminded that the church raised funds through compulsory taxation, which paid for the construction of elegant sanctuaries and the salary of the minister.

Alongside these familiar facts come more surprising revelations, which do not fit so easily into the existing literature on colonial Anglicanism. These case studies do not confirm a picture of spiritual apathy or an authoritarian regime; rather, we find parishioners in Virginia and Maryland clamoring for spiritual care from their parishes and demanding that the church provide the religious services required by law and paid for by their taxes.[20] These stories reveal how parish churches functioned as popular gathering places, sites of sacred rituals, and seats of legal authority. We recognize that parishes were an integral part of colonial government and acted under the banner of church and state.

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[19] Longstanding narratives of Anglicanism in the Chesapeake emphasize these issues. Scholars used to describe society in colonial Virginian as individualistic, irreligious, and avaricious. In these accounts, Virginia's religious landscape is cast as apathetic, even bleak, especially in comparison to New England, often presented as the archetype of religiosity. See in particular, Rhys Isaac, *The Transformation of Virginia, 1740-1790* (Chapel Hill and London: Published for the Omohundro Institute of Early American History and Culture at Williamsburg, Virginia, by The University of North Carolina Press, 1982); Frank Lambert, *The Founding Fathers and the Place of Religion in America* (Princeton: Princeton University Press, 2003), 46-72; Timothy Breen, "Looking Out for Number One: Conflicting Cultural Values in Eighteenth-century Virginia," *South Atlantic Quarterly* 78 (1979): 358-360; Breen, *Tobacco Culture: The Mentality of the Great Tidewater Planters on the Eve of the Revolution* (Princeton, NJ: Princeton University Press, 1985); Allan Kulikoff, *Tobacco and Slaves: The Development of Southern Cultures in the Chesapeake, 1680-1800* (Chapel Hill, NC: Published for the Institute of Early American History and Culture, Williamsburg, Virginia by the University of North Carolina Press, 1986).

[20] In addition to a number of studies that emphasize the institutional weaknesses of the established church, there is also a large body of scholarship that details the legal persecution of religious non-conformists. This dissertation instead seeks to offer a description of establishment as the legal foundation upon which orthodoxy rested and thus sanctioned persecution. For Virginia, see Ragosta, *Wellspring of Liberty*, 16-18; Isaac, *Transformation of Virginia,* 16-9, 58-65; Buckley, *Church and State in Revolutionary Virginia*, 8-12; Thomas J. Curry, *The First Freedoms,* 30, 51. Discussion of persecution in the eighteenth century, referred to as the "penal period." See Maura Jane Farrelly, *Papist Patriots: The Making of an American Catholic Identity* (New York: Oxford University Press, 2012), 136-219.

New Lines of Inquiry

The stories of Lunan and Hughes open up four valuable lines of inquiry for reassessing Anglicanism in eighteenth-century Maryland and Virginia: the parish, law, property, and the Chesapeake. Part I of this dissertation explores what Jefferson called "the churches of our government" and reexamines Anglican parishes with an eye toward law and property. I follow these themes in the five decades after the Revolution in Part II. I reconsider post-Revolutionary disestablishment to explore how and why Americans undertook a "great revolution in church as well as in state," as one contemporary described the process.[21]

The Parish

The establishment of religion in the Chesapeake can only be understood from the local perspective of the parish.[22] Hughes and Lunan were each confronted by their unhappy parishioners. In these disputes, the parish appears alternately as a legal body, a local community, a religious fellowship, and an essential part of colonial government. Without a Bishop in the colonies, parishes presided over a highly localized system of state-sponsored religion. Though historians have often referenced the localism of Virginia's religious culture, they have still overlooked the wide-ranging powers of parishes. Without the parish, we are left with an incomplete understanding of the most vital institution of established religion.

State archives classify parish vestry books as religious records, not local government records. Vestry books sit alongside Quaker Meeting minutes, not county court records. This

[21] Inhabitants on the South Side of the Nansemond River: Petition, Nansemond County, December 21, 1802, Legislative Petitions Digital Collection, Library of Virginia, Richmond, Va., available online at http://www.virginiamemory.com/collections/petitions [Hereinafter LPDC, LVA].
[22] The best study of colonial Virginia's Anglican parishes is John Nelson's masterful work, and I am indebted to his extensive research. Nelson, *A Blessed Company: Parishes, Parsons, and Parishioners in Anglican Virginia*, *1690-1776* (Chapel Hill: The University of North Carolina Press, 2001).

archival categorization reflects and reinforces the historiographical de-emphasis of the civic role of the parish and obscures the legal nature of these documents. Scholars of government and law have rarely consulted their pages. But historians of religion have also overlooked the value of parish records. Vestry books include tax lists, meeting minutes, land records, property inventories, and financial accounts but little about worship, doctrine, or prayer. Too administrative for scholars of religion yet too religious for scholars of the state, vestry books are an untapped goldmine of information about community, law, and belief in the Chesapeake.

Methodologically, I employ a broad definition of religion that includes all parochial activity as part of Anglican practice. Studies have long underestimated the institutional strength of religion in the colonial Chesapeake because they have not considered the parish's civic responsibilities as an integral part of Anglicanism. Scholars have discussed poor relief, processioning, and appointing tobacco inspectors as auxiliary duties of the church, rather than an expression of faith itself.[23] Revisionist studies of Anglicanism in the Chesapeake have highlighted the power of print, private devotion, familial worship, and architecture as signs of Anglican religiosity.[24] But these works still employ a relatively narrow set of criteria when discussing religious behavior.

The field of religious studies bolsters a broader intervention by offering a more capacious definition of religion. Scholars like Talal Asad and Winifred Sullivan have argued that academic

[23] Jewel Spangler refers to the parish's civic duties as "less directly related to church function." Monica Najar commented that parishes attended to far "more than spiritual matters" before describing parishes' spiritual duties. Spangler, *Virginians Reborn: Anglican Monopoly, Evangelical Dissent, and the Rise of the Baptists in the Late Eighteenth Century* (Charlottesville: University of Virginia Press, 2008), 17. Najar, *Evangelizing the South: A Social History of Church and State in Early America* (New York: Oxford University Press, 2008); 16-7.

[24] See Edward L. Bond, *Damned Souls in a Tobacco Colony: Religion in Seventeenth Century Virginia* (Macon, GA: Mercer University Press, 2000); Lauren F. Winner, *A Cheerful and Comfortable Faith* (New Haven, CT: Yale University Press, 2010); Jacob M. Blosser, "Pursuing Happiness in Colonial Virginia: Sacred Words, Cheap Print, and Popular Religion in the Eighteenth Century," *The Virginia Magazine of History and Biography,* 118, (2010): 209-245.

discussions of religion adhere to a narrow and selective definition of religion rooted in Protestant Christianity that prioritizes belief over practice.[25] Americans, raised to define religion as synonymous with faith, deemphasize materiality, activity, and practice. The critical insights of Asad and Sullivan explain why generations of colonial historians have looked in vain for signs of religion in the Chesapeake while discounting the parish's extensive public activity as evidence of a dynamic religious culture. Drawing on the insights of Asad and Sullivan, I return to the Chesapeake with an expanded definition of religion and integrate all parish activity into my description of religious life. Rather than only looking for worship, sermons, and prayer, I stress that record-keeping, medical care, taxation, and a host of other civic duties were part of the spiritual work of Anglicanism. This activity expressed the fundamental purpose of an established church - to oversee an orderly, moral community using public resources.

Just as we can appreciate the power of the Anglican establishment best from a parochial perspective, we also reach a new understanding of post-revolutionary disestablishment by investigating how the process unfolded locally. Most accounts of disestablishment focus on state legislation in the 1780s and emphasize the advocacy of religious denominations and revolutionary leaders.[26] A significant body of scholarship also explores how disestablishment in

[25] Talal Asad contends that the way scholars identify what counts as "religious" is "the product of a unique post-Reformation history" and "has a specific Christian history." Winifred Sullivan offers a complementary argument in her discussion of the Supreme Court's First Amendment jurisprudence. Sullivan suggest that American jurisprudence, and Americans more broadly, employ a definition of religion rooted in the reformed Protestant tradition that emphasizes belief over practice. Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore: The Johns Hopkins University Press, 1993), 28, 42; Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom* (Princeton: Princeton University Press, 2007), 1-12.

[26] State legislation remains the focus of most scholarship about disestablishment. See H.J. Eckenrode *Separation of Church and State in Virginia* (Richmond: 1910); Albert Warwick Werline *Problems of church and state in Maryland during the seventeenth and eighteenth centuries* (South Lancaster, Mass., College Press, 1948), 143-208; Thomas Buckley, *Church and State in Revolutionary Virginia, 1776-1787* (Charlottesville: University Press of Virginia, 1977), Thomas J. Curry, *The First Freedoms,* 134-148, 155-158; Carl H. Esbeck, "Disestablishment in Virginia, 1776-1802," and Michael D. Breidenbach, "Church And State in Maryland Religious Liberty, Religious Tests, and Church Disestablishment," in Carl H. Esbeck and Jonathan Den Hartog, eds., *Disestablishment and Religious Dissent: Church-State Relations in the New American States* (Columbia, MO: University of Missouri

the states shaped the ratification of the First Amendment.[27] My approach seeks to integrate local, statewide, and national events. I show that local demands influenced statewide policy and explore how communities institutionalized disestablishment over several decades. From this local perspective, my narrative of post-Revolutionary disestablishment shifts the focus from individual rights to community institutions. Disestablishment overhauled Virginia's traditional social welfare system, which had been administered by parishes. While poor relief was divorced from religious affiliation, the welfare system became explicitly connected to the regulation of free black communities in Virginia. The Assembly invested the secular successors to parish vestries, county Overseers of the Poor, with the power to superintend and sell free people of color. Surveillance of free black communities increased, just as local control over the moral and spiritual lives of white Virginians lessened.

This study does not follow a single county or locality but instead draws on a large range of extant records from Maryland and Virginia (see Figure ii). I read local sources alongside personal papers, material sources, court records, legislative records, denominational histories, and newspapers. Together, these sources reveal how the legally established church shaped everyday life in the colonial Chesapeake and how disestablishment remade communal life from the ground up.

Press, 2019), 139-180, 309-326; See Jon Ragosta, *Wellspring of Liberty: How Virginia's Dissenters Helped Win the American revolution & Secured Religious Liberty* (New York: Oxford University Press, 2010), 111-160.

[27] Some selected examples include: Frank Lambert, *The Founding Fathers and the Place of Religion in Early America (*Princeton, N.J.: Princeton University Press, 2003), 207-298*;* Sidney Meade, *The Nation with the Soul of a Church* (New York: Harper & Row, 1975); Philip Hamburger, *Separation of Church and State (*Cambridge, MA: Harvard University Press, 2009), 19-108; Steven Green, *The Second Disestablishment* (New York: Oxford University Press, 2010), 13-78; T. Jeremy Gunn and John Witte Jr., eds., *No Establishment of Religion of Religion: America's Original Contribution to Religion Liberty* (New York: Oxford University Press, 2012).

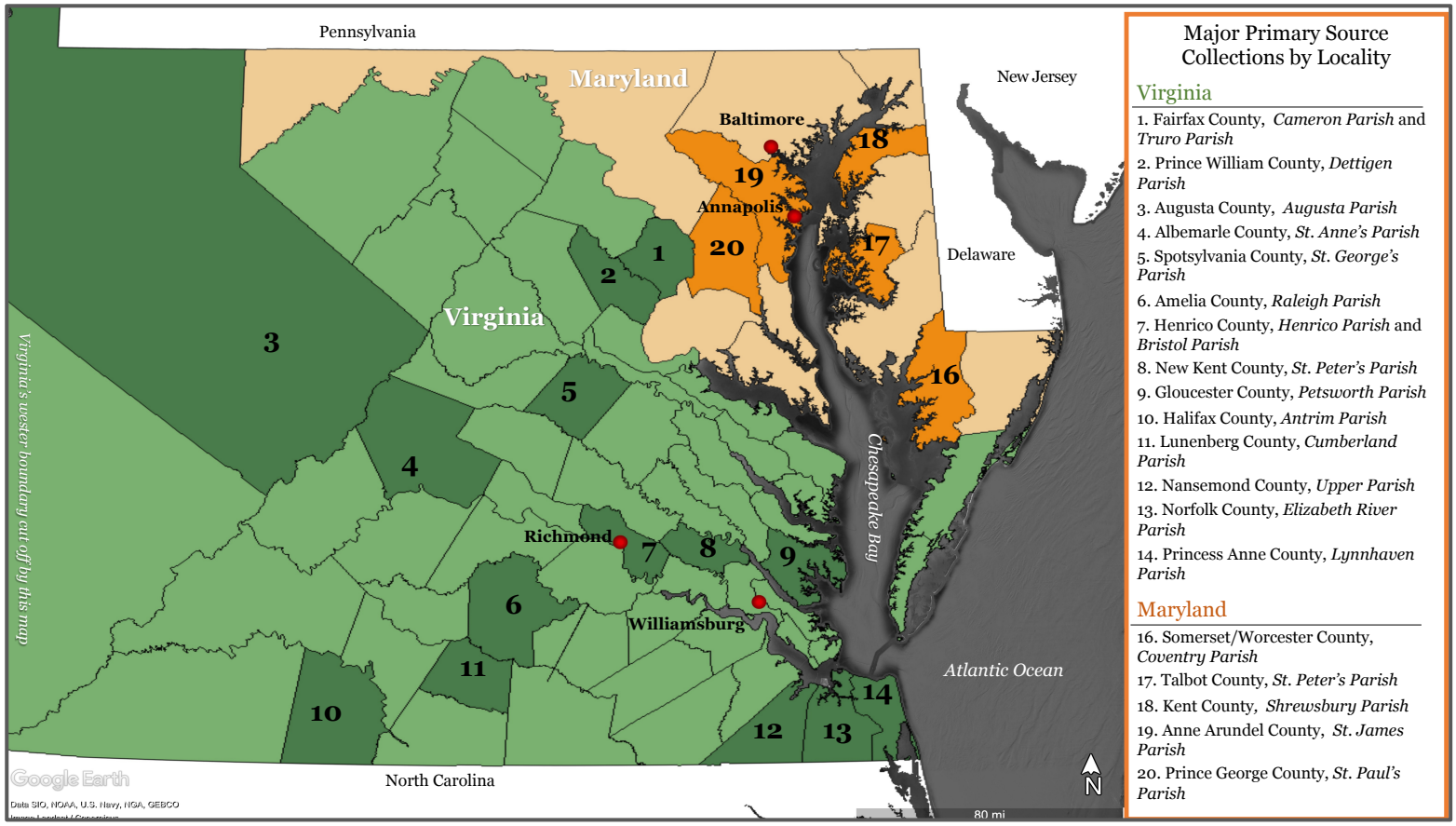


Figure ii: The significant primary source collections discussed in this dissertation mapped by county. Map created by Alyssa Penick using data from the *Atlas of Historical County Boundaries*, The Newberry Library, last accessed May 15, 2020, https://publications.newberry.org/ahcbp/index.html.

Law

The phrases "the church established by law" and "disestablishment" are a form of scholarly shorthand. We use them so frequently that we assume their definitions are self-evident. However, these terms need careful unpacking.

This study investigates the statutory and common-law frameworks that empowered colonial Anglican parishes. The civic responsibilities of the church varied between Maryland and Virginia, but across the Chesapeake parishes were arbiters of the public good and executors of the law. Local vestrymen exercised power on behalf the Crown, and by extension, God Himself. Parishes enforced racialized and gendered norms, cast out social inferiors, and compensated parishioners whom they deemed worthy. Legal and divine authority mingled inside the space of the parish church. Holy rites were legal acts. Ministers recited the slave code and bastardy laws, and churchwardens meted out punishments for moral crimes. Notices about for fugitives from slavery and court summons covered church doors. Parish churches were more than symbolic sites of law and order but institutions that enforced the dual power of church and state.

Parishes wielded so much power in part because they were customary corporations.[28] Though the topic has largely gone unnoticed, my work uncovers that common law was an important source of legal power for the established church. [29] Vestrymen and churchwardens came and went, but parishes existed in perpetuity as corporate entities. Parishes could sign and

[28] Customary incorporation bolstered the status of the established church and insulated its wealth. None of the leading studies discuss common-law incorporation. See Eric Hilt, "Early American Corporations and the State," in Naomi R. Lamoreaux and William J. Novak, *Corporations and American Democracy* (Cambridge, MA: Harvard University Press, 2017), 40-42, 48, 400n14; Pauline Maier, "The Revolutionary Origins of the American Corporation," *William and Mary Quarterly,* 3rd ser., 50 (1993): 51-84. The classic text on the subject mentions customary incorporation but does not include parishes; Joseph Stancliffe Davis, *Essays in the Earlier History of Corporations* (Cambridge, MA: Harvard University Press, 1917), 6, 79-80.

[29] Two earlier studies discuss the corporate status of parishes in the Chesapeake. See Gerald Hartdagen, "The Anglican Vestry in Colonial Maryland: A Study in Corporate Responsibility," *Historical Magazine of the Protestant Episcopal Church* 40 (1971): 315-335; Bruce, *Institutional History of Virginia in the Seventeenth Century, 77.*

enforce contracts. They brought lawsuits to recover debts. They held property and could transfer it securely decades, even centuries, later. By contrast, religious non-conformists could not incorporate in either Chesapeake colony and suffered without access to these legal powers.

Revolutionary Americans did not possess a single phrase to express their ambition for overhauling the legal relationship between church and state. "Disestablishment," the term scholars commonly use, is a late nineteenth-century term. Without a cohesive concept to articulate their goal, reformers wrested wide-ranging legal power and privileges from the exclusive grasp of the Anglican Church in a piecemeal fashion. Despite their shared goal of dismantling Anglicanism, the two Chesapeake states diverged sharply in their policies. Maryland and Virginia imposed different restrictions on the relationship between church and state, which yielded divergent definitions of "establishment" in their laws.

Debates over church and state reverberated widely in other arenas of republican legal reform. Maryland, like other states, passed an act of general incorporation for all Christian churches in 1802, a step which reformers celebrated as granting all Christians equality at law. [30] The move toward extending general incorporation to churches prefigured the rise of general acts of incorporation for businesses later in the nineteenth century.[31] Virginia departed sharply from the national trend and banned the incorporation of any churches. Virginia's 1802 Glebe Act, which seized glebe properties from parishes, also raised pressing questions about whether customary incorporation had survived the Revolution, whether a legislature could revoke a charter of incorporation, and what happened to the property of a disbanded corporation. The

[30] *Archives of Maryland Online,* 192:294-8.
[31] Sarah Barringer Gordon offers an exceptionally valuable discussion of general incorporation acts in the context of post-revolutionary disestablishment. I am indebted to her work as I compare a state like Maryland, which embraced general incorporation, to Virginia, which rejected all forms of religious incorporation. Gordon, "The First Disestablishment: Limits on Church Power and Property Before the Civil War," *University of Pennsylvania Law Review* 162 (2014): 316-324; The African Supplement: Religion, Race, and Corporate Law in Early National America," *William and Mary Quarterly,* 3rd ser., 72 (2015): 385-422.

Supreme Court would weigh in on Virginia's disestablishmentarian policies in *Terrett v. Taylor* (1815) and castigate the state for trampling on the rights of corporations and property holders.[32] The relationship between the legislature and corporations, the status of custom and common law, and the nature of private property were all up for debate during disestablishment. Deliberations over church and state queried how republicanism's abstract premises ought to shape actual laws in the new republic.[33]

Property

Scholars have long discussed the material culture of Anglican worship, but the stories of Lunan and Hughes call us to consider other material elements of faith – the boarded-up church, vested property rights, cash settlements, and weapons carried to worship.[34] Contests for legal rights between ministers and parishioners expressed competing claims to parish resources.

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[32] *Terrett v. Taylor*, 13 U.S. (9 Cranch). Mark McGarvie's excellent work details the relationship between disestablishment and early national corporate and contract law. It remains a model for integrating disestablishment in larger discussions of early American law. See Mark McGarvie, *One Nation Under Law: America's Early National Struggles to Separate Church and State* (DeKalb, IL: Northern Illinois University Press, 2005).

[33] I rely on a large body of scholarship for my discussion of republicanism. Classic texts still set the agenda; in particular, see Joyce Appleby, *Capitalism and a New Social Order: The Republican Vision of the 1790s* (New York: NYU Press, 1984); Linda K. Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 1997); Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: Harvard University Press, 2017), Third Edition; Gordon Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 1998), Second edition. However, I also draw on works that explicitly consider the relationship between race and republicanism, including: John Salliant, *Black Puritan, Black Republican: The Life and Thought of Lemuel Haynes, 1753-1833* (New York: Oxford University Press, 2002), 47-82; Gary Nash, *Race and Revolution* (Oxford, UK: Rowman & Littlefield, 1990), 26-28; 75-81; Joanne Pope Melish, *Disowning Slavery: Gradual Emancipation and "Race" in New England 1780–1860* (Ithaca: Cornell University Press, 1998), 1-5, 50-79; Michael A. Morrison and James Brewer Stewart, eds., *Race and the Early Republic: Racial Consciousness and Nation-Building in the Early Republic* (Lanham, MD: Rowman & Littlefield Publishers, 2001).

[34] Much of the best scholarship on Anglicanism comes from studies of its material culture. See Dell Upton, *Holy Things and Profane: Anglican Parish Churches in Colonial Virginia* (New Haven: Yale University Press, 1997); Isaac, *The Transformation of Virginia, 1740-1790* (Chapel Hill, 1982); Louis P. Nelson, "The Diversity of Countries: Anglican Architecture in Virginia, South Carolina, and Jamaica," in *Material Culture in Anglo-America: Regional Identity and Urbanity in the Tidewater, Lowcountry, and Caribbean,* ed. David Shields (Columbia: University of South Carolina Press, 2009).

Churches were not just sacred spaces but valuable assets paid for by levying taxes on all parishioners. The rich materiality of Anglican worship and parishes' wealth expressed the ideological foundation of a religious establishment, namely that the church extracted property from the community to support its program of moral order and religious orthodoxy. Establishment was fundamentally a material project.

Studying parochial property also highlights the deep involvement of colonial parishes in racial slavery.[35]Ministers read the slave code from the pulpit, and parishes enforced racial hierarchy in their liturgical practices.[36] Parishes played more than an ideological role; they also actively participated in the plantation economy and profited as slaveholders. Half of late eighteenth-century parishes in Virginia owned enslaved men and women.[37] The scope of parochial slaveholding is less clear in Maryland's extant records, but evidence suggests that parishes there also owned enslaved people.[38] These men and women were treated as appurtenances to glebe lands, which made their legal existence inseparable from the ground on which they labored. Even parishes that did not own enslaved people still frequently hired

[35] Several scholars have both called attention to the practice of institutional slavery in early America in which colleges, churches, and other institutions held enslaved people. See Jennifer Oast, *Institutional Slaveholding: Slaveholding Churches, Schools, Colleges, and Businesses in Virginia, 1680-1860* (Cambridge, UK: Cambridge University Press, 2016); Steven Craig Wilder, "War and Priests: Catholic Colleges and Slavery in the Age of Revolution," in Sven Beckert and Seth Rockman, eds., *Slavery's Capitalism* (Philadelphia: University of Pennsylvania Press, 2016), 227-242; idem, *Ebony and Ivy: Race, Slavery, and the Troubled History of America's Universities* (New York: Bloomsbury Press, 2014); Thomas Murphy, S.J., *Jesuit Slaveholding in Maryland, 1717-1838* (New York: Routledge, 2001).

[36] For more discussion of how race circumscribed parochial belonging, see Rebecca Anne Goetz, *The Baptism of Early Virginia: How Christianity created race*. (Baltimore: Johns Hopkins University Press, 2012); Nelson, *A Blessed Company*, 259-72; 421n4, 441n11, 442n6.

[37] My findings accord with Jennifer Oast. See Oast, *Institutional Slaveholding,* 20. See Chapter 3 of this dissertation for a detailed discussion.

[38] Presbyterian minister Patrick Allison mentioned that enslaved people were kept by parishes after disestablishment along with glebes. Vindex [Patrick Allison], "Candid Animadversions on a Petition," (Baltimore: 1793), 2nd edition, 14. Carol Van Voorst also found "scattered" evidence that parishes purchased slaves to work on glebes. Carol Lee Van Voorst, "The Anglican Clergy in Maryland, 1692-1776," (Ph.D. diss., Princeton University, 1978), 240.

enslaved labor. The religious establishment sanctified the dogma of racial slavery and profited from the bodies and labor of enslaved men and women.

Disputes over valuable property, including enslaved people, animated disestablishment in both Maryland and Virginia. Jesuit priests in Maryland owned extensive plantations and hundreds of enslaved people.[39] Maryland's Catholics eagerly embraced incorporation as the best means to secure their vulnerable property. In contrast, the lack of wealth among Virginia's evangelical denominations gave them less incentive to seek incorporation, which they viewed as unjust holdover of establishment. Americans invoked liberty and property as abstract categories in their debates over church and state, but real property was at stake in every community.

The hostility of Virginia's disestablishment did not end with the state's rejection of incorporation. In Virginia, disestablishment initiated a massive transfer of wealth from church to state. After a protracted political struggle, Virginia authorized the confiscation of glebe property, including tens of thousands of acres of land, fine homes, and enslaved people. However, Virginia's counties went further and also seized poorhouses, charitable endowments, churches, chapels, silver, books, and bells. Marylanders never seriously debated the confiscation of parish property, but disestablishment still remade its material landscape. Without public funds and facing an exodus of parishioners to evangelical churches, churches fell into ruin. Cash-strapped parishes in Maryland relied on their glebes to weather the financial storm of disestablishment.

After confiscation, parish property became a battleground as communities debated how to repurpose these assets. While some of Virginia's counties chose to open free schools, private academies, or poorhouses using glebe funds, most chose to lower taxes. Counties reduced their

[39] "Official Report from the Superior, Father G. Hunter, to the Provincial, Father Dennett," July 23, 1765, cited in Thomas Hughes, *History of the Society of Jesus in North America*, *Colonial and Federal, Documents: Volume 1, Part 1,* 335-337.

infrastructure and property-holdings, rather than administering the traditional apparatus of the parish welfare system. Under the banner of republicanism, local government stepped back from the role of overseeing many aspects of communal life and prioritized keeping taxes low taxes above all else.

The Chesapeake: A Comparative Approach

Finally, the similar predicaments of Coventry Parish and Upper Parish highlight the common experience of Anglican establishment across Maryland and Virginia. Anglicanism was established in both Chesapeake colonies by the early eighteenth century. Maryland and Virginia each had active parish systems that worked in concert with county courts to govern local communities. The Anglican establishment in both colonies experienced similar problems – too few ministers, expansive parishes, and distance from the episcopal hierarchy. While the Chesapeake has been envisioned as a single economic and social region, scholars have shied away from considering the shared religious culture of the two colonies.[40] The material culture, ministers, and social importance of Virginia's established church have received significantly more attention. In contrast, Catholicism remains the dominant feature of colonial Maryland's religious history, an emphasis which distinguishes it from other colonies and prioritizes the seventeenth century over the eighteenth century.[41]

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[40] For discussions of the Chesapeake as a single social and economic region see, Allan Kulikoff, *Tobacco and Slaves: The development of southern cultures in the Chesapeake, 1680-1800* (Chapel Hill: Published for the Institute of Early American History and Culture, Williamsburg, Virginia by the University of North Carolina Press, 1986); Philip Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake and Lowcountry* (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press), 1998; James Horn, *Adapting to a New World: English in the Seventeenth-Century Chesapeake* (Chapel Hill: Published for the Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 1994).

[41] For discussions of Catholicism in Maryland, see Antoinette Sutto, *Loyal Protestants and Dangerous Papists: Maryland and the politics of religion in the English Atlantic, 1630-1690* (Charlottesville, VA: The University of Virginia Press, 2015); Patricia Bonomi, *Under the Cope of Heaven: Religion, Society, and Politics in Colonial*

There were important differences between the religious cultures and legal establishments of the two colonies. Maryland's vestries were popularly elected; Virginia's were not. Parish rectors served as members of the vestry in Maryland but did not in Virginia. Moreover, in Maryland, counties paid Anglican ministers and administered poor relief, and the governor had the power to induct parish rectors. Maryland's annual parish levies were capped by law, which prevented vestries from raising large sums in a single year. Virginian vestries could impose whatever levy they saw fit, inducted and paid ministers, and oversaw the system of poor relief. All of these checks on parochial power made parishes far less autonomous in Maryland than in Virginia.

Moreover, while religious non-conformists lived in both colonies, their history and standing differed greatly. About 7% of Maryland's white population was Catholic in the mid-eighteenth century, and this community was elite, wealthy, and well-connected.[42] Maryland's Jesuits held valuable plantations and hundreds of enslaved people. In Virginia, there were few dissenters in the early eighteenth century, but the number of evangelicals began increasing rapidly after the Great Awakening. Roughly 10-20% of the population was non-Anglican by 1776.[43] Virginia's dissenting congregations did not hold nearly as much valuable property. As Virginia's evangelical churches grew on the eve of the Revolution, they began protesting the harsh legal penalties imposed by the colony and seeking greater protection for their assets.

America (New York: Oxford University Press, 1986), 13; 21-24; David W. Jordan, "Political Stability and the Emergence of a Native Elite in Maryland," in *The Chesapeake in the Seventeenth Century: Essays on Anglo-American Society,* David L. Ammerman and Thad Tate, eds. (New York: W.W. Norton & The University of North Carolina Press, 1979), 243-272; Maura Jane Farrelly, *Papist Patriots: The Making of an American Catholic Identity* (New York: Oxford University Press, 2012); some older studies include Nelson Waite Rightmyer, *Maryland's Established Church* (Baltimore: Church Historical Society for the Diocese of Maryland, 1956). Additional studies of Anglicanism in Maryland include Gerald Hartdagen, "The Vestry as a Unit of Local Government in Colonial Maryland," *Maryland Historical Magazine* 67 (1972): 363-388. Van Voorst, "The Anglican Clergy in Maryland, 1692-1776"; Werline, *Problems of church and state.*

[42] Farrelly, *Papist Patriots,* 291n48.

[43] Issac, *Transformation of Virgnia,* 179.

In Part I, I explore Anglicanism across the Chesapeake. Chapter 1 considers the everyday experiences of colonists living under the legal authority of the established church and investigates the origins of Anglican establishment. Chapter 2 evaluates parishes' wide-ranging legal and civic powers and argues that this activity embodied the church's mandate to oversee a godly society. Chapter 3 demonstrates that the church's material wealth and corporate privileges went hand in hand. As common-law corporations, parishes amassed property and safeguarded material investments while non-Anglicans struggled to hold property securely.

Disestablishment took divergent, even contradictory paths in the two states. The differences in the power and property of non-Anglicans shaped the course of disestablishment. Maryland's disestablishment proceeded quickly and peaceably. Parishes did not lose their property, and many Christian denominations across the state appealed for and received the power to incorporate. Moreover, Maryland's communities underwent far less administrative change as a result of disestablishment because parishes there had not been responsible for overseeing poor relief or other social welfare programs. Events in Maryland appear especially placid when contrasted with those in Virginia, where the legislature moved to prohibit any church from becoming incorporated and authorized the seizure of parish property. More than thirty thousand acres of land, scores of enslaved people, liturgical silver, and churches changed hands while secular administrators took the reins of Virginia's system of social welfare. Only a geographically comparative framework that explores events before and after the Revolution can explain why disestablishment unfolded so differently on either side of the Potomac.

Perhaps because of the similar chronology and shared rhetoric of disestablishment in Maryland and Virginia, scholars have left these significant differences unexplored and unexplained. Virginia has received far more attention from scholars while Maryland remains an

also-ran in the story of religious freedom.[44] Scholars have attributed Virginia's outsized influence on case law and the historiography of church and state to the preeminence of Thomas Jefferson and James Madison in the state's debates.[45] But a comparative framework underscores another reason why the Old Dominion continues to attract scholars of church and state in the early republic.[46] Marylanders did not hold lengthy debates about incorporation or the seizure of church property. Their apparent passivity led one radical reformer to bemoan the people's "want of attention and resolution" to religious liberty.[47] By leaving these issues undiscussed, the state's limited public debates in the 1780s did not closely interrogate the definition of "establishment" in the context of religious freedom. Marylanders expressed an apparent willingness to let sleeping dogs lie. Virginians, on the other hand, confronted the meaning of an "establishment" of religion in frequent debates after the Revolution. Disestablishment was no less important in Maryland, but Virginia's protracted public debates furnish far more material for historians.

Part II follows disestablishment in the Chesapeake after the Revolution. Chapter 4 explores statewide disestablishmentarian policies toward incorporation and underscores how these debates shaped the meaning of an "establishment." Chapter 5 examines the debates over the seizure of

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[44] The body of scholarship on Maryland's disestablishment focuses disproportionately on events before 1692 and frame post-revolutionary events as an extension of pre-establishment conflict between Catholics and Protestants. This approach does not devote adequate detail to the significance of the established church in the eighteenth century. See, for example, Kenneth Lasson, "Free Exercise in the Free State: Maryland's Role in Religious Liberty and the First Amendment," *Journal of Church and State* 31 (1989), 419, 423-34; Michael D. Breidenbach, "Church And State in Maryland Religious Liberty, Religious Tests, and Church Disestablishment," in Carl H. Esbeck and Jonathan Den Hartog, eds., *Disestablishment and Religious Dissent: Church-State Relations in the New American States* (Columbia, MO: University of Missouri Press, 2019), 309-326.

[45] Donald L. Drakeman, *Church, State, and Original Intent* (New York: Cambridge University Press, 2010), 2-148. Buckley, *Establishing Religious Freedom,* 1-5.

[46] Hartog and Esbeck argue that, "it cannot be said that the disestablishment story in any one state was more important than that of others. This means we can find no warrant for the US Supreme Court's step in *Everson v. Board of Education*, and subsequent cases, that elevated the disestablishment in Virginia as the most impactful in schooling early Americans in disestablishment principles." I agree that no single state ought to be treated as a stand-in for the American story. Moving toward a synthetic narrative that accounts for differences between states remains an important goal for the field.

[47] Vindex [Patrick Allison], "To the Citizens of Maryland, No. III," in *Candid Animadversions on a Petition*, (Baltimore: Goddard & Angell, 1793), 2nd edition, 22.

church property in Virginia, which were framed in the revolutionary language of liberty and property. The political fights over the glebes cannot be understood without close attention to the actual property at stake; neither liberty, nor property was ever abstract to Virginians. Chapter 6 traces the transfer of valuable property, including land, enslaved people, buildings, and silver, from church to state in Virginia and considers the ensuing legal disputes in communities. Chapter 7 investigates how Virginian counties repurposed parish property and debated what it meant to enact republican principles in civic life. Chapters 5, 6, and 7 use events in Maryland as a foil but focus more heavily on Virginia's distinctive policies – its prohibition of incorporation and its confiscation of church property. The radical nature and significance of Virginia's choices only register when examined within the comparative framework. Thus, while this post-Revolutionary story spends more time discussing Virginia, I argue that we can better appreciate the importance of these developments by keeping Maryland in the frame as a revealing counter-narrative.

Establishment and Disestablishment: A New Narrative

Following these lines of inquiry, I offer three interventions in the narratives of church and state in the Chesapeake. First, I argue that the specific nature of a colonial establishment produced and circumscribed the post-Revolutionary process of disestablishment. All colonists in Maryland and Virginia lived under the established church and experienced its force in their daily lives. The framework of "establishment" carried deep legal, religious, and cultural resonance in the eighteenth-century Chesapeake, and I carefully examine the meaning of "establishment" before and after the Revolution.[48] Without closely interrogating the full legal, civic, and material

[48] I focus on the term "establishment," rather than the more famous phrase, "the separation of church and state." This choice allows me to tie disestablishment in colonial and revolutionary America back to the creation of the

power of the colonial church, and particularly its parishes, it is impossible to understand the process by which the legal concept of *an* establishment of religion evolved from dismantling *the* established church. Post-revolutionary disestablishment was not a foreordained process but reflected choices made in the moment. Reformers embarked on the project of dismantling the established church without consensus about their end goal. Marylanders and Virginians diverged over specific policies, which led them to cement different definitions of "religious establishment" in practice. As they overturned colonial laws and debated how to ensure religious freedom under republican government, Americans constructed lasting legal categories.

Second, I argue that disestablishment was not only an expansion of individual liberty but also a transformation of civic community. Gone was the traditional value-system that tied religious adherence to civic belonging and rested on divine authority. On a practical level, the way in which municipal government raised funds and what services it provided changed, too. The nineteenth-century authorities who administered poor relief, regulated moral behavior, and managed local resources operated under a new republican logic. Race remained the key fault line of communal life, and republican authorities became even more vigilant about using race as the determinative category of civic belonging. Communities repurposed parish property and debated whether tax cuts, schools, poorhouses, or universities would best serve the new American experiment. Their choices were not always unanimous but grounded in the republican goals of securing liberty and protecting property. The traditional contours of public life changed as religious adherence was cleaved from civic belonging and the apparatus of the established

established church during the English Reformation and to 21st-century constitutional debates about the Establishment Clause. I am not the first historian of the topic to deemphasize separation. Thomas Curry, for example, assiduously avoided the term "separation." I address the issue of "separation" where it arises in the latter half of this project, but it does not remain my central lens of analysis. Curry, *The First Freedoms*, viii.

church was dismantled. So often discussed as a fight for individual liberty, the process of disestablishment also remade the fabric of every community.

Finally, I argue that disestablishment was fundamentally a material process. American narratives of religious freedom tend to frame disestablishment as a fight over revolutionary ideals. Scholars and the public at large dematerialize their accounts of disestablishment by attempting to divorce property from principles.[49] But the established church was a prosperous institution, and its exclusive legal power was embodied in its wealth. Dismantling the established church and claiming the equality of all religious denominations was also a fight over property. Glebes came to signify the denial of religious freedom in Virginia, while Marylanders raised little protest about parishes retaining their lands, enslaved people, and churches, as long as all churches could secure their own property through incorporation. Disestablishment was just one of the many venues in which newly independent Americans grappled with how to reconcile conflicting claims to property and liberty in the new republic.

Dismantling the established church wrought an extraordinary material transformation in the religious landscape. Communities auctioned off church silver, sold off gilded altarpieces, demolished Anglican churches, and left chapels to ruin. Recognizing the material dimensions of disestablishment connects the American Revolution more closely to other moments of religious

[49] There are, of course, notable exceptions. Sarah Barringer Gordon and Thomas Buckley each emphasized the property at stake in protracted battles over glebes. See Gordon, "The Landscape of Faith: Religious Property and Confiscation in the Early Republic," in eds., Daniel J. Hulsebosch and R. B. Bernstein *Making Legal History: Essays in Honor of William E. Nelson*, (New York: NYU Press, 2013), 13-48; Buckley, *Establishing Religious Freedom: Jefferson's Statute in Virginia* (Charlottesville: University of Virginia Press, 2013), 116-118. H.J. Eckenrode included a brief epilogue about what happened to the glebes. See. Eckenrode, *Separation of Church and State in Virginia,* 151-155. Denominational histories of the Episcopal Church, on the other hand, emphasize the transfer and destruction of parish property but their accounts also need to be read with a critical eye. See Meade, passim; George MacLaren Brydon, *Virginia's Mother Church and the Political Conditions Under Which It Grew*, 2 vols., (Richmond, VA: Virginia Historical Society, 1947-1952), 2:500-9. Historians of Catholicism in Maryland have also highlighted the importance of property to religious liberty. See, Fogarty, Gerald P. "Property and Religious Liberty in Colonial Maryland Catholic Thought." *The Catholic Historical Review* 72 (1986): 573-600; see Patrick J. Dignan, *History of the Legal Incorporation of Catholic Church Property in the United States*, 1784-1932 (New York, P.J. Kenedy & Sons, 1935).

rupture – the Henrician Reformation, the English Revolution, and the French Revolution.[50] Americans' revolutionary iconoclasm and the confiscation of religious property undermine narratives of a conservative affair in which private property rights were sacrosanct.

Acknowledging the material stakes of disestablishment does not make the struggle for religious freedom any less ideologically powerful or consequential. Dismantling the church led to radical and lasting changes in American law. Financial gain and material concerns animated many of disestablishment's most bitter contests because property reflected the very real stakes for rightsholders. In underscoring the tangible stakes of disestablishment, this study does not seek to cheapen or tarnish the ideological arguments made in the debates over religious freedom. Rather, acknowledging their material dimensions underscores the concrete consequences of personal liberties in the early republic.

[50] My discussion of religious iconoclasm draws broadly on the work of Eamon Duffy, *The Stripping of the Altars: Traditional Religion in England, c. 1400 – c. 1580* (New Haven, Conn.: Yale University Press, 1992). For other discussions of material violence in early America and during the Revolution see, Brendan McConville, *The King's Three Faces: The Rise and Fall of Royal America, 1688–1776* (Chapel Hill: University of North Carolina Press, 2006); Susan Juster, *Sacred Violence in Early America* (Philadelphia: The University of Pennsylvania Press, 2015).

PART I

"The Churches of Our Government": The Colonial Chesapeake

CHAPTER 1

Religious Establishment in the Chesapeake

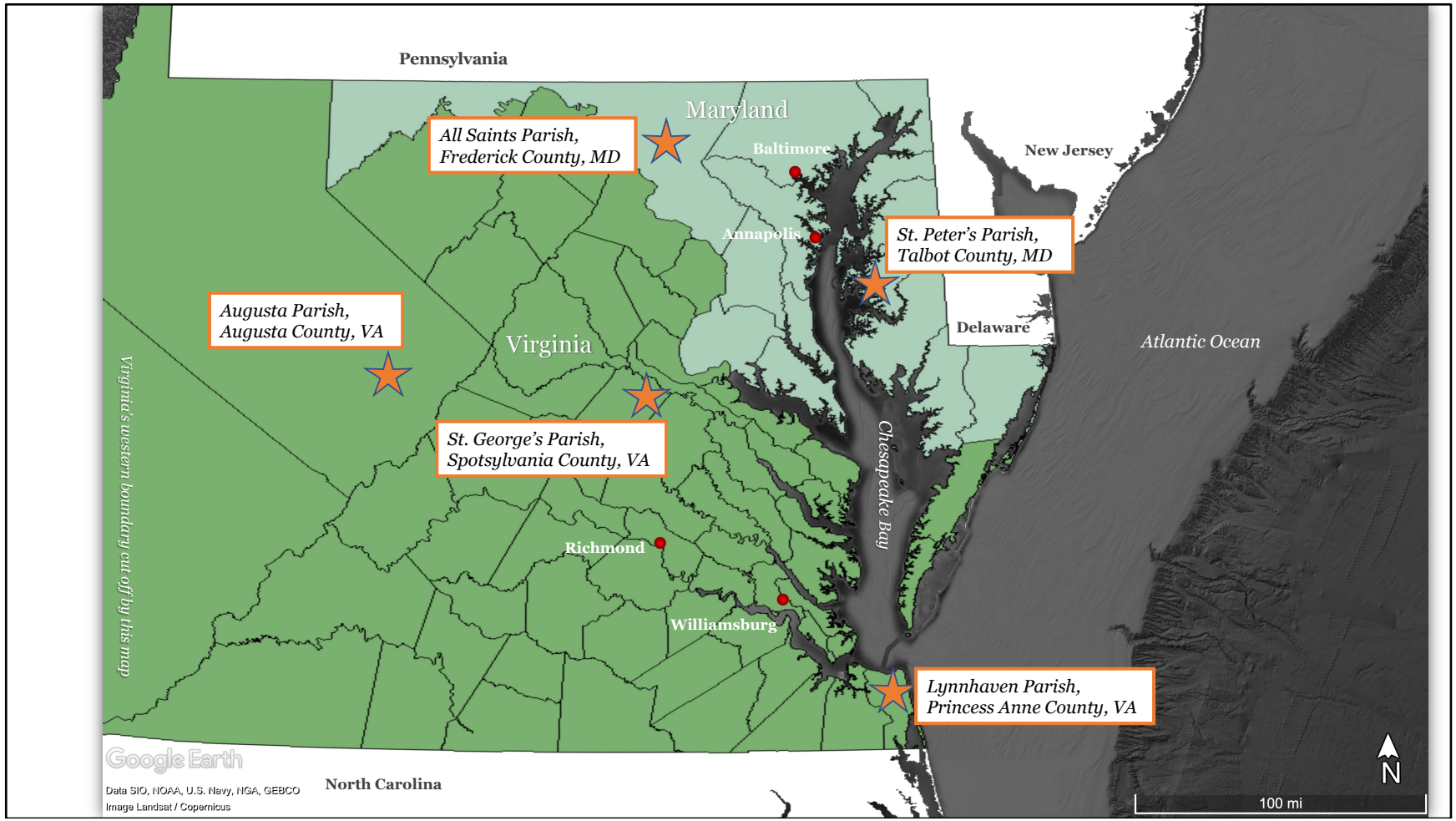


Figure 1.1. Map of Maryland and Virginia highlighting locations discussed in Chapter 1. Map created by Alyssa Penick using data from the *Atlas of Historical County Boundaries*, The Newberry Library, last accessed May 15, 2020, https://publications.newberry.org/ahcbp/index.html.

Anglicanism was a powerful force in the colonial Chesapeake, which makes its near absence from a century of historiography extraordinary. Longstanding narratives have mischaracterized religious institutions as civic or effaced religion altogether. Employing a specific set of expectations grounded in the Puritanism of New England, many historians hunted in vain for evidence of religion in the colonial Chesapeake. Because they found so little resembling the religiosity of New England, scholars often concluded that religion was far less important in the Chesapeake. Returning to colonial Virginia and Maryland with a broader understanding of Anglicanism drastically reshapes our impression of familiar stories.

Grace Sherwood, a woman convicted of witchcraft in colonial Virginia, and the Rev. Thomas Bacon, an erudite but disreputable Anglican clergyman in colonial Maryland, do not come up together in the history of the eighteenth-century Chesapeake. Grace Sherwood's case is most often invoked as an exception to the rule of witch trials in the colonies.[1] Her 1706 conviction and imprisonment in Virginia underscore that witchcraft was part of popular religious belief in Anglo-America and not confined to New England. The Reverend Thomas Bacon, on the other hand comes up in the footnotes of studies of the Chesapeake more than often than he appears as a subject of discussion. The minister compiled and published Maryland's colonial statutes in 1765, and his text has long served as an important source for scholars.[2] He also authored numerous sermons about the importance of catechizing enslaved men and women,

[1] Many broad overviews of colonial witchcraft mention Grace Sherwood's case alongside a discussion of the Salem witch trials. Emerson Baker brings up Grace Sherwood's case as a surprising footnote to the events in Salem, remarking "Interestingly, the last American trial for the capital crime of witchcraft occurred in Virginia...." Jon Butler, Grant Wacker, and Randall Balmer's synthetic account of religion in America invoked the story of Grace Sherwood to show that "magical beliefs" extended beyond Salem. See Emerson Baker*, A Storm of Witchcraft: The Salem Trials and the American Experience* (New York: Oxford University Press, 2014), 206; Jon Butler, Grant Wacker, and Randall Balmer, *Religion in American Life: A Short History* (New York: Oxford University Press, 2011), 86.

[2] Thomas Bacon, ed., *Laws of Maryland at Large, with Proper Indexes: Now First Collected into One Compleat* Body (Annapolis: 1765).

which were circulated by nineteenth-century defenders of pro-slavery Christianity.[3] Neither of their stories has been narrated from the perspective of the legally established church. Integrating these two individual's experiences into one account helps produce a more cohesive narrative of Anglicanism in the Chesapeake with some surprising results. This chapter begins by closely examining their lives to demonstrate how established religion as a legal, social, and spiritual framework circumscribed daily life in the Chesapeake colonies. Then, it considers the development of the legal and ideological framework of the "established" Anglican Church in England and explores how the two Chesapeake colonies came to support the legal establishment of Anglicanism in the seventeenth century.

The Virginia Witch

Witchduck Point is a narrow strip of land that juts into Lynnhaven Creek in present-day Virginia Beach. A few miles from Cape Henry, the southern boundary of the Chesapeake Bay, Lynnhaven Creek gave its name to the colonial Anglican parish that straddled its shores.[4] The site held the infamous trial by water of Grace Sherwood, which gave the point its very literal and distinctive name - Witchduck. Known as the Virginia Witch or the Witch of Pungo, Grace Sherwood was tried and found guilty of witchcraft in 1706 after being ducked in Lynnhaven Creek. Legends about Grace Sherwood have lived on in local memory ever since.[5] A midwife

[3] Larry E. Tise, "Proslavery: A History of the Defense of Slavery in America, 1701-1840," (Athens, GA: The University of Georgia Press, 1987), 20-21; 294.
[4] George Carrington Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish, Princess Anne County, Virginia, 1723-1786* (Newport News: VA, 1949), xi. The Library of Virginia also holds a copy of the original vestry book. See The Colonial Vestry Book of Lynnhaven Parish, 1723-1892, Accession 30109, Church Records Collection, The Library of Virginia, Richmond, Va. [Hereafter LVA].
[5] Local lore still remembers Grace Sherwood. Several local histories and children's books have been written about her in the past few decades, and there is an annual historical reenactment of her trial on Witchduck Point. Public interest in her case piqued after Virginia Governor Tim Kaine pardoned her in 2006, three hundred years after her conviction.

and healer, Grace who was rumored to don men's clothes and dance naked at night.[6] She was popularly credited with bringing the first rosemary cutting to Virginia's shores and planting it around her home. There were even tales of her crossing the Atlantic in an eggshell.[7]

Grace Sherwood's case echoes the familiar pattern of seventeenth-century witch trials in which a vulnerable, ostracized woman with property became the target of witchcraft accusations.[8] As the most infamous case of witchcraft in the colonial South, Grace's story extends the narrative of witchcraft in colonial America beyond New England and demonstrates widespread popular belief in witchcraft in the English Atlantic. The basic outlines of her case are well-known, though standard accounts make no mention of religion. But, if we look closely at the ordeal of Grace Sherwood and her family, we see established religion at work. Individuals ranging from the wealthiest civic leaders to the most marginalized inhabitants constituted the parish as a civic and religious community in Virginia. Institutionally, materially, and legally, church and state worked hand in hand on the local level. Established religion was part of the legal scaffolding of Virginian society, and the parish church and the county court both oversaw the trial and punishment of Grace Sherwood.

Born in 1660 to John White, a carpenter, and his wife, Mary, Grace grew up in Lynnhaven Parish.[9] She married James Sherwood around 1680, and the Sherwoods lived on a

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[6] Kierner, "Grace Sherwood," 21.
[7] These legends are recorded throughout the nineteenth and twentieth centuries. See "Grace Sherwood: The One Virginia Witch," *Harper's Monthly Magazine* LXIX (1884): 99-101. For contemporary discussions, see Kierner, "Grace Sherwood," 31; Belinda Nash and Danielle Sheets, *A Place in Time: The Age of the Witch of Pungo* (Virginia Beach, VA: W.S. Dawson Co., 2013).
[8] See Carol F. Karlsen, *Devil in the Shape of a Woman* (New York and London: W.W. Norton & Company, 1987); Paul Boyer and Stephen Nissenbaum, *Salem Possessed* (Cambridge, MA: Harvard University Press, 1974).
[9] My account of Grace Sherwood's life relies on published primary sources and secondary sources. Excerpts from the Princess Anne County Court records mentioning Grace Sherwood were published in a series of three articles published in the *William and Mary Quarterly* in 1894-5. See Edward W. James, "Grace Sherwood, the Virginia Witch," *William and Mary Quarterly*, 1st ser., 3 (1894): 96-101; James, "Grace Sherwood, the Virginia Witch," *William and Mary Quarterly,* 1st ser., 3 (1895): 190-192; James, "Grace Sherwood, the Virginia Witch," *William and Mary Quarterly,* 1st ser., 3 (1895): 242-245; James, "Grace Sherwood, the Virginia Witch," *William and Mary Quarterly,* 1st ser., 4 (1895): 11-22. Digital images of the original trial transcripts are also available online through

144-acre farm, which they inherited from Grace's parents.[10] By the late 1690s, the community was rife with allegations that Grace was a witch. Richard Capps claimed that Grace had bewitched his cattle. John Gisburne and his wife accused Grace of cursing their pigs to die and their cotton to wither. And, Elizabeth Barnes told people that Grace "came to her one night and rid her and went out of the key hole or crack of the door like a black catt." Grace and James Sherwood brought cases for slander against all three parties; they settled with Capps out of court.



Figure 1.2. Photo of Lynnhaven Creek from Witchduck Point in 2017. Photograph by Alyssa Penick

the Virginia Historical Society. See "Grace Sherwood: The "Witch of Pungo," The Virginia History Explorer, *Virginia Historical Society* (website), accessed 30 September 2017, https://www.virginiahistory.org/collections-and-resources/virginia-history-explorer/grace-sherwood-witch-pungo. Renewed interest in Grace Sherwood has led to recent scholarly studies of her life. Cynthia Kierner devoted a chapter to Grace Sherwood in her recent study. Cynthia A. Kierner, "Grace Sherwood: The Virginia Witch," in Cynthia A. Kierner, ed., *Virginia Women: Their Lives and Times* (Athens, GA: The University of Georgia Press, 2015), 11-32. Information on her birth and parents can be found in Monica C. Witkowski, "Grace Sherwood (ca. 1660–1740)," in *Encyclopedia Virginia*, Virginia Humanities, Last modified January 1, 2014, https://www.encyclopediavirginia.org/Sherwood_Grace_ca_1660-1740.

[10] James, "Grace Sherwood, the Virginia Witch," *William and Mary Quarterly,* 1st ser., 3 (1894), 97.

But, the couple lost their suits against the Gisburnes and the Barnes.[11] Grace was widowed in 1701. Though her husband's property gave her some financial security, she continued to face abuse and accusations. In September of 1705, she won a judgement against Luke Hill and his wife for assault and battery after the couple purportedly "assaulted bruised maimed & barbarously" beat her.[12] Though the jury sided with Grace, they only awarded her twenty shillings in damages and failed to sign their judgement. Grace wound up with nothing, and the jury's actions suggested that public sympathy did not lie with the widow. [13] Four months later, on January 3, 1705/6, the Hills and Grace Sherwood were back in court when the couple accused the widow of witchcraft. The court records note that "Grace Sherwood of the County was & have been a long time Suspected of witchcraft." However, witchcraft trials were unusual, and "the matter [was] a long time debated" before the court proceeded to a trial.

A legal handbook published in Williamsburg in 1732 included serious reservations about witchcraft but still outlined the procedures for recognizing and punishing the crime. The author warned that, "the existence of witches, or Persons of either sex, who have correspondence and familiar Conversation with Evil Spirits, has been a subject of controversy among Learned Men; and Later Ages have produced few instances of Witchcraft: But nevertheless, 'tis a Capitol offense, and by the common law, such offenders were to be burnt." The discussion cited the Parliamentary statute that defined witchcraft as the attempt to "conjure and covenant with any evil Spirit," and listed several criminal activities that could be empowered by witchcraft, including "to destroy any person's body" and "to destroy, or impair the cattle or goods of

[11] James, "Grace Sherwood, the Virginia Witch," *William and Mary Quarterly,* 1st ser., 3 (1894), 99-101.
[12] James, "Grace Sherwood, the Virginia Witch," *William and Mary Quarterly,* 1st ser., 3 (1895), 191.
[13] James, "Grace Sherwood, the Virginia Witch," *William and Mary Quarterly,* 1st ser., 3 (1895), 191. Witkowski's article on Sherwood in *Encyclopedia Virginia* suggests that Grace was awarded twenty pounds sterling in damages but the trial transcripts show that a far smaller sum was awarded but never paid. Witkowsi, "Grace Sherwood (ca. 1660–1740)," in *Encyclopedia Virginia.*

another." The punishment for the first offence was a year in prison, time in the pillory, and a public confession; the second conviction was punishable by death. The manual cautioned that "Information of witchcraft ought not to be received... without strong and apparent Cause... Plain and direct evidence is not to be expected in these Works of Darkness...therefore we can have only, either the confession of the Offender, or pregnant and convincing circumstances." The entire premise for punishing witchcraft was to stamp out cooperation between individuals and the devil, which threatened the community at large. The ideology of established religion in which the state was a guardian of morality motivated the criminal prosecution of witchcraft and provided the guiding framework for Grace's trial. [14]

Apparently, the Princess Anne County magistrates decided there was enough compelling evidence against Grace Sherwood to hold to a trial. The court first ordered a jury of women to inspect her body for signs of witchcraft. The impaneled women rendered their verdict that "after a mature consideracon... wee of [the] Jury have Serched Grace Sherwood & have found two things like Titts wth Several other Spotts."[15] The forewoman of the Jury was none other than Elizabeth Barnes, whom Grace and her husband had sued for spreading rumors of her nighttime conjuring eight years earlier. The county court sent the case up to the colony's General Court, but the higher court refused to prosecute because she had not been charged "any particular act." The General Court effectively passed the buck and sent the case back to the Princess Anne County Court in May of 1706. Left to handle the matter on the local level, the county court moved forward with the case.

Grace's antagonists were all representatives of state and church. The bench appointed Maximillian Boush to act as the Queen's attorney, or the chief prosecutor, in the case. Boush, a

[14] George Webb, *The Office and Authority of a Justice of the Peace* (Williamsburg: 1736), 361-362.
[15] James, "Grace Sherwood, the Virginia Witch," *William and Mary Quarterly,* 1st ser., 3 (1895), 192.

wealthy member of the gentry, was Justice of the Peace and one of the two churchwardens of Lynnhaven Parish. Four of the nine Justices of the Peace who presided over the trial, including Col. Edward Moseley, Lt. Col. Adam Thorrowgood, Capt. Horatio Woodhouse, Capt. Henry Chapman, were all certainly vestrymen of the parish, and it is likely that others of the JP's were either current or future vestryman. The women appointed to inspect Grace's body were her fellow parishioners, as were the defendants in the case, the Hills. The trial of Grace Sherwood was initiated and conducted by Lynnhaven parish, which was a far older community than the newly formed Princess Anne County. The overlap between parish vestrymen and county JP's has been used by scholars to highlight the hegemony of Virginian elites and the concentration of church and state power in the hands of the gentry. This is certainly visible in Grace's story, but we can also add more nuance to their conclusion when we recognize that Grace and her accusers, from the vestrymen to the female inspectors of the jury, were all parishioners. The parish was not only an institution of gentry power but one of a watchful community. The parish articulated the boundaries of belonging within the divinely and legally ordained framework of established religion.

The trial continued during the summer. In June, the court heard “Sundry Evidences Sworne ag[ains]t her proving Many Cercumstances to which She could not make any excuse” and she had “Little or nothing to say in her own Behalf.” The county courthouse and the parish church stood side by side on the point of land where Grace endured her ducking. When the colonial assembly carved Princess Anne County out of Lower Norfolk County in 1691, Lynnhaven Parish donated the land needed to construct the county's courthouse next to the site of its church. The limits of the new county followed the boundaries of the parish, which had been drawn over half a century earlier. According to local lore, Grace was taken to the church before

her ducking. She was placed on a stool and ordered to repent for her witchery. Rather than admit any wrongdoing, she declared, "I be not a witch, I be a healer."[16] While her visit to the church is not recorded in the trial transcripts, the powerful local memory of her defiance inside the church should be taken seriously. The persistence of this memory shows that her community understood her crimes as both civil and religious in nature. In the local retelling of the story, the parish church and the courtroom were both arenas of public condemnation. By urging Grace to repent in both the court and the church, the local authorities invoked their power as representatives of church and state. Their legal authority was rooted in a popular fear of the devil and the desire to punish blasphemy.

Though she refused to deny or confirm the charges, Grace apparently consented to "be tryed in [the] water." The court turned to ducking her as their last resort after she refused to confess in the court or the church. The site chosen was close to the courthouse and the parish church. The test was postponed until July because of apparent fears that the poor weather "might endanger her health." The magistrates' concern for Grace's well-being might seem more genuine if they had not been in the midst of prosecuting her as a witch. Indeed, the month-long delay allowed news of the planned ducking to spread, and a large audience gathered to watch the ordeal the following month. When the time came that July, the court took precautions to "preserve her from drowning" by taking an "assistance of boats and men" out onto the creek with her. Onlookers crowded on the shore to witness the scene. The magistrates tied up Grace and plunged her underwater. Somehow, she managed to free herself from the ropes binding her and began "Swiming... contrary To custom & the Judg[men]t of all [the] spectators." Her underwater

[16] Nash was the local expert on Sherwood and coordinated the annual reenactment of her trial until her death in 2016. Belinda Nash and Danielle Sheets, *A Place in Time: The Age of the Witch of Pungo* (Virginia Beach, VA: W.S. Dawson Co., 2013).

escape confirmed widespread suspicions that Grace wielded nefarious power. Just as damning was a second inspection by five "ancient" women who examined her naked body after the test and declared that she was "not like them nor noe Other woman that they knew of having two things like titts on her private parts of a Black Coller being Blacker [tha]n [th]e Rest of her Body."[17] Although there is no other evidence that Grace was African-American, or that either of her parents was of African descent, this description of her body suggests that her skin was a darker tone. Whatever her race, her coloring might be another reason why she became socially isolated in the community. After the trial, Grace was taken to jail, where she remained for some nearly a decade before being released.[18] Grace died in 1733 and left property to her three sons.[19]

The story of the so-called Virginia Witch usually ends with Grace's imprisonment, but Grace and her descendants continued to live in Lynnhaven long after her trial ended. Grace appeared as one of the few female landowners in 1731 Lynnhaven Parish Processioners Reports.[20] Processioning was the surveying of all private property boundaries in the parish. In a society dependent on tobacco cultivation, land was a prized asset. In the metes-and-bounds land-holding of Virginia system, wherein a certain tree or meadow served as the physical demarcations of property lines, confirming boundaries regularly was essential for maintaining order and harmony.[21] Every four years, parish vestries appointed at least a dozen men from the community to confer with landholders and then process, or physically walk along all private

[17] James, "Grace Sherwood, the Virginia Witch," *William and Mary Quarterly,* 1st ser., 4 (1895): 18-19.
[18] Witkowski, "Grace Sherwood (ca. 1660–1740)," in *Encyclopedia Virginia.*
[19] James, "Grace Sherwood, the Virginia Witch," *William and Mary Quarterly,* 1st ser., 4 (1895): 20; Kierner, "Grace Sherwood: The Virginia Witch," 25-26.
[20] Processioners' Report on Lands, October 19–November 4, 1731, Princess Anne Minute Book 2, 1709–17, 269–71 cited in Kierner, "Grace Sherwood," 31n36.
[21] Warren R. Hofstra, *The Planting of New Virginia: Settlement and Landscape in the Shenandoah Valley* (Baltimore: Johns Hopkins University Press, 2005), 108-111.

property lines, to ensure all parties approved.[22] Parish processioners were responsible for confirming agreement between neighbors about the limits of their property and reporting any disputes over the boundaries to the vestry for resolution. As a parishioner and landholder, Grace Sherwood partook in this ritual. The all-encompassing nature of the established religion meant that she was always a parishioner, no matter her past conviction. Long after enduring isolation and punishment at the hands of her fellow parishioners, Grace Sherwood also participated in parochial customs meant to affirm communal harmony.

Examining how the Sherwood family fared after their infamous matriarch's death provides another new and intriguing denouement to this story. The Sherwoods fell on hard times in the 1740s. When Grace's sons and her grandchildren needed financial assistance, time and again they turned to Lynnhaven Parish for support payments. Parishes in Virginia administered a social safety network by providing poor relief to the elderly, the poor, the mentally ill, widows, and orphans. In 1748 and 1749, John Sherwood requested relief to help maintain his wife's aged mother, and the parish granted them 400 pounds of tobacco each year.[23] And, when James Sherwood, Grace's son, died in 1752, he left two orphaned children. Between 1752-1756, the parish paid three different individuals, John Ashby, Sarah Dyer, and Willoughby Aires, at least three hundred pounds of tobacco a year to care for the orphaned Sherwood children.[24] Among the vestrymen who made the final decisions about these disbursements were at least five sons and grandsons of the men who presided over Grace Sherwood's trial.

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[22] Lynnhaven Parish carried out this duty every four years without fail until the Revolution. Processioning, like many other parish duties, has been mispresented as areligious. Scholars who cite this activity often present it as a county duty and miss the role of the parish altogether. See Kierner, "Grace Sherwood," 17. I argue that processioning reflected the role of the parish as an arm of the state and exemplified the established church's larger mission to care for the community's welfare.

[23] Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish,* 40-1.

[24]Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish,* 54-55, 57, 60, 69-70.

It is difficult to imagine the feelings of the Sherwoods as they sought assistance from the Woodhouses, Moseleys, and Thorowgoods. Local memory about Grace's case remained potent. Yet, mutual care was a legal duty of the parish. Parishioners had the right to receive relief from the parish as a public body. Institutionally, parish communities could punish those who transgressed, like Grace Sherwood, but also provide for those struggling to support an elderly family member or a neighbor's orphans. Parishes had the mandated legal imperative to draw moral and social boundaries around and within the community. The bonds of reciprocity were as strong as those of censure.

Neither a witch trial nor strong institutions of social welfare fit easily into our image of colonial Virginia under the Anglican Church. The moral vigilance and social fellowship embodied in this story seem to belong to the world of Hawthorne's Puritans, not to the tobacco-obsessed Virginians living on remote plantations. Even in the scholarly version of Grace's story, the role of religion has largely been effaced. State power and social status are present, but the clout of established religion is missing altogether. Reassessing the experiences of the Sherwood family requires historians to think critically about the relationship between religion and government in the Chesapeake. In fact, it forces us to examine the often overlooked adjective "established" in our accounts of "established religion." Virginians lived under the legally established church in Virginia, and religious establishment shaped their daily lives. Parishes exercised the legal authority of the religious establishment in local communities. The experiences of Grace and her descendants provide us with one jumping off point for reassessing established religion in the colonial Chesapeake.

The Disgraced Bacon

Across the Chesapeake Bay, we find another memorable figure whose personal story also reveals the power of established religion, though on a different scale. In many ways, the life of the genteel and erudite Reverend Thomas Bacon could not have differed more from that of poor Grace Sherwood. However, revisiting Bacon's life story also calls attention to the omnipresence of religious establishment in the Chesapeake. Born in County Cumberland in the Northwest of England around 1700, Bacon was ordained as a priest with a certificate to "go into the colonies." When the minister arrived in Talbot County on the Eastern Shore of Maryland in 1744 with his wife and son, he already had strong connections to the area. His elder brother, Anthony, was a wealthy and well-established merchant in Talbot County. Anthony's connections and means gave Thomas Bacon quite the leg up when he arrived in Maryland. Reverend Bacon first acted as curate to St. Peter's Parish and upon the death of the previous parson in 1746, Governor Thomas Bladen appointed him rector.[25]

The new minister quickly joined genteel social life in Talbot. Local merchant Henry Callister fondly described the minister a few months after his arrival, writing "I should have pass'd for a tip top Musician if the Revd. Mr. Bacon had not come.... His performance on the Violin & Violincello has afforded us much delight & his Conversation as much."[26] Bacon described another evening of music-making with his friends in Oxford as "the most delightful concert America can afford."[27] There was also an economic relationship between these men. Callister, a factor for Cunliffe and Sons, ordered and sold groceries and luxury items to the

[25] "Thomas Bacon's Life," *Archives of Maryland Online*, 75: 1.
[26] Thomas Bacon's Life," *Archives of Maryland Online*, 75: 1.
[27] Thomas Bacon to Henry Callister, 26 October 1756, Callister Papers, Archives of the Episcopal Diocese of Maryland, Episcopal Diocesan Center, Baltimore, Md. [Hereafter MDA], 1: 256a.

Bacon family.[28] Callister also expressed high regard for Bacon's spiritual leadership, writing that the new rector was "the worthiest clergyman I ever knew."[29] Bacon's zealous preaching attracted more parishioners to attend services. He oversaw the expansion of the church to accommodate twice as many people, and he also began performing services at a chapel of ease that had fallen into disuse. Callister was clearly not alone in his admiration for the minister.

Bacon and Callister were involved in a small circle of local elites on the Eastern Shore. In an invitation to dinner dated January 22, 1748, Reverend Bacon teasingly wrote to Callister, "This is to summon you & Mrs. Callister to attend, according to Promise, at my House... on Wednesday next… His Excellency of Oxford will be here with the facetious and merry magistrate Captain. Fail not to obey this summons."[30] A riff on the standard court summons, Bacon's humorous invitation showcased his playful sense of humor and highlighted a tight-knit social network that included the county Sheriff, the militia captain, and leading merchants. Bacon also cultivated connections with powerful men across the colony. The Reverend became an honorary member of Annapolis' famous Tuesday Club. He joined the social club for meetings whenever possible and frequently entertained the gatherings with his musical abilities. Bacon gained powerful political allies through his association with the Tuesday Club, including the colony's governor, Horatio Sharpe.[31]

Bacon curried favor with the proprietary family, the Calverts, by keeping them and Governor Sharpe abreast of developments within Maryland's Anglican Church. In August of 1753, Bacon gathered with other Maryland clergymen to discuss clerical discipline in the colony and wrote an address to Lord Baltimore about the problems facing the established church. Bacon

[28] Thomas Bacon to Henry Callister, Easter Monday 1756, Callister Papers, MDA, 1: 216.
[29] Thomas Bacon's Life," *Archives of Maryland Online*, 75: 1.
[30] Thomas Bacon to Henry Callister, 22 January 1748, Callister Papers, MDA, 1:118.
[31] Thomas Bacon's Life," *Archives of Maryland Online*, 75: 1.

acted as clerk for the conference and personally delivered their letter to his friend, Governor Sharpe, to send to the Calvert family. A more radical group of clergymen convened a few months later to voice their complaints about recent "encroachments of popery" in Maryland and crafted a separate report to the governor. Governor Sharpe and the Calvert family viewed this unauthorized meeting as a seditious violation of the proprietor's privilege. Bacon provided the Calvert family with a report about the subversive meeting. The following year Lord Baltimore appointed Bacon to be one of his domestic chaplains in the colony in a show of gratitude. Henry Callister once described Bacon as "a very considerable Man here & in Great Esteem with every great Man from the Governor to the Parish Clarke." This flattering description of the man also gestured towards Maryland's civic hierarchy. Bacon rested somewhere between the parish clerk on the lowest rungs and the colonial governor at its apex. [32]

Bacon embraced slaveholding and became an early spokesperson for pro-slavery Christianity. He hoped to sway white slaveowners to catechize the men and women whom they held in bondage by arguing that Christian conversion "would make [them] *excellent* slaves."[33] His sermons addressed enslaved people as "my dear black Brethren and sisters" while returning again and again to the importance of submission to God in all things.[34] He touted the promise of heaven as a just reward for a lifetime of unfreedom. Bacon's works were reprinted widely in the nineteenth century and prefigured antebellum Christian paternalism. [35] In the context of the Anglican Chesapeake, Bacon's sermons also expose how the premise of established religion

[32] Thomas Bacon's Life," *Archives of Maryland Online*, 75: 1.
[33] Jeffrey Robert Young, *Pro-Slavery and Sectional Thought in the Early South, 1740-1829* (Columbia, SC: The University of South Carolina Press, 2006), 81.
[34] Young, *Pro-Slavery and Sectional Thought in the Early South,* 81.
[35] Young, *Pro-Slavery and Sectional Thought in the Early South, 79-98;* Jon Butler, *Awash in a Sea of Faith* (Cambridge, MA: Harvard University Press, 1992), 142-3. For one of Bacon's complete sermons, see Thomas Bacon, "Second Sermon on Colossians 4:1, 1750," in Edward L. Bond, "Spreading the Gospel in Colonial Virginia (Lanham, MD: Lexington Books in association with *The Colonial Williamsburg Foundation,* 2004), 439-450.

allowed him to naturalize racial slavery. Hierarchy underwrote Anglican establishment and had long equated order with godliness. Such a premise could easily incorporate racial slavery into its picture of the divinely ordained universe. A system in which the divine rule of the monarch underlay the entirety of church and state implicitly sanctified even the cruelest laws of man.

Despite his easy entry into genteel social circles in the 1740s, Bacon became embroiled in personal scandals in the mid-1750s. Rachel Beck, described as a "spinster" and "mulatto woman" in the court records, accused the minister of committing adultery with her and fathering her bastard child in 1752. Beck was found guilty of adultery by the Talbot County Court in a criminal case. Bacon hotly denied the charges and sued Beck for defamation in civil court. Bacon eventually won his suit, but his own reputation suffered greatly. Rachel, a single woman of color, may not have had the credibility to win in court, but her allegations still carried weight in the community. The jury awarded Bacon a single pound of tobacco for his court costs in the defamation case, which suggests they were not convinced of the minister's blamelessness. Bacon complained that the case had ruined his "good name fame credit and reputation."[36]

Only two years later, Bacon was back in court facing heavy fines for failing to publish the banns of matrimony in two different instances. One of the most important legal duties of every parish minister was to oversee the publication of marriage banns, either by reading them from the pulpit or posting a notice on the courthouse or church door. The failure to perform these duties meant that a marriage was not legally formalized. In 1755, Bacon performed the wedding of the already-married, disreputable clergymen John Belchier, and Miss Elizabeth Bozman, the daughter of a leading Talbot County merchant. Bacon's failure to properly publicize this unlawful marriage suggests his complicity in Belchier's bigamy. When his bigamy came to light,

[36] Thomas Bacon's Life," *Archives of Maryland Online*, 75: 1.

Bozman left her husband and returned to Talbot. Bacon, then a widower, married Miss Bozman and again failed to legalize the marriage banns of his own second scandalous union. The legislature fixed a 5,000 pound of tobacco penalty for the failure of a minister to properly perform these duties. The steep legal penalty highlighted the importance of regulating marriage in the colony, and Bacon's appearance in court on both counts exposed his professional failure and morally questionable behavior to the community. [37] Following these events, Bacon wrote a downhearted letter to his old friend Henry Callsiter, lamenting, "few are the friends I have now in this world.... I would not write to you on such a scrap of paper, if I had plenty of it as formerly; but the man without money or credit, must do as he can."[38]

Despite his personal and professional wrongdoing, Bacon still had valuable connections to men in power. The proprietary government granted Bacon a welcome chance to relocate by appointing him as reader in All Saints Parish in 1759 and then inducted him as rector in the parish in 1762. [39] Located in Frederick County in Western Maryland, All Saints was far away from Talbot County and the most lucrative parish in the colony. The move provided Bacon and his disgraced wife with a better income and fresh start.

Bacon spearheaded two public projects during his tenure in Maryland. The first the Charity Working School in Talbot to educate poor youth. In his original subscription letter soliciting funds, Bacon emphasized "the necessity of such work in this province" because "education is hardly to be attained to, at any rate, by the children of the poor." He believed that the "profaneness and debauchery, idleness and immorality... especially among the poorer sort in this province" could be edified by "maintaining and teaching poor children to read, write and

[37] Thomas Bacon's Life," *Archives of Maryland Online*, 75: 1.
[38] 17 March 1757, Bacon to Callister, The Henry Callister Papers, MDA, 1:275.
[39] Thomas Bacon's Life," *Archives of Maryland Online*, 75: 1.

account" and "instructing them in the knowledge and practice of the Christian religion, as taught in the Church of England." From the perspective of the parish minister, the school's mission was civic and spiritual; the only way to improve the poor of society was through orthodox religious and academic instruction. Many parish ministers made additional income as teachers and the established church served an important role in providing education to local communities. But these academies often limited their instruction to the gentry. Bacon's vision went further though by aiming to enroll poor children. Bacon felt the Church had a moral imperative to care for the poor, even though the parish church was not legally responsible for poor relief in Maryland. By 1753, the trustees had purchased 120 acres and built a substantial brick schoolhouse only a few miles from the church. Few records remain, but Bacon's school operated under the administration of St. Peter's Parish until after the Revolution.[40] The established church in Maryland did not provide poor relief but still acted on behalf of the public good. While parishes occupied a slightly different position in the colony's constellation of state power than did parishes in Virginia, they still carried out the same mission of overseeing communal well-being and regulating morality.

Bacon's second public project was transatlantic in scale. He compiled and published the first complete collection of the colony's statutes in 1765, known as Bacon's *Lawes of Maryland*.[41] This volume remained the essential text for state courts into the nineteenth century. Bacon took on this project to gain favor with the Calverts, who were eager to reassert their proprietary prerogatives in the colony. The minister was well-positioned to review the laws due to his close connections to local and colonial government. He petitioned for access to the Talbot County Court's copies of the assembly's laws in 1753, and his frequent trips to Annapolis afforded him

[40] Thomas Bacon's Life," *Archives of Maryland Online*, 75: 1.
[41] Thomas Bacon, ed., *Laws of Maryland at Large, with Proper Indexes: Now First Collected into One Compleat Body* (Annapolis: 1765).

with additional opportunities to gather sources.

The project aroused considerable protest from critics of the colonial government, or, as Sharpe described them, "those who are destinguish't here by the false Appellation of Patriots."[42] Anger towards the proprietary privileges stoked resistance to the work. Governor Sharpe also worried that Thomas Bacon was a bad choice to undertake the already controversial project. Bacon's notoriety and his many "personal enemies" in the colony would provoke further opposition to the plan.[43] Moreover, the Governor objected to Bacon's appointment as compiler because the massive project would prevent him from fulfilling his ministerial responsibilities to his parish. Sharpe wrote that if Bacon were to "leave his Parish at this time on such an Account, there would be such an Out Cry against him, as you can scarcely have an Idea of."[44] Sharpe feared that he would hear "Exclamations...ecchoed thro the Province" about the disgrace of "a Clergyman taken from the Parishioners by whom he is supported & who by Law are obliged to support him."[45] In the public's imagination, Bacon's failure to perform his ministerial duties would be added to "the Catalogue of Vices whereof His L[or]d[shi]p as well as His Lieut[enan]t Governor might expect to be accused."[46] The governor understood that the absence of a parish clergyman would incite popular anger against the government. These concerns crystallized the important ties between church and state in the public mind. Parish clergymen like Bacon were public servants paid to minister to their communities and represented a faraway colonial proprietor. Bacon's failure in his duties as a rector would be understood as the governor's failure in his. The public perception of the established church informed their views of the colonial

[42] Horatio Sharpe to Frederick Calvert, Sharpe to Calvert, May 26, 1760 in *The Correspondence of Governor Sharpe, 1757-1761*, *Archives of Maryland Online*, 9: 417.
[43] Horatio Sharpe to Frederick Calvert, May 26, 1760 *Archives of Maryland Online*, 9: 417.
[44] Ibid.
[45] Ibid.
[46] Ibid.

government more generally; the parish remained a potent local symbol of transatlantic state power. Ultimately, Bacon defied Sharpe's wishes and published the volume in 1765.

As a parish minister, Bacon wore many hats. When he died in May of 1768, *The Maryland Gazette* published a highly selective obituary of Bacon's life: "By several years intense Labour, [he] compiled a compleat Body of the Laws of this Province, as lately published. – His humane, benevolent Disposition and amiable Deportment, gained him the Love and Esteem of all his Parishioners. He was likewise an affectionate Husband, a tender Parent, a kind Master, and a most agreeable Companion; which renders his Death not only a Loss to his Acquaintances but to Society in general."[47] This white-washed account of Bacon's time in the colony certainly left out the more scandalous episodes but still highlighted the multi-faceted nature of the colonial Anglican ministry. Parish rectors like Bacon were spiritual leaders and husbands with ties to their communities, families, and dependents. They were slaveholders and active participants in genteel life. Ministers served "society in general" as representatives of the legally established church.

No matter their status or circumstances, all individuals across the Chesapeake engaged with the established church. The accused witch and her financially struggling family experienced legal power, moral censure, and communal care through their parish. The urbane but disreputable minister engaged in the highest levels of colonial society and politics but was still answerable to his local parish for fulfilling his legal responsibilities and providing pastoral care. Ministers and parishioners were part of the moral, legal, and social community of the established church. As the locally constituted body of the transatlantic Anglican Church, parishes operated as powerful communal institutions and potent symbols of royal authority.

[47] *Maryland Gazette,* June 9, 1768, 2.

The Origins of Anglican Establishment

These personal stories illustrate the everyday power of established religion. Historians often assume that the "established" nature of the Anglican church is something self-explanatory. However, religious establishment was a specific phenomenon that emerged in the context of the English Reformation and undergirded the subsequent founding of a national Protestant church under the English Crown. The definition of religious establishment was emerging and evolving just as English colonies were establishing colonies across the Atlantic. Interrogating the meaning and history of established religion as a specific Anglo-American concept illuminates the scope of the church's presence and power in the Chesapeake colonies.

This idea of "establishing" a religion "by law" emerged in sixteenth- and seventeenth-century England as the Protestant national church sought to define itself in the wake of splitting from the Catholic Church. There were multiple definitions of the word "establish" by the Tudor period, but the term had no specific association with religion before the English Reformation. The modern English word "establish" came from the older French "establir." Sometimes spelled "stablish" or other variations thereof, the verb appeared in Chaucer's translation of Boethius's *De consolatione philosophiae* (1374) and in *The Parson's Tale* (c.1386-1400) and meant "to fix, settle, institute, or ordain permanently." In a late medieval legal context, the word came to mean, "to secure or settle property or privileges, etc. to or upon persons" or "to set up [an institution] on a secure or permanent basis." Sir John Fortescue's *Governance of England* (1460) used the word to describe the founding of state institutions and the conferring of legal privileges upon the crown. In the 1530s, the word was used to in the legal context of certifying the validity of a property deed. The verb could also mean "to strengthen by material support," as found in

quotation from Cardinal Wolsey in 1524 describing military action. In all of these uses, the word "establish" necessitated the involvement of both a subject and an object wherein someone with authority established something, i.e. the subject strengthened, founded, or authorized a specific object, be it an institution, legal right, or a person. The verb suggested that permanence, security, and strength had been rightfully bestowed by a higher power.[48]

Both the older legal definition of the term "establish," and its more everyday meaning informed how the Tudor government used the phrase when creating the legal framework of the national religion. After Henry VIII left the Catholic Church in 1534, England underwent decades of religious turmoil as its monarchs instituted different policies that oscillated from a strongly reformist Protestant position under Edward VI back towards Catholicism under Queen Mary. Elizabeth sought to follow a so-called "middle way" that carved out a compromised position between the pro-reform and pro-Catholic camps.

Several Parliamentary acts passed between 1530 and 1560 articulated the new material and a legal relationship between the Crown and the new Protestant Church of England. Though none referred to the "established church," these pieces of legislation used the verb "establish" when laying out the national church's standing powers. Multiple Henrician statutes from the 1530s employed the verb to construct and affirm the independent legal framework of the English Church from Rome.[49] However, Parliament also used the term numerous other instances, such as statutes regarding succession and the creation of new courts.[50] The use of the word "establish"

[48] *Oxford English Dictionary Online,* s.v. "establish," accessed Sept. 2017.
[49] 1534 Dispensations Act (25 Henr. VIII, c. 21) and the 1533 Act in Restraint of Appeals (24 Henr. VIII, c. 12), cited in ed. J.R. Tanner, *Tudor Constitutional Documents, A.D. 1485-1603, with an historical commentary*, (Cambridge: Cambridge University Press, 1930), 33; 43.
[50] 1534 First Succession Act (25 Henr. VIII, c. 22), in Tanner, *Tudor Constitutional Documents,* 382.

thus reflected the term's traditional definition and evidenced no clear association with the national Protestant Church.

The only legislative use of the term that suggested a special association between law and religion appeared in the 1539 Statute of Six Articles. The act sought to quell growing "diversities of minds and opinions" by reaffirming the Church's traditional teachings on six controversial questions, including transubstantiation and priest celibacy.[51] The act proclaimed, "unity might and should be charitably established in all things touching and concerning [the Christian Religion], as the same so being established might be to the honour of Almighty God."[52] The use of the term "established" in this sense not only affirmed the importance of religious accord as a legal and spiritual duty but also staked out the state's authority to ascertain and legislate a singular religious truth. A church "established" by laws would encourage harmony and thus honor God. This statute drew on the traditional definition of the term "establish" but its usage pointed to Parliament's authority to enforce godliness through law.

The Elizabethan Act of Uniformity, passed in 1559, returned to Protestant reform. The law affirmed the order of service under the Book of Common Prayer and instituted punishments for anyone who interrupted services, who spoke "anything in the derogation" of the liturgy, or who displayed "any contempt or irreverence" for the "rites of the Church."[53] The act referred to all persons as "parishioners" of the new national church and compelled them to attend worship at their parish church at least once a month. This act nullified any prior laws that had "established, or set forth" regulations for the administration of the sacrament or the order of service.[54] In this context, the word "establish" reflected Parliament's power to regulate and revise the terms of the

[51] 1539 Statute of Six Articles (31 Henr. VIII, c. 14), in Tanner, *Tudor Constitutional Documents,* 96.
[52] Ibid.
[53] 1558 Act of Uniformity (1 Eliz 1 c 2), Tanner, *Tudor Constitutional Documents*, 138.
[54] 1558 Act of Uniformity (1 Eliz. c. 2), cited in Tanner, *Tudor Constitutional Documents*, 139.

Anglican Church's liturgy through the passage of laws. Its use, though, did not indicate any special association with the newly independent national church.

A second important piece of Elizabethan legislation defining the role of the church was the Act of Supremacy. This law reinstated several Henrician laws against heresy that Mary had overturned. Secondly, it reaffirmed that, "the queen's highness is the only supreme governor of this realm, and of all other her highness's dominions and countries, as well in all spiritual or ecclesiastical things or causes, as temporal."[55] Moreover, the law, "established and enacted...that such jurisdictions, privileges, superiorities, and preeminences, spiritual and ecclesiastical....exercised or used for the visitation of the ecclesiastical state and persons, and for reformation, order, and correction... of all manner of errors...shall for ever, by authority of this present Parliament, be united and annexed to the imperial crown of this realm."[56] This act specifically "established" the crown's authority over the church and conferred privileges and jurisdictions to the "ecclesiastical state."[57] Together, the Elizabethan Acts of Uniformity and Supremacy extended legal and material support to the Church of England and affirmed the crown's ability to govern the church to ensure the peace and stability of the nation.

The Tudor legislative program formalized religious establishment in statute and crafted a framework to structure the new relationship between church and state. However, the use of the verb "establish" was minimal. Only in the 1539 Statute of Six Articles did the use of the term hint at its future connotation. These Tudor laws may have created the established church, but no statute referred to the "established church" or a "religious establishment." While Parliament

[55] 1559 Act of Supremacy (1 Eliz c. 1), in *Tudor Constitutional Documents,* 131.
[56] 1559 Act of Supremacy, (1 Eliz. c. 1), *Tudor Constitutional Documents,* 132.
[57] Ibid.

began “establishing” the church’s powers in these acts, there was not yet an articulated concept of a “religious establishment” in law.

In fact, the concept of the established church arose from religious culture, rather than through legal change. The specific association between the phrase “establish” and the English Church emerged in the changing language of the English translations of the Bible. The word established rarely appeared in Tyndale's Bible (1524, 1530s), but both the Geneva Bible (1587) and the King James Bible (1611) employed the word with frequency.[58] The repeated use of the term “establish” and its variations in the post-Reformation translations reveal that the Elizabethan meaning of the word and its explicit ties to religion had saturated English religious culture.

Derivations of the word “establish” appear infrequently in Tyndale's English translation of the Pentateuch and the New Testament, which were published in installments in the 1530s. Tyndale's version of the Old Testament used the term “stablish” in the context of marriage vows and conferring property.[59] Tyndale employed the word “stablish” in the New Testament to discuss the founding of churches by the apostles and to describe the promise God would “settle strengthen and stablishe his followers” in First Peter. Tyndale's scriptural use of the word

[58] The scriptural quotations come from *The Bible in English*, a Cambridge University project which include complete reproductions of Tyndale’s Bible, the Geneva Bible, and the King James Bible. See: *Tyndale Pentateuch* (1530); *The prophete Ionas (1531); The newe Testament / dylygently corrected and compared with the Greke by Willyam Tindale* (1534); *The Bible: That Is, The Holy Scriptvres Conteined In The Olde And Newe Testament. Translated According To The Ebrew and Greeke, and conferred with the best translations in divers languages. With most profitable annotations upon all the hard places, and other things of great importance* (London: Christopher Barker, 1587); *The Holy Bible, Conteyning the Old Testament, And The New: Newly Translated out of the Originall tongues: & with the former Translations diligently compared and reuised by his Maiesties speciall Comandement Appointed to be read in Churches* (London: Imprinted ... by Robert Barker [etc.], 1611*),* “The Bible in English,” Cambridge University*,* Chadwyck-Healey, modified 1996, last accessed May 4, 2020, https://quod.lib.umich.edu/b/bie/.

[59] In Tyndale's translation, Numbers 30:14 reads, “But if her husbande hold his peace from one daye unto another then he stablisheth all her vowes and boundes .” Tyndale's version of Leviticus 25:30 states, “But and if it be not bought out agayne within the space of a full yere then the housse in the walled cytie shall be stablished for ever unto him that boughte it and to his successoures after him....” *Tyndale Pentateuch* (1530), “The Bible in English.”

reflected its pre-Reformation meanings, such as bestowing legal rights, permanently founding an institution, or extending material support and strength.

In both the 1587 Geneva Bible (GB) and the 1611 King James Version Bible (KJV), the word “establish” appears more than a hundred times, and its meaning had evolved in striking ways. First, the GB and KJV use the phrase to refer to God's covenant with mankind. In both the GB and the KJV's translations of Genesis, the word explicitly refers to the relationship between God and his prophets. Time and time again, the text says that God declared, “with thee will I establish my covenant,” (see Genesis 6:18, 9:9, 9:11, 9:17 17:7, 17:19, 17:21, 41:32). Tyndale had translated these same passages using the phrases “I will make myne apoyntement with the[e]” or “ I will make my bonde betwene me and the[e].” And, both translations of the New Testament use the word to describe the authority of the new covenant sanctioned through Christ's atonement. Jesus is described as, “the mediator of a better covenant, which was established upon better promises,” (Heb 8:6) whereas Tyndale's translation read, “the mediator of a better testament which was made for better promyses.” Closely related to the notion of the covenant was the discussion of God's law in the GB and KJV. These later English translations declared that through faith in Christ, believers “establish the Law,” (Rom. 3:31) whereas Tyndale had used the phrase, “mayntayne the lawe.” The two later translations thus drew an explicit link between the use of the word “establish” and God's commandments to man, which was missing from the pre-Reformation text. Decades after the Elizabethan settlement, there was then a clear connection in the English language between the term “establish” and the concept of a divine agreement.

The GB and KJV translations also use the phrase “establish” to describe the founding of God's kingdom on Earth. There is a striking similarity between the legal language establishing

the church under the authority of the monarch who rules by the grace of God and of the scriptural covenant between God and his divinely appointed prophets. The GB proclaims, "Then David knew that the Lord had established him King over Israel," while the KJV declares "Then sat Solomon upon the throne of David his father, and his kingdom was established mightily. (2 Samuel 5:12; 1 Kings 2:12)[60] Through divinely authorized prophets and monarchs, God "established" his earthly kingdom. This meaning reverberated in the post-Reformation translations of scripture and the Elizabethan laws. By the end of the sixteenth century, the term "establish" had evolved beyond simply conveying the conference of security, rights, or privileges to express the specific relationship between God's law and earthly government

The notion of "the established church" as the legally established and state-funded national church crystallized in Elizabethan legal and religious culture. The phrase had evolved from a subject-verb-object, in which the state was said to have "established" the church, to a singular phrase – "the established church." This syntactic change reflected the emergence of "established religion" as a cohesive concept, and, indeed, as an available ideological framework that guided the crown's policy towards religion. When used in England, the phrase began to refer specifically to the Anglican Church and encompass its status as the legally privileged national church under the governance of the monarch. A reformer with more Presbyterian leanings, Thomas Cartwright referred to the "established church" as early as 1575.[61] In a 1581 publication, Anglican divine Alexander Nowell argued that "an established Church" was necessary for supporting the Church visible, or the community of Christian believers on earth.[62] The use of this

[60] Tyndale did not live to complete a full translation of the Old Testament, so it is impossible to know what form his translation of these passages would have taken. Given the fact that he rarely employed the word "stablish" and never used the phrase "establish," it seems likely he would have used different phrasing.
[61] *The second replie of Thomas Cartwright: agaynst Maister Doctor Whitgiftes second answer, touching the Churche discipline* (Heidelberg,1575), xxxiii-xxxv, *Early English Books Online* [Hereafter EEBO].
[62] Alexander Nowell, A *true report of the disputation or rather private conference had in the Tower of London, with Ed. Campion Jesuite, the last of August*. (London: 1581), Image 34-35; Image 86 [unnumbered pages], EEBO.

phrase reflected popular familiarity that the term denoted a state-sponsored church governed by the Crown.

The concept of the established church became familiar during the late sixteenth century; however, the form and future of the established church increasingly became a source of conflict during the seventeenth century. The unity of all English subjects in the Church of England was essential to the orthodox program of established religion as it existed at the dawn of the seventeenth century. Anglican parishioner and English subject were one and the same. As Richard Hooker's *Of the Laws of Ecclesiastical Polity* put it, "There is not any man of the Church of England but the same man is a member of the Commonwealth, nor any member of the Commonwealth which is not also of the Church of England."[63] This idealized vision of a national, all-encompassing church stressed that the universality of church membership was essential to the project. Differences between church papists, Anglo-Catholics, middle-way Anglicans, and reforming dissenters were never fully resolved under Elizabeth and these tensions grew more hostile under the Stuarts.

Anglicans defended the newly established relationship between church and state, wherein the monarch acted as Supreme Governor of the Church, as following the biblical example. Richard Bernard was a moderate reformer and a defender of the established church. He pointed out that "the old Testament... shewes the practise of established Churches."[64] According to Bernard, in the "Commonwealth of Israel... persons were gathered into Families; Families brought into Cities; Cities united into Tribes; and Tribes subject all under one Supreame

[63] Richard Hooker, *Of the Laws of Ecclesiastical Polity: Preface, Book I, Book VIII*, Arthur Steven McGrade, ed., (Cambridge: Cambridge University Press, 1989), 130.
[64] Richard Bernard, *Plaine evidences The Church of England is apostolicall, the separation schismaticall…* (London:1610), 179, EEBO.

power."[65] The Church of England "observed" this scriptural model too; English "persons are gathered into Families, Families into Parishes, Parishes into Diocesses, Diocesses into Provinces; and all under one Supreame regal authoritie... for well ordering this bodie knit together, as was the same in Israel."[66] In both cases, "the Church and Commonwealth" were "one commixt bodie in policie, under one King."[67] The distinction between civil and religious authority was impossible because "the Kings [sic] authoritie... is Gods [sic] authoritie."[68] The monarch of a national church governed with divine authority and enforced the righteous laws of the God over all of his/her subjects.

From this apologist's perspective, the gathering of all persons into one church - the unity of civic and religious institutions - conferred holiness on the project. The monarch's divine power "united us, by his established lawes."[69] The author credited Elizabeth with starting the established church. She had compelled "outward obedience of the Gospel," begun "to reforme [her] people," and governed the kingdom with "wholesome Lawes."[70] Thanks to the Elizabethan settlement, the English were now "a *gathered and united people* by the word, into the profession of Christ; and knit by Baptisme, and the Communion, and...under one Soveraigne authoritie."[71] Through its leaders, its laws, its structure, and sacraments, the established church governed a holy commonwealth. The united authority of church and state mutually reinforced one another and reinforced morality, order, and unity in the realm.

More radical reformers increasingly began to challenge the idea of an established church. Henry Barrow, who was eventually executed for his writings, rejected the premise that a state-

[65] Bernard, *Plaine evidences,* 127.
[66] Bernard, *Plaine evidences,* 127-128.
[67] Bernard, Plaine evidences, 127.
[68] Bernard, *Plaine evidences,* 128.
[69] Bernard, *Plaine evidences,* 128.
[70] Bernard, *Plaine evidences,* 126.
[71] Bernard, *Plaine evidences,* 126.

sponsored church could ever be a truly Christian church. In his 1590 treatise, *A Brief Discourse on the False Church,* Barrow attacked the basis for a church that was required by civil law. Barrow's blistering critique relied on his audience's familiarity with the concept of an "established church" as a state church. In a state-sponsored church where every subject was a church-member and required by law to take the sacraments, the people were not "called" or "joined in the faith." The result was a church bankrupt of true belief or fellowship that "abound[ed] with all manner of sin, abhomination and abhominable persons." The universal framework of the national church meant that it could not "seperate the most uncleane" and it did not have the power to "censure or cast out anie offendor." To Barrow, the all-encompassing nature of a state church compromised its sanctity.

While the Church of England claimed, "to be a true established church of Christ," Barrow insisted that a state church could indeed never be an "established church of Christ." Such a church lacked a "covenant with Christ,*"* which again underscored the linguistic association between "the established church" and a covenant. Barrow concluded that anyone who knows "what a true established church of Christ is" could no "longer mistake that adulterous Church of England that sitteth upon all the confused people… as upon manie waters...[with] the well ordered and established Church of Christ." Barrow's rhetorical move to upend the broader concept of an established church reveals that the term became well-known and synonymous with the Church of England by the end of the sixteenth century. The very concept of established religion became a touchstone in debates about the Anglican Church's policies and practices. Some radical Puritans felt increasingly restricted and targeted by the church during the first half of the seventeenth century. Under the leadership of men like Barrow and Brown, Puritan

Separatists justified their removal from the Church of England on the basis of fundamental objections to establishment. [72]

To defenders of the establishment, the removal of English subjects from the Church represented a breach in the civic order that smacked of treason. In comparison to the unity and order of the established church, those daring to worship outside the fold were a "confused meeting of stragling private persons, who under pretence of Christian libertie, will live under no law." Brownists, Anabaptists, and other Separatists were "full of varietie" and 'instabilitie is their Christian libertie..." While the "the Church of England established by Law" was the new Israel, dissenters were "a very Babel, for that they have no King in their Israel." The author ominously declared, "Marke and consider; the happinesse herein, and their miserie."[73] A monarch acting as lawgiver and presiding over the united body of the church and the state was the surest way to prevent disorder, instability, and sin. By uniting church and state, the establishment also married the political and religious spheres. Leaving the church violated the laws of the state and flouted the authority of the crown.

The place of dissent in a society which knit together political allegiance and religious identity proved particularly thorny. The emergence of the legal and spiritual framework of an established church produced a number of legal categories to label the unorthodox, those who refused to conform and those who felt reform had not gone far enough. New terms expressed their status outside of the orthodox Anglican fold: recusant, Papist, dissenter, and non-conformist. These legal categories were a necessary corollary to the idea of *the* establishment. As the minister of Baltimore's First Presbyterian put it two centuries later in 1792, "'dissenter' is a relative term - where there is no religious establishment, there can be no dissent – the one

[72] Henry Barrow, *A brief discoverie of the false church* (London:1590), EEBO.
[73] Bernard, *Plaine evidences,* 128.

unavoidably implies the other – the one cannot exist without the other."[74] The term, dissenter, is often used as a type of shorthand by historians to refer to those Protestants outside the established church in Anglo-America but the phrase itself does not tell us much substantively about beliefs or practices of those who bore this label. Dissenters were not Catholic and while they may have been as heretical, they were not quite heretics. They could be puritans, Quakers, Baptists, Presbyterians, Calvinists, or Methodists, depending on where and when in the seventeenth or eighteenth century one looks. The label itself is a legal status, and its durability underscores how deeply the legalistic language of establishment shaped Anglo-American religious culture.

Between 1559-1600, the concept of an established church coalesced in English political and theological writing. This discussion forged the identity of the Church of England as the only lawful religion. Disputes over the future of the state church were increasingly hostile by the early seventeenth century and reflected disagreements among Anglicans of all stripes, including Anglo-Catholics, moderate Anglicans, and more radical Puritans, about the proper relationship between church and state. Much of the ensuing turmoil in seventeenth-century England that followed revolved around established religion - its doctrines and material expressions, its legal power to compel worship, its hierarchy and organization. It is beyond the scope of this dissertation to provide a full account of English religious and political unrest in the seventeenth century but it is essential to recognize that English Civil War, the Puritan regime under Cromwell, and the succession crisis were all essential developments in the evolution of the established church.

[74] Vindex [Patrick Allison], "To the Citizens of Maryland, No. III," in *Candid Animadversions on a Petition*, (Baltimore: Goddard & Angell, 1793), 2nd edition, 29.

Establishment and Toleration

After a century's worth of political and religious turmoil, the Glorious Revolution revised the religious settlement as William and Mary ascended to the throne. They formally promised toleration alongside requiring some outward allegiance to the established church. In his *Letter Concerning Toleration*, Locke described his version of how the civil state ought to oversee religion. The state was empowered to make laws that supported the "temporal good and outward prosperity of the society" and to "promote piety, and the public weal, and peace of mankind."[75] To a large degree, Locke's opinions reflected the longstanding Anglican settlement. Locke argued that, "the public good is the rule and measure of all law-making," but "the care of souls does not belong to the magistrate."[76] This distinction echoed the focus on outward conformity, rather than inner salvation, that had been the guiding policy of the Anglican establishment since Elizabeth. Locke limited the authority of the civil state to making laws that ensured "external profession and observation," without attempting to enforce anything in the realm of "the mind."[77]

Along these lines, Locke laid down the grounds for rightful obedience to ecclesiastical laws. When the magistrate enacted laws "for the public good," all persons were compelled to follow these ordinances, even if they privately disagreed with the judgment of the monarch.[78] No "private judgement of any person concerning a law for the public good" can "take away the obligation of that law."[79] However, the treatise also argued that "obedience is due, in the first place, to God and, afterwards to the laws."[80] If a law extended beyond "the magistrate's authority

[75]John Locke, "A Letter Concerning Toleration," in *Locke: Political Writings,* ed., David Wootton (Indianapolis: Hackett Publishing, 1993), 423.
[76] Locke, "A Letter Concerning Toleration," 395.
[77] Locke, "A Letter Concerning Toleration," 399.
[78] Locke, "A Letter Concerning Toleration," 424.
[79] Locke, "A Letter Concerning Toleration," 423.
[80] Locke, "A Letter Concerning Toleration," 423.

(as, for example, that the people...should be compelled to embrace a strange religion, and join in the worship and ceremonies of another Church), men are not in these cases obliged by that law, against their consciences."[81] Thus, Locke's philosophical articulation of the church-state relationship limited the power of the establishment in crucial ways. Locke theoretically rejected the divine right of kings in which subjects owed complete obedience to the monarch because he acted on behalf of God. One of the key bases for the Elizabethan model of outward conformity was that obedience to the church amounted to the obedience to the divinely appointed monarch. Political allegiance rested on outward religious conformity. In Locke's writings, this older notion gave way to a more limited view of the civil magistrate's sovereignty by insulating the realms of conscience and worship from the full power of the state.

The necessary complement to Locke's vision of religious establishment was a much broader policy of religious toleration. When every person owed obedience to God first and foremost, it affirmed that, "liberty of conscience is every man's natural right."[82] Every individual had the right to honor his or her duty to God as they understood it. If a religious group's public and private worship was otherwise lawful, it could not be prohibited. Locke's expression of toleration firmly rejected the premise that all religious dissent amounted to political sedition. He argued that the longstanding fear of dissenters as a threat to the peace of the state stemmed from the very oppression of those same dissenters. Locke argued that if all subjects, "enjoy but the same privileges... these religious meetings will be no longer dangerous."[83] Locke's formulation of established religion and toleration distinguished loyalty to the commonwealth from membership in the Anglican Church.

[81] Locke, "A Letter Concerning Toleration," 423.
[82] Locke, "A Letter Concerning Toleration," 423.
[83] Locke, "A Letter Concerning Toleration," 428.

In Locke's formulation, the only religious views which could be prohibited were those "contrary to human society, or to those moral rules which are necessary to the preservation of civil society."[84] Unless a religious opinion threatened the morality, peace, or security of society, it must be tolerated. Translated into practical policy, Locke's framework of toleration extended to all Protestant dissenters but excluded Catholics, whose allegiance to the papacy threatened the political authority of the monarch and the security of "their fellow subjects," and atheists, whose views "dissolved" the very "bonds of human society."[85] Locke wrote *The Letter Concerning Toleration* before the Glorious Revolution and explicitly stated that he was concerned with "the rule of right," rather than real events. His was a philosophical endeavor, not a prescription for specific policies.[86]

The Glorious Revolution converted many of the ideas laid out by Locke into realities. The post-revolutionary church settlement extended in the Act of Toleration (1689). Indeed, institutionalizing toleration for Trinitarian Protestants formally enshrined the term "dissenters" in English statute for the first time in 1688.[87] These laws cemented Locke's more limited view of the role of the magistrate in the realm of religion. The event fundamentally rejected the older notion of passive obedience to the divinely ordained monarch, thereby severing political allegiance from religious conformity. Yet, the church continued to regulate moral behavior. Archbishop John Tillotson, an advisor to the newly installed William and Mary, argued that the traditional goal of religious uniformity had alienated dissenters from the established church over "fruitless quarrels" and "needless differences" and fundamentally undermined "the peace and

[84] Locke, "A Letter Concerning Toleration," 424.
[85] Locke, "A Letter Concerning Toleration," 426.
[86] Locke, "A Letter Concerning Toleration," 424.
[87] "William and Mary, 1688: An Act for Exempting their Majestyes Protestant Subjects dissenting from the Church of England from the Penalties of certaine Lawes. [Chapter XVIII. Rot. Parl. pt. 5. nu. 15.]," in *Statutes of the Realm: Volume 6, 1685-94*, ed. John Raithby (s.l: Great Britain Record Commission, 1819), 74-76, *British History Online*, accessed April 4, 2020, http://www.british-history.ac.uk/statutes-realm/vol6/pp74-76.

happiness of this church and nation."[88] Indeed, he asks all English Protestants to remain united without "names and distinctions of Parties."[89] Tillotson's words again echoed Locke who argued that stringent laws regulating religious conformity sowed strife while toleration healed it. Tillotson urged all Englishmen to "incline your minds to peace and good agreement with one another." For Tillotson, the persistent danger of Catholicism required Englishmen to lay aside their petty differences and remain "united for our common defence against a Common enemy" which "still remains and threatens us."[90] The Glorious Revolution revised the Elizabethan understanding of religious establishment by promoting toleration as its necessary counterpart. The best way to secure the peace and stability of the nation was to support a broad religious establishment that regulated moral behavior but offered some religious toleration to those outside the fold. The established church stood alongside the state and remained a steward of the public good, a guardian of its morals, and a bulwark against the threat of Catholicism.

Anglican Establishment in the Chesapeake Colonies

During this century of fierce debate and often violent conflict over the established church, the English also embarked on the colonization of North America and carried with them debates about established religion. Virginia established the Anglican church at its founding in 1607, and the colony's establishmentarian carried on an Elizabethan model that denied numerous privileges to non-Anglicans. Virginia's orthodox establishment did not face significant dissent for more than a century. Maryland, on the other hand, was founded by the Catholic Calvert family in 1632 and attracted many non-conformist colonists. Over the course of the seventeenth century, the

[88] *The Works of the Most Reverend Dr. John Tillotson... Containing Fifty Four Sermons and Discourses, on Several Occasions* (London: 1720), 455; 476; 455.
[89] *The Works of the Most Reverend Dr. John Tillotson,* 455.
[90] Ibid.

Calvert proprietors faced mounting political pressure to establish Anglicanism in their colony. Following the Glorious Revolution, the colony established the Anglican church by law in a series of acts passed between 1692-1702. While on paper the Anglican establishments in Virginia and Maryland looked quite similar by 1700, the church's power in the two colonies differed in meaningful ways.

In Virginia, the Church of England was established before the English had even arrived at Jamestown. The instructions in the Virginia Company's charter, dated November 20, 1606, declared that "Christian faith be preached, planted, and used, not only within every of the said several colonies, and plantations," and "amongst the salvage people... according to the doctrine, rights, and religion now professed and established within our realme of England; and they shall not suffer any person to withdrawe... from the same, or from their due allegiance, unto us, our heires and successors, as their immediate soveraigne under God."[91] The charter thus explicitly laid out the terms of religious establishment in the colony. Clerics, colonists, and Indians were bound to follow the orthodox faith and practices of the English church. Moreover, religious dissent would not be tolerated. The charter expressed the Elizabethan vision of religious establishment that equated political allegiance with loyalty to the established church. Outward religious conformity amounted to obedience to the divinely ordained crown and, by extension, their authorized representatives in the colony. The colony enforced the charter's establishmentarian vision by legislating religious life in the colony. The Virginia company's rules for the colony, *Lawes Divine, Morall, and Martiall* (1611), required attendance at church twice on Sunday and laid out the duties of ministers. Colonists faced punishment for criticizing the

[91] "The First Charter of Virginia; April 10, 1606," *The Avalon Project: Documents in Law, History, and Diplomacy,* Lillian Goldman Law Library, Yale University, last modified 2008, http://avalon.law.yale.edu/17th_century/va01.asp#b1.

church, blaspheming, and a host of moral crimes.[92] However, the dire straits of the early colony meant that the lofty ambitions for the colonial church expressed in the charter were far from the colonists' minds in the first decade of settlement.

As company rule gave way to royal governance in 1624, financial and organizational support for the church faltered. After several failed attempts to establish a colonial episcopate, the colonial assembly effectively assumed oversight of the church. They passed laws regulating clerical duties and organizing the system for raising funds for ministerial salaries and church building in 1632.[93] The assembly divided the entire colony in a system of parishes in the colony in 1655, although numerous parishes had already been organized locally and recognized in statute.[94] Without any formal church leadership in the colony, the religious establishment in Virginia was in the hands of civic government until the Revolution. There was a commissary in each colony, an appointee who acted as the Bishop's representative in the colony, but his authority was limited in practice.[95] The colonial assembly, the commissary, and the royal governor oversaw the church in the colony without much intervention from the English church hierarchy. The assembly created new parishes and empowered parishes to raise funds by setting an annual levy. However, the assembly had a hands-off approach to governing the church, which meant that religious life fell under the direction of local parishes for the most part. The crown delegated ecclesiastical power to their royally appointed representatives in the colony, the assembly and the governor, who in turn conferred power to local bodies.

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[92] Brent Tarter, "Lawes Divine, Morall, and Martiall," in *Encyclopedia Virginia,* Virginia Humanities, Last modified January 20, 2012, https://www.encyclopediavirginia.org/Lawes_Divine_Morall_and_Martiall.
[93] Hening, 1:155; 157-161.
[94] Hening, 1:399-400. Earlier statutes sanctioned the boundaries of existing parishes, which had been organized locally. See Hening, 1:223, 229; 249-251, 278, 298, 317.
[95] For more on commissaries in the colonies, see Nelson, *Blessed Company,* 114-116, 146-147, 171.

Though some Quakers, Puritans, and Catholics did immigrate to Virginia, their numbers remained low. In the *Office and Authority of a Justice of the Peace*, George Webb listed the penalties imposed on dissenters and Catholics in Virginia. All dissenters had to take an oath of fidelity and a profession of belief upholding basic Trinitarian doctrines. Quakers faced legal penalties; they were prohibited from giving evidence in a criminal case, serving on a jury, or holding government office. Papists suffered "Grievous Fines, penalties, and disabilities." They were forbidden from inheriting land, holding office, practicing law or medicine, and carrying arms. Webb admitted he had "purposefully omitted" an exhaustive list of all prohibitions against Catholics "because this Government has hitherto enjoied the singular happiness, that all the subjects here agree in uniformity of Worship, according to the Doctrine of the Church of England, which is here by Law established." Webb felt it was unnecessary to fully elaborate the prohibitions against Catholicism because these statutes were so rarely invoked in the religiously homogeneous colony. Of course, Webb failed to mention that even in the absence of active persecution these laws were at work effectively dissuading Catholics from settling in the colony. [96]

In Webb's world, almost all Virginians were conforming Anglicans, which made Virginia different from neighboring colonies and from England itself. His description of religion explicitly linked the uniformity of belief to the legally established church, which organized nearly "all" colonists into local parish communities. In his discussion of dissenters, Webb wrote, "we have among us no Conventicles, or Meetings of professed Dissenters, except Quakers: All other Persons, agree in a decent and uniform Exercise of the Protestant Religion, in their Parish Churches."[97] Webb was mistaken in stating that Virginia's only dissenters were Quakers, but it is

[96]Webb, *Office and authority*, 133.
[97] Webb, *Office and authority*, 133

worth considering his experience of Virginia as a religiously orthodox and homogenous colony.[98] Adherence to the established church was a fundamental order in this society, and Webb believed that this arrangement had bred "singular happiness," decency, and agreement among its inhabitants. The roles of Virginian colonist and Anglican parishioner were imagined to be indistinguishable. Because of the lack of religious diversity, the pretense of a universal, established colonial church remained intact well into the eighteenth century in Virginia.

The localism of the parish system could effectively cloak some of Virginia's religious diversity. King William Parish was settled by Huguenot refugees and offered French-language services to the congregation. Apparently, there were accusations about irregularities in the parish's liturgical practices, but their minister assured the Commissary that he followed the Book of Common Prayer. King William Parish retained much of its distinct identity as a community apart while still conforming to the parish model. More striking was the case of Augusta Parish, which was created in 1738. Colonial law made the expanse of territory stretching to the Mississippi and encompassing current-day West Virginia, Ohio, Kentucky, and Illinois, into a single county and parish. Laying claim to a vast stretch of territory, which was under the control of Native peoples, was equal parts grandiose and preposterous, but Europeans did begin arriving to settle the Valley in significant numbers by the 1740s. In February of 1752, the General Assembly of Virginia sought to lure more people to the region by passing *"An Act for*

[98] For more information on Friends in the colony, see Kenneth L. Carroll, "Quakerism on the Eastern Shore of Virginia," *Virginia Magazine of History and Biography* 74 (1966): 170–89. Recent scholarship has highlighted religious diversity in the colony. These scholarly arguments importantly highlight that the different religious practices of, as well as racism towards Native Americans in the early seventeenth century and African Americans after the mid-seventeenth century prevented many inhabitants of Virginia from ever being considered conforming Anglicans in the eyes of most orthodox Anglo-Virginians. See Rebecca Anne Goetz, *The Baptism of Early Virginia: How Christianity created race*. (Baltimore: Johns Hopkins University Press, 2012); Philip D. Morgan, "Religious Diversity in Colonial Virginia: Red, Black, and White," in Paul Rasor, Richard E. Bond, eds., *From Jamestown to Jefferson: The Evolution of Religious Freedom in Virginia* (Charlottesville: University of Virginia Press, 2011).

encouraging persons to settle on the waters of the Mississippi."[99] This law extended "privileges" and gave "proper encouragement" to "his majesty's natural born subjects, as well as foreign protestants...to settle on the waters of the Mississippi river, in the county of Augusta." Doing so would "be a means of cultivating a good correspondence with the neighbouring Indians," and expressed the hope that "settling that part of the country, will add to the strength and security of the colony in general." While the Assembly began by maintaining that drawing more settlers to the region would foster better relations with Native Americans, the next sentence suggested that the real objective was to create a buffer of loyal, Protestant settlers to protect the colony from incursions by the French and Native Americans in this contested territory.

The essential caveat to the legislature's invitation to settlers was their religious affiliation. The law specified "that all and every person and persons, being protestants, who shall hereafter settle and reside on any lands...to the westward of the ridge of mountains...in the county of Augusta, shall be... exempted, and discharged, from the payment of all public, county, and parish levies, for the term of ten years." This decade-long tax exemption provided an important incentive to attract new residents to the region and was also a remarkable accommodation to religious non-conformists in a colony that had long enforced orthodoxy. Across Virginia, parish levies were the highest form of tax colonists regularly paid and voting, holding office, and many other forms of public life were tied to religious adherence.[100] In the 1750s, the Virginian government was experiencing its first real struggle with religious dissenters as the Great Awakening spurred conversions and colonists began objecting to the church's power to compel financial support in greater numbers. The express invitation for more non-Anglicans to settle in the colony and to exempt them from parochial taxation were striking accommodations from the

[99] Hening, 6:268.
[100] Nelson, *A Blessed Company*, 29.

Anglican establishment. The assembly dictated Augusta would be a parish and that it would later raise levies, but colonial officials granted the frontier community significant leniency in managing its religious affairs in exchange for their presence in the contested western territory. Moreover, the very isolation of this western community made their non-conformity less of a threat to orthodoxy in other areas. These were not missionaries coming to convert parishioners in Tidewater Virginia but non-conformists setting up on the edge of the empire.

Perhaps more intriguing than the motives of officials were the goals of those dissenters in the Shenandoah Valley who oversaw Anglican parishes and enforced establishmentarian laws. Populated by Scotch-Irish Presbyterians and German Lutherans, Augusta organized and supported an established church, per the laws of the colony. Outwardly, Augusta Parish resembled other Virginian Anglican parishes. The parish was organized in 1746, nearly eight years after the legislature created it by statute. Every inductee to parochial office in Virginia swore allegiance to the Crown and then took the Oaths of Abjuration and Allegiance. [101] All vestrymen and churchwardens also had to sign the Test, in which they denied Transubstantiation, and pledged to "be conformable to the doctrine and discipline of the Church of England." [102] While these oaths may have given dissenters pause, more than half of the vestrymen elected and inducted in 1746 were Presbyterians, and all of them took the prescribed oaths of office. These Presbyterian vestrymen regularly continued to worship there while serving as leaders of the parish.[103]

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[101] The assembly required these oaths by law. See Hening, 5:76; 7:141. Examples of these oaths are recorded in numerous vestry books. Vestry Book 1746-1782, Augusta Parish, Augusta County, Va., Accession 20429, 427 Church records Collection, LVA.

[102] For the full text of the oaths, see William Meade, Old Churches, Ministers and Families of Virginia, 2 vols. (Philadelphia, Lippincott, 1857) [Hereafter Meade], 1:307.

[103] Comparing the vestrymen listed in the vestry book to the list of members of the Presbyterian Tinkling Spring Meetinghouse reveals significant crossover. Vestry Book, Augusta Parish, Augusta County, Va., passim, LVA; Joseph A. Waddell, *Annals of Augusta* (Staunton, Va: 1902), 63-64; Howard McKnight Wilson, *The Tinkling*

The vestry and churchwardens also took advantage of their autonomy. They exercised legal discretion by choosing not to enforce certain statutes. For example, there were no presentments in Augusta for absence from one's parish church, a crime that was prosecuted in other parts of the colony. The churchwardens were happy to police bastardy and drunkenness but had no interest in compelling religious adherence. The localism of Virginia's parochial system gave Augusta's vestry full autonomy over which laws they enforced and which they treated as negligible. Moreover, many of the essential spiritual components of Anglican practice were entirely absent in Augusta. Most noticeably, the vestry refused to build a parish church for several decades. By the time that the parish was organized, there were already several Presbyterian and Lutheran congregations worshipping in the area.[104] When the first parish minister arrived in Augusta, the vestry forced him to sign a contract agreeing "to preach in this Court House and in People's Houses of the same persuasion in the different quarters of the Parish as shall be most convenient, and that he administer the Sacrament in the Court House in stead of a Church and in different quarters of the Parish as aforesaid unless the Governor thinks proper to reverse the same."[105] The vestry compelled the clergyman to accept a churchless parish and to offer communion in the Court House. Indeed, the vestry voted to reject motion after motion to build a church over the next decade. [106] Finally, in 1761, the vestry agreed to rent "Thomas Harrisons as a place of worship."[107] It is unclear whether Harrison offered a barn, a home, or another outbuilding, but it certainly was not a church in the traditional sense.

Spring: Headwater of Freedom (Fishersville, Va., Tinkling Spring and Hermitage Presbyterian Churches, 1954), 438-440.

[104] Vestry Book, Augusta Parish, Augusta County, Va., 348, LVA.

[105] Vestry Book, Augusta Parish, Augusta County, Va., 1, LVA.

[106] Vestry Book, Augusta Parish, Augusta County, Va., 236, 267, LVA.

[107] Vestry Book, Augusta Parish, Augusta County, Va., 348, LVA.

Augusta's minister also seems to have joined the Anglican establishment out of necessity, rather than devotion to the Anglican cause. In 1747, Rev. John Hindman was hired by the vestry on a provisional basis as parish minister. Hindman was not a new arrival in Augusta -- in fact, he had been a Presbyterian missionary in the Shenandoah Valley before he set sail for England to receive Anglican orders.[108] He was ordained in England in 1746 as an Anglican minister and returned to Augusta to become the parish minister.[109] Though it is possible that a coincidental religious change of heart led Hindman to seek Anglican ordination, the convenient timing suggests that the enticement of an annual salary, a home on a glebe farm, and lifetime tenure as a rector convinced Hindman of the benefits of becoming rector of the newly-established parish. Another Presbyterian minister in the area, Rev. John Craig, wrote scathingly of Hindman's reappearance in Augusta, noting that he had "turned his coat and now appears in the quality of a Church of England parson."

It is difficult to assess how closely Hindman or his successors conformed to orthodox Anglican theology and liturgy. Hindman, who died in 1749, personally owned a Book of Common Prayer.[110] The parish eventually purchased a copy of the Book of Common Prayer in 1750s and two more in the 1760s[111] For a community of over two thousand, the slow acquisition of prayer books suggests that liturgical conformity was not a priority. The parish also dawdled in purchasing a glebe, another statutory requirement for every parish. After Hindman's death, the vestry chose not to hire a new minister for a number of years, despite having applicants for the post. Moreover, the vestry had frequent disputes with Hindman and the following parish rectors

[108] Waddell, *Annals of Augusta*, 60.
[109] James B. Bell, "Anglican Clergy in Colonial America Ordained by Bishops of London," *Proceedings of the American Antiquarian Societ*y, 83 (Worcester, 1973), 132.
[110] Waddell, *Annals of Augusta*, 80.
[111] Vestry Book, Augusta Parish, Augusta County, Va., 11; 348, LVA.

over the next twenty-five years over the payment of their annual salaries. The power of the establishment was deployed to oversee the communal welfare but largely unexercised when it came to building churches, supporting a parish rector, promoting the customary liturgy, and ensuring the spiritual cure of parishioners through the parish.

The Great Awakening brought new religious practices to the colony and deeply undermined the Anglican establishment's monopoly on religious life. The relative stability of the late seventeenth and early eighteenth century quickly morphed into pitched hostility between Anglicans and dissenting Presbyterians, Baptists, and others. Virginia had largely avoided the religious strife of seventeenth-century England, which had limited the political role of the established church and enshrined the policy of toleration. Virginia had no bishops and for the most part its religious organization operated locally, which meant colonists were also closer to the disputes over church hierarchy. While Virginia had been subject to the Parliamentary statutes of toleration in the late seventeenth century, it was not until the mid-eighteenth century Awakening that the colony's establishment confronted these challenges.[112]

While Virginia's religious establishment was placid until the mid-eighteenth century, Maryland experienced religious turmoil throughout the seventeenth century that more closely resembled tensions in England. Founded in 1632, Maryland was a proprietary colony under the Catholic Calvert family. George Calvert, a Catholic convert and close associate of Charles I, was elevated to a peer in 1625, the same year that Parliament prohibited Catholics from holding office. George Calvert died in 1632, and his son, Cecil Calvert, became the second Lord Baron

[112] For more information about the rise of dissenting communities in Virginia after the Great Awakening, see Monica Najar, *Evangelizing the South: A Social History of Church and State in Early America* (New York: Oxford University Press, 2008); Jewel L. Spangler, *Virginians Reborn: Anglican Monopoly, Evangelical Dissent, and the Rise of the Baptists in the Late Eighteenth Century* (Charlottesville: University of Virginia Press, 2008); Rhys Isaac, *The Transformation of Virginia, 1740-1790* (Chapel Hill and London: Published for the Omohundro Institute of Early American History and Culture at Williamsburg, Virginia, by The University of North Carolina Press, 1982).

of Baltimore and proprietor of Maryland. Cecil Calvert received a charter from the king to establish a colony in Maryland in 1632. The charter skirted around the Catholicism of the proprietors by referring to their "laudable, and pious Zeal for extending the Christian Religion" and the need to promote the, "Worship and Religion of Christ." By broadly invoking "God's holy and true Christian Religion" without any mention of doctrine or dissent, the charter suggested the establishment of a broadly ecumenical Christian establishment in the colony where Catholics and Protestants could coexist.[113]

The Maryland Charter did grant to the proprietor: "the patronages, and advowsons of all Churches which (with the increasing Worship and Religion of Christ)...hereafter shall happen to be built, together with License and Faculty of erecting and founding Churches, Chapels, and Places of Worship, in convenient and suitable places... and of causing the same to be dedicated and consecrated according to the Ecclesiastical Laws of our Kingdom of England."[114] The charter, then, suggested that if the colony were to formally establish a church, it would be Anglican. Moreover, the charter gave the proprietor the "ample Rights, Jurisdictions, Privileges, Prerogatives, Royalties, Liberties, Immunities, and royal Rights...to be had, exercised, used, and enjoyed, as any Bishop of Durham, within the Bishoprick...of Durham."[115] This clause, which likened the proprietor to a bishop, extended the colony privileges that remained inert without an established church. The colony simply avoided the matter of religious establishment by providing no financial support for religion in the colony and by not formalizing any sort of parish system.[116]

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[113] "The Charter of Maryland: 1632," *The Avalon Project: Documents in Law, History, and Diplomacy,* Lillian Goldman Law Library, Yale University, last modified 2008, http://avalon.law.yale.edu/17th_century/ma01.asp.
[114] "The Charter of Maryland: 1632," *The Avalon Project.*
[115] "The Charter of Maryland: 1632," *The Avalon Project*.
[116] Gerald P. Fogarty, "Property and Religious Liberty in Colonial Maryland Catholic Thought," *The Catholic Historical Review* 72 (1986): 577.

Attempting to avert religious discord in the colony, Lord Baltimore instructed the first governor to "be very careful to preserve unity and peace among all the passengers on shipboard... [to] suffer no scandall nor offence to be given to any of the Protestants, whereby any just Complaint may hereafter be made by them in Virginea or in England."[117] Calvert not only feared that there would be tension among different religious groups, but that rumors of an oppressive Catholic regime would tarnish the colony's standing in the increasingly hostile environment of the 1630s. Moreover, he ordered "all acts of Romane Catholique Religion to be done as privately as may be, and that they instruct all the Roman Catholiques to be silent upon all occasions of discourse concerning matters of Religion."[118] Even in this haven for Catholics, there was an attempt to veil nonconformity from public view and insulate it from popular deliberation. The proprietor's instructions reflected his belief that public harmony could be preserved only by relegating controversial practices to the private sphere. Calvert's broad policies of toleration attracted many religious nonconformists to the colony. [119] Catholics not only left England for Maryland, but Puritans from Virginia arrived in 1643 after its assembly passed a law prohibiting dissenting ministers from preaching.[120] Maryland boasted large populations of Catholics, Quakers, and Puritans by the 1640s.

The ecumenical tenor of the charter was formalized in statutory law during the English Civil War. After Charles I's execution in late January of 1649, Calvert wrote to the proprietary government to enact a policy of religious toleration. Often called the Act of Toleration, the statute, *An Act Concerning Religion,* made no mention of toleration. Rather, it declared that laws

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[117] Cecil Calvert, "Instructions, 13 Novem. 1633," reproduced in William Hand Browne, *George Calvert and Cecilius Calvert: Barons Baltimore of Baltimore* (New York: Dodd, Mead, and Company, 1890), 46.
[118] Ibid.
[119] Albert Warwick Werline, *Problems of church and state in Maryland during the seventeenth and eighteenth centuries* (South Lancaster, Mass., College Press, 1948), 5-10.
[120] Bonomi, *Under the Cope of Heaven.* 13; 21-24.

regulating "the conscience in matters of Religion hath frequently fallen out to be of dangerous Consequence in those commonwealthes..." This statement perhaps reflected Calvert's own sense of the causes of the English Civil War. In order, then, to secure a "more quiett and peaceable governement of this Province, and the better to preserve mutuall Love and amity amongst the Inhabitants," the law ordered that no colonist could be "compelled to the beleife or exercise of any other Religion against his or her consent." Moreover, the law stated that, "noe person or persons whatsoever within this Province... professing to believe in Jesus Christ, shall from henceforth bee any waies troubled, Molested or discountenanced for or in respect of his or her religion nor in the free exercise thereof." As long as colonists were Christian and did not "molest or conspire against the civill Governement," they would be tolerated in the colony. Extending toleration to all Christians and arguing that toleration actually promoted harmony, not discord, were radical ideas and reflected the previous decade of bloody civil war.[121]

In addition to laying out these abstract rights, the law also sought to enact practical policies that would quell religious hostilities. The law made it a criminal offense to call any other colonist a "heritick, Scismatick, Idolator, puritan, Independant, Prespiterian popish prest, Jesuite, Jesuited papist, Lutheran, Calvenist, Anabaptist, Brownist, Antinomian, Barrowist, Roundhead, Separatist, or any other name or terme in a reproachfull manner relating to matter of Religion." Again, Calvert's solution to the problem of religious conflict was to attempt to prevent public discussion or display of religious difference. Calvert's actions were performed out of self-interest to defend his claim to the colony and to protect the Catholic settlers there during a precarious moment. His fears about Puritan retribution were to be proven true when the majority-Protestant

[121] "An Act Concerning Religion," *The Avalon Project: Documents in Law, History, and Diplomacy,* Lillian Goldman Law Library, Yale University, last modified 2008, http://avalon.law.yale.edu/18th_century/maryland_toleration.asp.

assembly overturned the law in 1654. After the Restoration, the Maryland assembly reenacted the law and once again restored toleration.

Despite Calvert's best efforts, religious strife between Protestant colonists and their Catholic leaders broke out several times. During the Restoration era, the Calvert family came under increasing pressure both in Maryland and in London to promote the Anglican Church in the colony. George Yeo, an Anglican minister in Maryland, lobbied the Archbishop of Canterbury to pressure the proprietary government for greater support of Anglicanism in the colony. He wrote, that, "there are in this province ten or twelve counties and in them at least twenty thousand souls and but three Protestant ministers of us that are conformable to the doctrine and discipline of the Church of England."[122] To Yeo, the problem was not a lack of faithful Anglicans, but of ministers and institutions to serve their spiritual needs. Without an Anglican establishment, "no care is taken or provision made for building up Christians in the Protestant religion, for want of which not only many daily fall away to Popery, Quakerism, or fanaticism, but also the Lord's day is profaned, religion despised and all notorious vices committed."[123] He described Maryland as a "Sodom of uncleanness" and advocated for a tax to support the ministry in the colony. [124]

Lord Baltimore himself faced questions about the state of religion in the colonies. In 1676, the Bishop of London, in whose care all colonies were placed, raised concerns about why the government of Maryland had never established a parish system in the colony, as per the guidelines set forth in the original charter. In answering questions about the topic from the King's Privy Council, Lord Baltimore defended the lack of establishment by stating that, "the greatest

[122] George Yeo to the Archbishop of Canterbury, May 25, 1676, in John H. Seabrook, "The Establishment of Anglicanism in Colonial Maryland," *Historical Magazine of the Protestant Episcopal Church* 39 (1970): 288.
[123] Ibid.
[124] Ibid.

part of the inhabitants of the Province (three of four at the least) do consist of Presbiterians, Independents, Anabaptists, and Quakers," while Anglicans and Catholics made up a smaller part of the population. It was certainly in Lord Baltimore's favor to downplay the number of Anglicans in Maryland while dodging questions about establishment. There were at least fifteen Anglican churches built by voluntary contributions and at least sixteen ministers who came over the sixty-year period between the colony's founding and the church's establishment. Anglicanism was present but not powerful in Maryland for most of the seventeenth century.[125]

The Glorious Revolution initiated sweeping change in the colony. Protestants overthrew the Catholic proprietary government in the colony and Maryland became a royal colony in 1691. The transformation of the religious settlement in Maryland in the 1690s largely brought the colony's policies in line with those of both England and Virginia. Through a prolonged legislative process, the Maryland Assembly established the Church of England in the colony, and the crown affirmed its establishment in 1702. The colony was divided into thirty parishes and an annual tax of 40 pounds of tobacco was set to fund the construction of churches and provide Anglican ministers with an income. Toleration was extended to Protestant dissenters.

The assembly also introduced new laws that prohibited Catholics from voting, holding office, publicly worshipping or proselytizing. Only after Charles Calvert, the fifth Baron of Baltimore, openly pledged his commitment to the Anglican faith was the Calvert family's claim to Maryland restored. In fact, by passing discriminatory laws against Catholics, Maryland was simply enforcing the 1689 Parliamentary Act of Toleration, rather than the colony's 1649 proprietary Act of Toleration. Discrimination against Catholics was part and parcel of English toleration as articulated in the philosophical works of Locke and in parliamentary statute.

[125] Kenneth L. Carroll, "Quaker Opposition to the Establishment of a State Church in Maryland," *Maryland Historical Magazine* 65 (1970): 155.

Suspicion of Catholics stemmed from the idea that the state could legislate against a religion that disturbed the public peace and threatened the political order. The threat of the papacy, the succession crisis, and support for the Pretender all made Catholicism seditious and therefore beyond the bounds of toleration. By adopting this framework of toleration in the late seventeenth century, Maryland may have deviated from its original founder's vision but embraced the orthodox Anglo-American ideology of established religion.

By 1700, then, both Maryland and Virginia boasted an established church. Civic life was inextricably linked to religious practice in the minds and experiences of colonists. The Chesapeake colonies required attendance at worship once a month and supported Anglican ministers through a system of local taxation. Virginia's had been an immediate establishment. Its laws made it a hostile destination for non-conformists, which in turn reinforced the orthodox religion's hold on the colony. However, the localism its religious culture could also shield non-conformity. While Virginia's church and state were interwoven from its infancy, the establishment in Maryland represented a rupture in the history of the colony and a deviation from its original mission as a refuge for non-conformists. The establishment of the church in the 1690s reflected the opinion of the crown and Protestant colonists that Catholicism posed a threat to the commonwealth and its colony. Together, the royally appointed colonial government actively sought to bind itself to an established Anglican church.

The Parish

The Anglican Church was a transatlantic institution but studying the colonial church only from a transatlantic or even a colony-wide perspective obscures its actual power in the Chesapeake. While the colonial church technically fell in the diocese of London, the Bishop of

London had very little to do with the everyday affairs of the colonies. In fact, the colonial governors and assemblies took over many of the powers overseeing parishes that were normally exercised by English bishops. At its heart, the colonial establishment functioned as a local institution. Without a colonial episcopate and far removed from the oversight of Anglican hierarchy in England, colonial Anglicanism was administered by its parishes.

Parishes organized Anglican practice on both sides of the Atlantic. In England, the medieval parish had been an ecclesiastical unit of the Catholic Church.[126] Following the Reformation, the parish emerged as an institution that represented the civic-religious power of the Church of England and organized the church geographically under the new Anglican establishment. The parish began formally administering important civic duties. It took over the management of poor relief under the Tudor Poor Laws.[127] Some English parishes also gained control of important civic duties such as the maintenance of roads and bridges.

The Virginia assembly laid out a formal parochial system overseen by vestries in 1642. There are scattered references to parishes and church wardens in the records of the House of Burgesses as early as the 1620s, which suggests that some elements of the English parish system organically came to Virginia before the company or the assembly dictated a parish system. In Maryland, the division of the colony into thirty parishes in 1692 was the first key step towards the formal establishment of the Anglican Church. The creation of parishes reflected a desire to replicate the English establishment, but the social realities of the Chesapeake created a distinctly colonial parish. The dispersed settlement pattern of tobacco colonies made parishes much larger

[126] For more information on the medieval English parish, see Katherine L. French, The People of the Parish (Philadelphia: University of Pennsylvania Press, 2001); W.E. Tate, *The Parish Chest* (Cambridge: Cambridge University Press, 1946); N.J.G. Pounds, "A History of the English Parish," (Cambridge: Cambridge University Press, 2000).
[127] Sir Frederick Pollock and Frederic William Maitland, *The History of English Law Before the Time of Edward I* (Cambridge: Cambridge University Press, 1898), 2 vols., 1:60-562.

geographically than they had been in England. Parishes in Virginia and Maryland ranged from a few square miles to more than 2,000 square miles along the frontier, whereas English parishes were often smaller than five square miles.[128] By the eighteenth century, many Chesapeake parishes had multiple churches and chapels within their boundaries to serve scattered communities, unlike in England where each parish had only one church and congregation.

The structure of the Chesapeake parochial system also differed markedly from England's because of the colonial laity's control over parishes. As noted above, without an episcopal system in place for the colonies or any resident bishops, colonial Anglican churches fell under the Diocese of London. Despite this official obligation, the Bishop of London had little to do with the everyday affairs of the colonial churches. The responsibility of supervising colonial parishes fell to the vestry, a group of laymen who came to hold significant power. The vestry was an English institution, but colonial vestries exercised far more power than their English counterparts. [129] In England, the term "vestry" referred to a meeting or assembly of the parishioners called to make decisions about the parish.[130] During the English Reformation, an institution known as the select vestry emerged as a corporate, decision-making body but still was elected annually.[131]

The vestry morphed into a small group of elite parishioners who oversaw the affairs of the parish in the Chesapeake colonies. In Virginia, the vestry was a group of twelve laymen

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[128] Dell Upton, *Holy Things and Profane: Anglican Parish Churches in Colonial Virginia* (New Haven: Yale University Press, 1997), 8.
[129] See Katherine L. French, Gary Gibbs, and Beat A. Kumin, eds. *The Parish in English Life, 1400-1600* (Manchester and New York: 1997); Sidney Webb and Beatrice Webb, "What Happened to the English Parish," *Political Science Quarterly* 17 (1902): 223-246; "What Happened to the English Parish II," *Political Science Quarterly* 17 (1902): 438-459. See also, Mark Smith, "'The Hanoverian Parish," *Past and Present* (2012) 216 (1): 79-105; Donald Spaeth, *The Church in an Age of Danger: Parsons and Parishioners, 1660–1740* (New York: Cambridge University Press, 2000).
[130] Nelson, *A Blessed Company*, 39-40; 373n7.
[131] Beat Kumin, *The shaping of a community: the rise and reformation of the English parish, c. 1400-1560* (Brookfield, VT: Scolar Press, 1996), 250-253.

elected at the formation of the parish. From then on, Virginian vestries were generally self-perpetuating through a system called co-optation, in which the standing members internally decided who would fill a vacant seat.[132] Two of the vestrymen were chosen by their fellow vestrymen to act as churchwardens each year. The Maryland parochial system was based on Virginia's but differed in several important ways. First, its vestries consisted of six laymen, the minister, and two church wardens.[133] And unlike in Virginia, parishioners in Maryland gathered annually on Easter Monday to elect two vestrymen in place of two standing vestrymen and two new church wardens. Tensions between ministers and vestries was more evident in Virginia, where vestries operated more autonomously from their minister and communities. In England, the right of advowson, or the power to appoint or dismiss the rector, had traditionally fallen to the Bishop. Maryland and Virginia handled the exercise of this power differently. In Virginia, vestries claimed the right of advowson, whereas in Maryland, the Governor exercised this power. The differences between the composition and powers of the vestry in the two colonies seem to have quieted more obvious hostilities in Maryland than in neighboring Virginia.

The colonial vestry system gave control over parochial life to the same group of planters who dominated other areas of economic, social, and political life in the tobacco colonies. Many vestrymen were also Justices of the Peace, served in the Assembly, and held appointments in the militia. Vestries oversaw parochial spending, including the construction of churches and chapels. And while there were not ecclesiastical courts, churchwardens in both colonies took on the role of moral policing in colonial communities and presented offenders to the county courts for

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[132] Nelson, *A Blessed Company,* 34; William H. Seiler, "The Anglican Parish Vestry in Colonial Virginia," *The Journal of Southern History* 22 (1956): 310-337. Joan Gunderson concludes that popular elections of vestries were more common than is often acknowledged and that vestries wielded less power by the mid-eighteenth century. Joan Rezner Gundersen, "The Myth of the Independent Virginia Vestry," *Historical Magazine of the Protestant Episcopal Church* 44 (1975): 132-141.

[133] Gerald Hartdagen, "The Vestries and Morals in Colonial Maryland," *Maryland Historical Magazine* 63 (1968): 360.

punishment. Vestries exercised significant authority in the colonial Chesapeake, and the system of Anglican governance that existed in the colony by the eighteenth century could be more properly characterized as parochial than episcopal.

The parish was an active arm of the state that carried out the traditional duties of English vestries, and those assigned to it by the assembly. Anglican parishes received financial support from taxation and carried out a wide range of religious and civic duties in both Maryland and Virginia, which will be discussed in detail in Chapter 2. Armed with significant resources, parishes carried a legal mandate to ensure an orderly and moral community. They oversaw worship, administered relief services, appointed local officials, and kept vital statistics. Parishes were powerful patrons in local economies and gatekeepers to public welfare services. The established church anchored the social, economic, and legal order; indeed, promoting "order" was part of the guiding ideology of established religion.

Under the established church, everyone living in the parish's bounds was a parishioner. By law, colonists had to attend "publick worship" at their parish church at least once every two months. Indeed, the phrase "publick worship" expressed the principle that attending church amounted to an expression of civic belonging. In this context, worship took on social and civic importance because it was unlawful and immoral to abstain. Attendance at one's parish church maintained sacred bonds within the civic community. The large size of parishes often made the journey to church difficult, but divine services offered colonists a rare opportunity to socialize. Announcements were often publicly posted on church doors because the parish church was often the best means of communicating news to the whole community.

There is clear evidence that ordinary parishioners felt entitled to a convenient and accessible parish church. A 1732 letter from the Royal Governor, William Gooch, recounted that

on June 3 of that year, a mob "wilfully and maliciously burnt" the parish church of St. George. He speculated that there was "great reason to suspect a sett of people who had projected to have another instead thereof in their neighbourhood." Former Governor Alexander Spotswood had been empowered by an act of assembly in 1720 to choose the location of the parish church, court, jail, and other public buildings in the newly established county of Spotsylvania, named in his honor. Spotswood had chosen to locate all these new facilities on his own estate. After the construction of the church began in 1724, parishioners began complaining that the "place [was] so remote that few or none other [than] his menial Servants can ever frequent it." Gooch described the attack on the church as the "last desperate effort of a lawless and discontented mob... that profligate crew, with which that part of this Colony is but too well stocked." Gooch publicized a £100 reward for any information about the suspected arson. This outbreak of mob violence highlights the ferocity of popular attitudes towards religious life in the colony. The location of a parish church was an important concern, even in a tobacco colony. The colonial church was certainly a transatlantic and hierarchical institution governed by a local gentry like Spotswood, but common parishioners felt entitled to its privileges.[134]

Attending worship in the tobacco colonies reinforced existing social hierarchies as wealthy parishioners paid for and built comfortable pews, while others sat on benches or stood in the back. Male and female, elite and poor, free and enslaved, and even dissenters were all parishioners, at least in theory. As the established church, the Anglican Church abstractly included every colonist, whether he or she attended church or professed Anglican beliefs. The

[134] Lt. Governor Gooch to the Council of Trade and Plantations, July 18, 1732, in *The Calendar of State Papers, Colonial: North America and the West Indies, 1574-1739*, 39:173-178, Colonial State Papers, ProQuest, last modified January 30, 2017, https://proxy.lib.umich.edu/login?url=https://search-proquest-com.proxy.lib.umich.edu/docview/1845210175?accountid=1466.

entire community was imagined to be both governed and served by the parish, which reinforced the notion of an Anglican and English commonwealth that included all colonists. In Maryland, even after establishment, the colony's policies of religious toleration and larger population of non-conformists exposed the fallacy of the established church as a universally inclusive institution. Dissenters and Catholics occupied an ambiguous position as non-Anglicans who nonetheless contributed to the parish financially.

Membership in the parochial community particularly benefited white women and lower-class whites in the stratified society of the colonial Chesapeake. Vestry records bear out the ability of wealthy widows to buy central pews inside churches and show how the parish employed middling women as cleaners and nurses, which will be discussed in Chapter 2. Female parishioners were listed as the beneficiaries of numerous parochial welfare services such as poor and widows' relief and healthcare. The many ways in which women could benefit from the parish proved true for lower-class whites more generally. Poor relief, orphans' relief, processioning, healthcare, and other parochial services helped the lives of non-elite white Virginians by providing a public social safety net through the parish. White women of all classes and lower-class white men were acknowledged formally as part of the parochial community and benefitted from this membership.

Parishes enforced racialized boundaries to this imagined, all-encompassing parochial community. Few parishes provided black Virginians, either free or enslaved, with poor relief during the eighteenth century, yet another clear sign of their exclusion from the parish community.[135] Many Chesapeake planters prohibited enslaved people from attending worship or being baptized, particularly by the mid-eighteenth century. Thomas Bacon complained bitterly to

[135] My research shows the general exclusion of black Virginians from parochial forms of poor relief, which is discussed in greater depth in Chapter 2.

his church superiors in England about white opposition in Maryland to the baptism and religious instruction of those held in bondage. He preached and published a series of sermons exhorting planters about the "Duty of Christians to propagate their religion and particularly Christian Masters to propagate it among their domestics."[136] He goaded the white listener who took "pains in making his slaves profitable to his worldly interest, without bestowing on some time and labor upon making them servants of God." This "sad negligence" made white slaveholders more like "*unbelievers* than *Christians."* Bacon lamented the consequences for white colonists' souls as much as he despaired for those held in bondage. Bacon's own efforts to convert enslaved communities naturalized racial slavery and proclaimed that God had intentionally "made them" to bear their lot in life. He instructed his listeners that "Masters and Mistresses are God's Overseers" and they owed obedience in all things "to your great Master in Heaven."[137]

The vestry of Lynnhaven Parish prohibited all enslaved people from attending worship after the discovery of a purported rebellion in 1730. Governor Gooch described the incident in a letter to the Duke of Newcastle:

> the negros, in the countys of Norfolk and Princess Anne, had the boldness to assemble on a Sunday while the people were at church, and to chuse amongst themselves officers to command them in their intended insurrection... four of the ringleaders, on full evidence convicted, have been executed... we cannot be too much on our guard against such desperate combinations, I have ord'red the Militia to patrole twice or thrice in a week to prevent all night meetings, and every man to bring his arms to church on Sundays and Holydays, lest they should be siezed by the slaves in their absence, if the same mutinous spirit should be revived amongst them.[138]

Gooch's words revealed that black men and women had not typically gathered with the white

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[136] Bond, ed., *Spreading the Gospel in Colonial Virginia*, 435
[137] Young, Proslavery and Sectional Thought, 92.
[138] Lt. Governor Gooch to the Council of Trade and Plantations, Feb 12, 1731, in *The Calendar of State Papers, Colonial: North America and the West Indies 1574- 1739*, 38:41-42, Colonial State Papers, ProQuest, last modified January 30, 2017, https://proxy.lib.umich.edu/login?url=https://search-proquest-com.proxy.lib.umich.edu/docview/1845210035?accountid=14667.

community for worship on the Sabbath in Lynnhaven before the planned uprising, and they were certainly not included afterward. White parishioners were instructed to bring their arms to church, and there is perhaps no more concrete example of militantly pro-slavery Christianity.

Conclusion

In the eighteenth-century Chesapeake, the civic was religious, and the religious was civic. Both Virginian Grace Sherwood and Marylander Thomas Bacon lived in Anglican colonies governed by an established church. In Virginia, this connection was the result of an organic evolution; in Maryland, this design had been purposefully implemented after half a century without a formal religious establishment. The Anglican establishment was a legal framework built and refined over the course of the sixteenth and seventeenth centuries wherein religious adherence, public morality, social harmony, and political order were made inseparable. The two Chesapeake colonies had followed very different routes to reach similar religious settlements by the eighteenth-century. The established church was an arbiter of the public good, a body of legal power, and an enforcer of social order in the eighteenth-century Chesapeake. Though abstractly established on a colony-wide basis, the church operated locally without much oversight and remained most potent in its local form - the parish. Parishes worked alongside counties to govern local communities. Parishes carried out many public duties, and no clear division existed between their civic and religious activity. The next chapter will closely examine the legal powers of the parish and argue that the established church was an essential part of civic government in the colonial Chesapeake.

CHAPTER 2

Enforcing the Laws: The Parish as a Site of Legal Authority

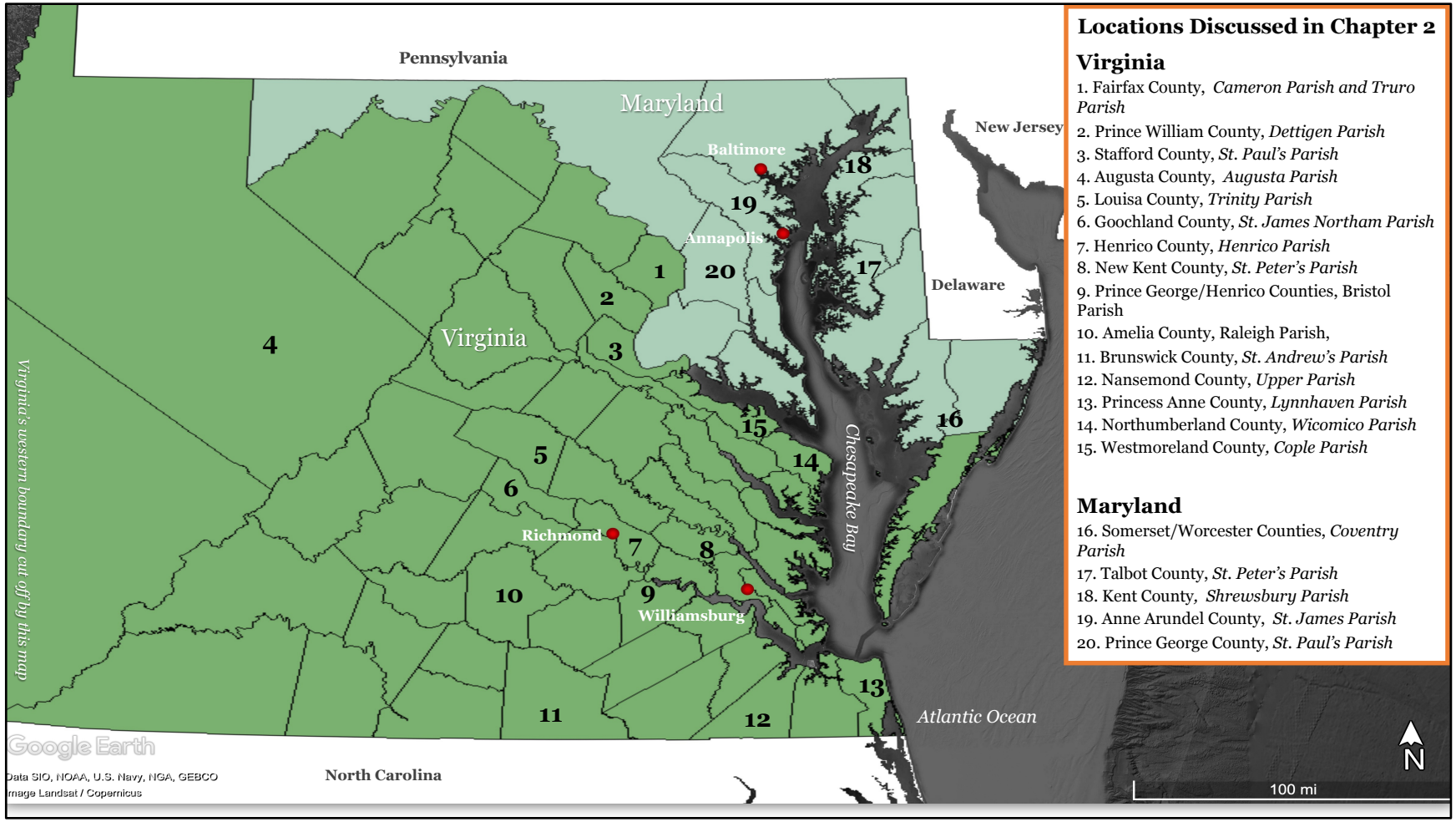


Figure 2.1. Map of Maryland and Virginia highlighting locations discussed in Chapter 2. Map created by Alyssa Penick using data from the *Atlas of Historical County Boundaries*, The Newberry Library, last accessed May 15, 2020, https://publications.newberry.org/ahcbp/index.html

After graduating from Princeton College, Philip Vickers Fithian spent a year working as a tutor for the children of Robert Carter III in Westmoreland County, Virginia. Keenly attuned to the differences between the Old Dominion and his home colony of New Jersey, Fithian kept a detailed diary from 1773-1774 about his time living with one of Virginia's wealthiest families.[1]. The young Presbyterian accompanied the Carters to worship in Cople Parish, where Mr. Carter was a long-serving vestryman, but the New Jerseyan expressed consternation at the "rings of Beaux chatting before & after Sermon on Gallantry... assembling in crowds after Service to dine & bargain."[2] He described the "general custom on Sundays here, with Gentlemen to invite one another home to dine, after Church; and to consult about, determine their common business, either before or after Service—It is not the Custom for Gentlemen to go into Church til Service is beginning, when they enter in a Body, in the same manner as they come out."[3]

Virginia's Anglican clergymen were not exempt from Fithian's criticism, either. His descriptions of their sermons were often succinct to the point of disapproval. Of his first Sunday in the parish, Fithian recalled, "at Church Parson Smith Read to the Congregation an Order Issued out lately by the Governor to elect Burgesses in the several Counties—He preached us a Sermon on Brotherly Love."[4] The diarist remained unimpressed when recounting another Sabbath a few months later, "Rode to Nominy-Church, parson Smith preached 15 minutes—Advertisement at the Church door dated Sunday Decemr 12th Pork to be sold to-morrow at

[1] For a detailed study of Philip Fithian's life and writings, see John Fea, *The Way of Improvement Leads Home: Philip Vickers Fithian and the Rural Enlightenment in Early America* Philadelphia: University of Pennsylvania Press, 2013).
[2] Hunter Dicksinson Farish, ed., *Journal & Letters of Philip Vickers Fithian, 1773-1774: A Plantation Tutor of the Old Dominion* (Charlottesville, VA: University of Virginia Press, 1957), 100.
[3] Farish, *Letters and Journal of Philip Vickers Fithian*, 29.
[4] Farish, *Letters and Journal of Philip Vickers Fithian*, 202.

20/."[5] His scorn barely concealed, Fithian's observation suggested he had learned nothing more valuable at church than the price of pork.

Fithian's rich observations have been used by generations of scholars to explore Anglicanism in eighteenth-century Virginia. Some historians have more or less accepted Fithian's statements at face value and used his entries as evidence of the irreligiosity of Anglican Virginians.[6] Revisionist approaches have read Fithian's words more critically and rely on his descriptions to underscore the importance of parish churches to communal life.[7] But Fithian's diary shows the church served as far more than a "bulletin board" for sharing news, conducting business, or swapping gossip.[8] Embedded in Fithian's entries are glimpses of the ways that every parish church was a site of legal authority. Both the governor's mighty proclamation and the lowly notice of pork for sale exemplified the legal duties of the parish. Throughout the eighteenth century, governors issued proclamations for ministers to read aloud in all parish churches and chapels.[9] These messages did not simply convey political news but legally compelled colonists to undertake certain civic actions, such as raising of a militia or organizing

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[5] Farish, *Letters and Journal of Philip Vickers Fithian*, 29.

[6] Rhys Isaac, *The Transformation of Virginia* (Charlottesville, VA: The University of Virginia Press, 1980), 74-77; Monica Najar, *Evangelizing the South: A Social History of Church and State in Early America* (New York: Oxford University Press, 2008), 22-24; Jewel L. Spangler, *Virginians Reborn: Anglican Monopoly, Evangelical Dissent, and the Rise of the Baptists in the Late Eighteenth Century* (Charlottesville: University of Virginia Press, 2008), 239n65.

[7] Patricia Bonomi, *Under the Cope of Heaven,* 97; David Hackett Fisher, *Albion's Seed: Four British Folkways in America* (New York: Oxford University Press, 1989), 336-340; Lauren F. Winner, *A Cheerful and Comfortable Faith* (New Haven, CT: Yale University Press, 2010), 11, 36, 192.

[8] John Nelson, *A Blessed Company: Parishes, Parsons, and Parishioners in Anglican Virginia*, *1690-1776* (Chapel Hill: The University of North Carolina Press, 2001), 413n45; Darrett B. Rutman and Anita H. Rutman, *A Place in Time: Middlesex County, Virginia*, *1650-1750* (New York: W.W. Norton & Company, 1986), 125; Winner, *A Cheerful and Comfortable Faith,* 10-12

[9] Fithan recorded hearing the election announcement at the parish church. Farish, *Letters and Journal of Philip Vickers Fithian*, 202. For examples of proclamations read at parish churches in Maryland, see Governor Samuel Ogle's Proclamation from 1751 raising a militia and Governor Horatio Sharpe's "Proclamation for a public Thanksgiving," from December of 1758, which ordered "all such Ministers to publish this my Proclamation in their several Congregations, during the Time of divine Service on the Sunday next preceding the said Day of Thanksgiving." *Proceedings of the Council of Maryland, 1753-1761*, *Archives of Maryland Online*, 28:513; 29:299-301.

an election. County courts also used the church door as a place to posted announcements like the one described by Fithian advertising public auctions in the upcoming week.[10] Only after publication on Sunday at the parish church could certain local activity occur legally. Law in its many forms, ranging from executive orders from the royal governor, legislation passed by the assembly, and action pending in the county court, infused the space of the parish church. All levels of colonial government relied on the parish to execute and enforce the laws of the land.

The establishment of religion is typically discussed in the many ways that the state preferentially supported one church. The definition in contemporary legal discussions of "religious establishment" rests on the ways in which the state can bolster or disadvantage certain religious group by compelling attendance, tying civic rights to religious adherence, penalizing dissent, and providing or withhold public financial support.[11] Recognizing the parish church as a site of legal power reverses this familiar relationship. Not only did the Chesapeake privilege the Anglican Church in the eighteenth-century Chesapeake, but the church was as an arm of government.

Parish churches and county courthouses were sites of law and order in the Chesapeake. Parishes publicized and executed laws, raised and spent public funds, and policed moral crimes. They regulated the local economy through tobacco inspection and land processioning, bolstered the institution of slavery, and acted as patrons through which public funds flowed to private

[10] Hening: 3:275-276.

[11] For an overview of how the contemporary legal system defines religious establishment as a series of privileges or disadvantages, see Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion, 44 Wm. & Mary L. Rev.* 2105 (2003), 2131-2180, http://scholarship.law.wm.edu/wmlr/vol44/iss5/4. For a valuable overview of the Court's twentieth-century interpretation of the Establishment Clause, see *McCreary County v. American Civil Liberties Union of Ky*., 545 U.S. 844 (2005). Justice Souter, author of the majority opinion, wrote, "[w]hen the government acts with the ostensible and predominant purpose of advancing religion, it violates that central Establishment Clause value of official religious neutrality, there being no neutrality when the government's ostensible object is to take sides." 545 U.S. at 860. The entire discussion rests on the power of the state to tip the scales in favor or against a particular religious or non-religious group.

hands. The established church exercised discretionary power over the lives of colonists as a source of public patronage and, in Virginia, the overseer of poor relief. In fulfilling these many roles, parishes acted as powerful executors of law and essential civic bodies.

"Affix'd to the church door": The Legal Authority and Responsibilities of Parishes

When men and women in the Chesapeake arrived at their parish church on Sundays, they would have seen a flurry of notices hanging from the church door. Reports of lawsuits, land sales, boundary disputes, and court summons were posted on the entryway to divine worship.[12] There would have also been regular announcements about the date of land processioning, upcoming elections, and the annual levy.[13] Local civic petitions to the colonial assembly were hung on the parish church and chapel doors. For example, when residents of Baltimore County debating relocating the county seat to Baltimore from Joppa, they hung copies of a petition on the courthouse door, as well as on doorways of the four parish churches and three chapels of ease

[12] Laws in Virginia and Maryland both stipulated the certain public notices be posted on the church door. In Virginia, the sale of Native American lands was posted on the church doors. For example, the Nottoway Indians were given permission to sell their lands in five successive acts passed by the General Assembly (1701, 1708, 1725, 1729, and 1772). Before the sales could proceed, the law required, "public notice to be given, at least thirty days before the sale and leasing, by fixing up advertisements of the time and place of such sale and leasing, at the door of the courthouse of the said county, on a court day, at every church and chapel in the parishes of Nottoway." Hening, 8:590. In 1744, the assembly passed "An Act, for the relief of certain Creditors," which required that summons to the General Court for cases in equity be posted on the parish church door in the county where the defendant lived, as well as being published in the *Virginia Gazette* and posted on the door of the General Court. Hening, 5: 220-225. For other types of court summons posted on the parish church door in Virginia, see Hening, 4:83. In Maryland, before the county court could settle land disputes, the Justices of the Peace initiated the process "by setting up Notes at the Court-House Door, and parish Church where the Land lies." See *Archives of Maryland Online*, 36:517-518. County court summons were also posted on the doors of the parish church. See *Somerset County Judicial Records, 1727-1730*, *Archives of Maryland Online,* 841:95; *Somerset County Judicial Records, 1760-1763, Archives of Maryland Online,* 543:257.

[13] The Justices of the Peace advertised every June where they would collect the lists of tithables for the levies. Hening, 6:41. The date of processioning had to be posted three Sundays in a row to inform all landholders and processioners of the event. Hening, 3:421. Notices of the Virginia Burgesses' elections had to be posted on the parish church door. See Hening, 7:520; 8: 308, 316.

in the county. Eight copies of the petition garnered 2,076 signatures of support, which reveals the high level of foot traffic around the parish churches.[14]

The church door also effectively worked as a form of public shaming to enforce the laws. County sheriffs hung notices on parish church doors naming individuals who had fallen behind on their quitrent taxes.[15] And, if a county court planned to auction off seized or stray animals, the assembly had required Justices to "the make public sale of such beast or beasts, to the highest bidder after giving at least three days' notice of the time and place of the sale, at every church and chapel in the county, on a Sunday."[16] In Virginia, church doorways also hung warnings about any enslaved persons who had recently "run away" and were possibly "l[ying] out, hid[ing] and lurking in swamps, woods, and other obscure places, killing hogs, and committing other injuries to the inhabitants."[17]

Parish clerks would have copied major acts of legislation, such as the slave code, requirements about registering baptism and marriages, and laws about bastardy, and "publish[ed]" them on "the door of every church and chapel" in March and again in September.[18] Colonial legislation required these announcements to be posted on the doors to parochial worship spaces and the county courthouse.[19] Requiring public notices to appear at both locations expressed that both church and state enforced law and order in the Chesapeake.

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[14] The full text of this petition, and others, are recorded in *Archives of Maryland Online*, 61: 519-523.
[15] See, for example, Hening, 8: 276-277; 5:519; 2:50.
[16] Hening, 3:217; 5:187.
[17] Hening, 3:460.
[18] Hening, 3; 447-462; Hening, 3:516
[19] For example, Virginia passed " *An act to restrain the keeping too great a number of Horses and Mares, and for amending the breed,"* which anyone who found stray animals to " [set] up notes at the door of the court-house of that county, and the church of that parish." Hening, 4:48. The statute in Maryland for settling land disputes similarly required notices to be posted at the parish church and the county courthouse. *Archives of Maryland Online*, 36:517-518.

Once parishioners entered the parish church, they would have been inundated with legal announcements. They listened to sermons and the pronouncement of marriage banns.[20] They would have said prayers for the King and heard the minister read out letters from the governor and pronounce certain laws. Indeed, reciting laws ritually at church imbued the law of the land with divine authority. In 1723, the Maryland assembly passed "An Act to punish Blasphemers, Swearers, Drunkards, and Sabbath-Breakers," which described a host of moral crimes and detailed the punishments for each. Blasphemy, for example, was defined as "writing or Speaking" to "Blaspheme or Curse God, or deny our Saviour Jesus Christ to be the Son of God, or [to] deny the Holy Trinity, the Father, Son and Holy Ghost, or the Godhead of any of the Three Persons, or the Unity of the Godhead, or [to] utter any profane Words concerning the Holy Trinity."[21] Convicted blasphemers were to be "bored through the tongue" for their first offense, branded with a B on their forehead for a second offense, and executed following a third offense. The law stipulated that every parish clerk had to read the entire act out loud four times a year "in their respective Parish-Churches, between Divine Service and Sermon, on Pain of forfeiting One Thousand Pounds of Tobacco for every Omission."[22] When reading this law aloud, the minister not only represented the authority of God but that of the Crown, governor, and assembly. This ritual conveyed the interwoven power of church and state over the lives and souls of parishioners.

Parishes in Virginia regularly displayed and recite the slave code. Next to the notices about fugitives from slavery, the church posted a copy of the 1705 "Act Concerning Servants and Slaves," twice a year.[23] Moreover, the assembly required the full act to be read aloud bi-annually

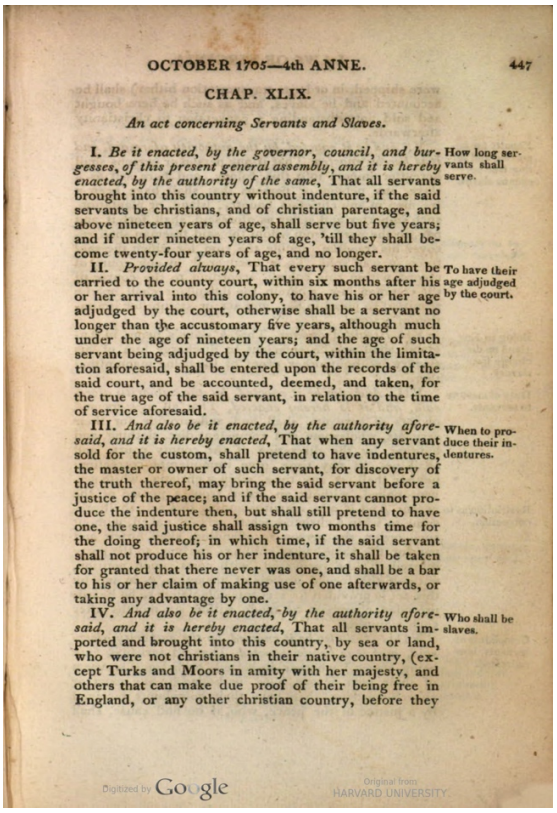
[20] Hening, 3: 441-446; *Bacon's Laws of Maryland, Archives of Maryland Online,* 75:301.
[21] *Archives of Maryland Online,* 75: 344.
[22] *Archives of Maryland Online,* 75:346
[23] Hening, 3:460.

in March and September to "better [put] this act in due execution."[24] The assembly claimed that reciting the act publicly in the parish church prevented any "servants or slaves" from feigning "ignorance" of its terms, but this practice was undoubtedly aimed at free white listeners who were far more likely to be present at worship.[25] The law included a long list of violent threats against any enslaved person who ran away and any free person who aided them, which ranged from a lashing to execution without a trial for those who dared violate it. Investing the rector with the responsibility to remind his parishioners of the laws regulating slavery naturalized racial slavery as part of God's earthly plan while also reminding listeners of the earthly consequences for breaking the law. The ritual of reciting the violent and detailed statute in plain view of the Ten Commandments and the Lord's prayer, which were often ornately and prominently displayed behind the altar in Virginian churches, lent greater weight to the laws of man.[26] The assembly intentionally gave divine sanction to their laws and tied their statutes authority to the Word of God.

Using the church to disseminate news made practical sense; it was a hub of social activity. The many statutes that required public notices to be affixed to the church door or read aloud in church underscored that the parish church was one of the most accessible public sites in a local community. Giving the community notice of an announcement by posting on the church door or reading it aloud after the Sunday service made an action lawful and public. The church became a space that authorized public activity and allowed an action to proceed with legal authority. Laws could only become binding if the community had knowledge of them.

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[24] Hening, 3:461.
[25] Hening, 3:461.
[26] For a discussion of the display of the Ten Commandments in Virginian parish churches, see Dell Upton, *Holy Things and Profane: Anglican Parish Churches in Colonial Virginia* (New Haven: Yale University Press, 1997), 55-6; 97; 120.



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CHAP. XLIX.

An act concerning Servants and Slaves.

How long servants shall serve.

I. *Be it enacted, by the governor, council, and burgesses, of this present general assembly, and it is hereby enacted, by the authority of the same,* That all servants brought into this country without indenture, if the said servants be christians, and of christian parentage, and above nineteen years of age, shall serve but five years; and if under nineteen years of age, 'till they shall become twenty-four years of age, and no longer.

To have their age adjudged by the court.

II. *Provided always,* That every such servant be carried to the county court, within six months after his or her arrival into this colony, to have his or her age adjudged by the court, otherwise shall be a servant no longer than the accustomary five years, although much under the age of nineteen years; and the age of such servant being adjudged by the court, within the limitation aforesaid, shall be entered upon the records of the said court, and be accounted, deemed, and taken, for the true age of the said servant, in relation to the time of service aforesaid.

When to produce their indentures.

III. *And also be it enacted, by the authority aforesaid, and it is hereby enacted,* That when any servant sold for the custom, shall pretend to have indentures, the master or owner of such servant, for discovery of the truth thereof, may bring the said servant before a justice of the peace; and if the said servant cannot produce the indenture then, but shall still pretend to have one, the said justice shall assign two months time for the doing thereof; in which time, if the said servant shall not produce his or her indenture, it shall be taken for granted that there never was one, and shall be a bar to his or her claim of making use of one afterwards, or taking any advantage by one.

Who shall be slaves.

IV. *And also be it enacted, by the authority aforesaid, and it is hereby enacted,* That all servants imported and brought into this country, by sea or land, who were not christians in their native country, (except Turks and Moors in amity with her majesty, and others that can make due proof of their being free in England, or any other christian country, before they

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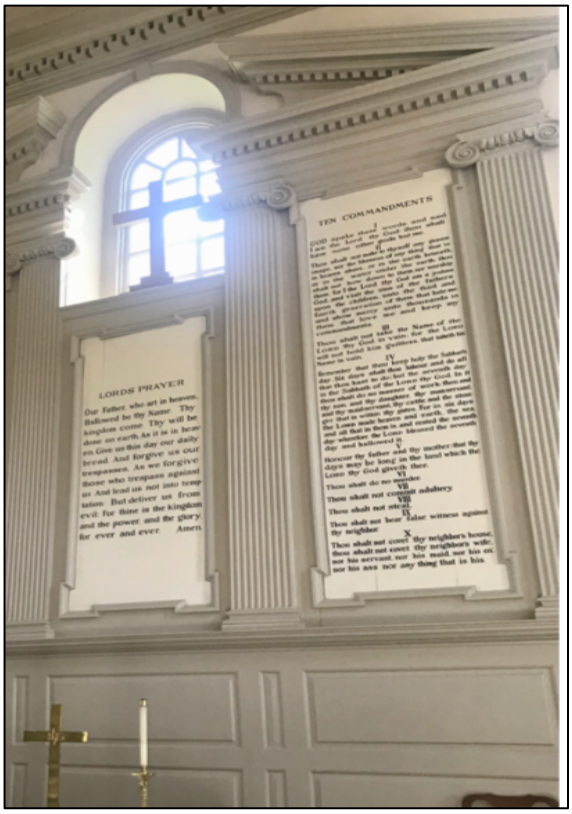


Figure 2.2 (Left). The 1705 "Act Concerning Servants and Slaves" was read annually in parish churches in Virginia. Hening, 3:447. **Source:** Google Books. **Figure 2.3 (Right).** The Ten Commandments and Lord's Prayer behind the altar of Christ Church in Alexandria, VA. Photograph by Alyssa Penick.

The case of Jane Ham, a white indentured servant accused of concealing the death of her bastard child, illustrated the importance of publicizing the laws. A statute passed in 1710 made concealing the death of a bastard child a capital offense. Typically, when a female servant like Ham had a child out of wedlock, her term of service was lengthened, and her son or daughter was bound out by the churchwardens. The law targeted female indentured servants who murdered heir bastard children and then "alledged" that their children had been "born dead" in order to avoid the legal penalty.[27] The law specified that the minister should "read [it] yearly, on some Sunday in May, in all Parish Churches and Chappels within this Colony...immediately after

[27] Hening, 3:516.

Divine Service."[28] Jane Ham's case arose after her bastard child was found dead and she was sentenced to death under the 1710 law. The court found no evidence that she had committed any "Violence" against the "child to occasion its death," but, by the terms of the act, she was still guilty of murder without witnesses to prove the baby had died naturally.[29]

Moved by Ham's plight, the Justices of the Peace who presided over the trial appealed to the royal Governor, Alexander Spotswood, for a pardon. Spotswood too hoped to spare the "unfortunate woman" from execution. He reasoned that she deserved mercy because she had committed no violence. Moreover, he explained that "she has a more reasonable excuse to plead for her ignorance of that law, which makes the concealment penal, than I at first imagined, for notwithstanding that Act is by an express clause therein appointed to be read yearly in all churches, I find it never was published in any church in that county wherein she lived."[30] The governor argued that reading the law out loud in the parish church was the "only way of publication in this country, where we have no printing."[31] To Spotswood, the young servant could not be convicted of breaking a law of which she had no knowledge. Publication, by definition, required notifying the public. In this capacity, the parish church played an essential role in legitimizing and authoring the laws by publicizing them.

Many of the legal announcements made at the parish church would have been highly personal in nature. Summons to Virginia's General Court were posted on the parish door, well after the advent of printing the colony. Typically, these cases were suits in chancery over debt.

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[28] Ibid.
[29] Lt. Governor Spotswood to Lord Bolingbroke, Virginia, July 21, 1714, cited in R.A. Brock, ed., *The Official Letters of Alexander Spotswood, Lieutenant-Governor of the Colony of Virginia, 1710-1722* (Richmond: Virginia Historical Society, 1885), 2 vols., 2:74.
[30] Lt. Governor Spotswood to the Earl of Dartmouth, Virginia June 30, 1713, cited in Brock, ed., *The Official Letters of Alexander Spotswood*, 2:30.
[31] Lt. Governor Spotswood to Lord Bolingbroke, Virginia, July 21, 1714, cited in Brock, ed., *The Official Letters of Alexander Spotswood* 2:74.

Publicly announcing court summonses served an important legal function in notifying witnesses and defendants but would have also certainly have stirred up gossip in a small community. Finding out about a local scandal or dispute likely raised a few eyebrows and sent tongues wagging as communities gathered for worship.

Summons to the General Court were posted on the church door in the July of 1773 case of *Craig v. McDonald* in Goochland , Virginia. This case had grown out of a bitter falling-out, unpaid debts, and a flight from justice. News of the trial would certainly have piqued the interest of the local community. Williams Craig and John McDonald had been close associates only a few years earlier. Craig had provided security for the sum of 30 pounds to McDonald. When the penniless McDonald could not pay, Craig was forced to cover his friend's debt.[32] Though McDonald had "often and repeatedly assured" Craig that he would repay it, he kept putting off his repayment and asked Craig time and again to "wait with him a little" longer.[33] Then, to Craig's "great surpize," McDonald "absconded," fleeing the colony to avoid his mounting debt. McDonald had left behind a tract of thirty acres in Goochland County, which Craig was hoping the chancery court would grant him as a repayment for the outstanding debts.[34] The General Court's order summoning Craig to appear before them was "fixed up" on the door of Trinity Parish Church in Louisa County where the two men and their families worshipped.[35] Another notice was hung on the door of the county courthouse, and a third was placed in the *Virginia Gazette*.[36] By publishing a notice in the newspaper and hanging notices on the church and courthouse doors, the Court was giving adequate legal notice to McDonald. Making an

[32] *Craig vs. McDonald* (1773), Goochland County, Chancery Papers, LVA.
[33] *Craig vs. McDonald*, 1.
[34] *Craig vs. McDonald,* 2-3.
[35] Sept. 16, 1773, *Virginia Gazette.*
[36] Ibid.

announcement in the physical space of the parish church legally authorized a case to proceed in the absence of the defendant.

In Maryland, Justices of the Peace decided boundary disputes. These commissioners announced the date of their examination of the lands in question on the doors of parish churches and solicited witnesses to attend and provide sworn depositions. For example, in 1762, the Somerset County Court investigated the claims of Matthias Cotten, a sixty-six-year-old man, who accused a neighbor of planting on his property, known as Good Luck. The JP's noted in the county court record that "WE doe hereby certifie that after bein qualifyed to Execute the above commiss-ion and affixing up advertisements at the parrish church and most publick places of the county wherein the afforesd Land Lieth agreable to Law we met on the said Land ageable to the Notice given and then and there took the above Deposition."[37] The validity of this process rested on properly informing potential witnesses and calling them to attend. Three men over the age of fifty, Thomas Gilliss, James Polk, and David Polk, came forward and provided evidence based on their knowledge of the land's boundaries over the previous forty years. The fair adjudication of this disagreement relied on the court informing the community and the county turned to the parish church door for publication.

In Virginia, all actions to transfer land held in entail to fee simple also had to be posted on the parish church door. When Lewellin Jones' father, Richard Jones died in 1758, he left his son a sizeable plantation of one thousand and six acres in Raleigh Parish, Amelia County, Virginia.[38] However, the elder Jones did not leave the land to his son outright; rather, he entailed

[37] *Somerset County Judicial Records, 1760-1763*, *Archives of Maryland Online,* 543:257

[38] See "An act to dock the entail of certain lands, whereof Lewellin Jones is seized, and for settling other lands and slaves in lieu thereof," Hening, 8: 276-277. The legislature passed countless statutes relating to the entail of private estates. For a sample, see Volume 8 of Hening's Statutes, which recorded acts related to the entail of sixty-five individuals' property between 1764 and 1773. Hening, 8:25; 27; 34, 61; 54; 57; 59;63; 66; 159; 161; 163; 166; 168; 174; 214; 215; 218; 222; 224; 227; 230; 270; 276; 278; 283; 285; 289; 291; 301; 436; 438; 440; 442; 445;

the plantation. A common legal practice in colonial Virginia, entailing the land meant that Jones was not free to sell the estate or divide it up for his heirs. Rather, the younger Jones remained a "tenant in fee tail" indefinitely. Less than a decade after inheriting, Jones, hoped to sell off his father's land. He petitioned the assembly to "dock the entail" of this inheritance, or to make him a freeholder, and, in exchange, entail 800 other acres, as well as three enslaved women, Tabb, Fanny, and Phillis. The assembly acquiesced to the exchange only after "notice [had] been published three Sundays successively in the several churches in the said parish of Raleigh." In a small community, news of such a sale would have aroused considerable speculation about why Jones needed to raise capital or might have caught the eye of interested buyers.

Colonial governors, too, used parish churches to communicate directly with colonists. As Governor Gooch noted, the surest method of publication in region without a printing press was to order notices to be read aloud in parish churches. In 1702, the Virginia Governor's Council circulated a scathing letter condemning the actions of William Byrd. Their letter explained that Byrd had "publish[ed] divers false, seditious and scandalous reports highly reflecting on the honour and justice of…the Hon. Council, and the worshipful House of Burgesses, and leading much to the raising sedition in the minds of H.M. loving subjects."[39] Byrd had apparently spread rumors "that this Assembly were about to raise a tax upon the people in this country… for the use of the College, and that Col. William Leigh had consented to it, as well as claiming that Nathaniel Harrison and George Marable were taken into custody about giving the Speaker 10,000lb. of tobacco."[40] The Council decided not only to prosecute Byrd, but that it was

448;450;452; 454; 455; 457; 460; 462; 463; 468; 470; 474; 476; 478; 481; 483; 487; 627; 630; 631; 635; 637; 638; 640; 641; 643; 665; 667.

[39] "Journal of House of Burgesses of Virginia," Jun 22, 1702, in *The Calendar of State Papers, Colonial: North America and the West Indies 1574-1739*,), 20:411-413, Colonial State Papers, ProQuest, last modified January 30, 2017, https://proxy.lib.umich.edu/login?url=https://search-proquest-com.proxy.lib.umich.edu/docview/1845189755?accountid=14667.

[40] Ibid.

necessary, "for vindicating the honour of the Government, quieting the minds of H.M. subjects, and preventing the spreading of such dangerous and seditious reports for the future," to send "copies of the said resolves ordered to be published in the County Court, Churches and Chapels" in Byrd's home county.[41] The Council ordered their resolution be read aloud in every church and chapel in Byrd's parish to expose his falsehoods and assuredly to deal him an embarrassing blow. The parish church and county courthouse were sites of direct communication between the government and the governed.

But even after the arrival of a printing press in the Chesapeake, governors relied on parish churches to communicate with colonists.[42] Maryland Governor Samuel Ogle issued a proclamation in 1740 urging "all his Majestys faithful Subjects within this Province chearfully to enlist themselves in his Majestys Service in this glorious Ex-pedition which promises so many Advantages to themselves, and secures to them the favour of their Prince."[43] He commanded, "with all Convenient speed cause the same to be read at the several Court Houses of the respective Counties, and to be set up and affixed at the several Church Doors, Chappels Court Houses and Other the most Publick Places in their several & respective Counties."[44] The most direct way for the governor to reach colonists quickly was through a public announcement that would be posted on parish church doors, as well as in other public places. This directive suggested that the court and the parish were visible public places and sites of civic authority. Virginian ministers

[41] Ibid.
[42] For more on print culture in the Chesapeake, see Lawrence C. Wroth, *A History of Printing in Colonial Maryland, 1686-1776 (Baltimore: 1922);* Jacob M. Blosser, "Pursuing Happiness in Colonial Virginia: Sacred Words, Cheap Print, and Popular Religion in the Eighteenth Century," *The Virginia Magazine of History and Biography* 118 (2010): 209-245; David D. Hall, *Cultures of Print,* "The Chesapeake in the Seventeenth Century"; Richard Beale Davis, *Intellectual Life in the Colonial South* (Knoxville, TN: The University of Tennessee Press, 1978), 499-500, 509.
[43] "A Proclamation," *Proceedings of the Council of Maryland, 1732:1753, Archives of Maryland Online*, 28:202-3.
[44] *Archives of Maryland Online*, 28:203.

also continued to read messages from governors aloud in churches, as Fithian noted in his journal when he heard the minister read the Governor's call for an election in 1773.

Indeed, the arrival of print in the colonies may have actually made it easier for parish ministers and clerks to publicly recite laws as required by the assembly. Less than a year after William Parks began publishing the *Virginia Gazette* in 1736, he printed a purported letter from the clerk of Wicomico Parish in Northumberland County, Virginia:

Sir,

> I am Klark of a Church, and am to rede the Laws about Fornecasion and Nigers to Times in the Yere in the Church; whech laws are in wreten Hand, which I can't rede, wethout some Gentile foks laff at my Blon-ders. I have sin your Gasset, and can rede it in as wel as in the Bible, for it is wreten in prenting Hand; and desir you wel send the Laws in that Hand by next Cort, or give me an Order upon the next Justis to tear it out of his Bok for the Use of the Church, or pay my Fine, or prent this as sone as it coms to Hand; and you wel oblege,
>
> Your unknoing Frend,
> Nicholas Witudle[45]

The bumbling Witudle was, of course, an invention of Park's imagination. The spoof was so outrageous that the printer certainly had not intended to fool any readers. Parks included a response ridiculing the fictional clerk while still endorsing his plan. "I can't find out the Design of the above Letter unless it to be expose the Ignorance of a Parish-Clerk; or to shew the necessity of the Vestries being furnish'd with the Printed Body of Laws, there being many Laws in Force, which the Minsiter or clerk are enjoyned to read in the chruches, under Severe Penalties," Parks wrote. [46] While he could not issue "an order on any Justice of Peace, to tear his book," the printer assured his "new correspondent" that if the clerk could "prevail on his Vestry to be at the Expence of purchasing a Complete Body of the Laws of this Colony, I will undertake

[45] *Virginia Gazette* (January 20, 1737), 2.
[46] Ibid.

to supply them (or any other Vestry) with such a Book, for Thirty Two Shillings, in so good a Print that he may read it as well as the Bible."[47] Park argued that "the Charge is so small, especially when collected from a whole Parish," every vestry in the colony should purchase one.[48] Parks' recommendation that the parish clerk could read the Acts of Assembly "as well" as the Bible to his congregants smacked of irony but nonetheless reflected the importance of sacred and legal texts to every parish.

Though Parks denied any "self-interest" on his part, this humorous exchange of letters was in fact an ingenious advertisement for the newly-arrived printer to showcase the utility of his services.[49] Vestries across the colony purchased copies of the printed Acts of Assembly in the forty years between the arrival of the printing press in the colony and the Revolution. Parish ministers and clerks diligently read the required statutes out loud, even if their genteel listeners did laugh at their delivery.[50] The repeated recital of these statutes was an important ritual of the parish church, albeit one outside of the liturgical calendar.

The busy, social space of the church in which rumors, gossip, and news swirled upset some contemporaries who saw this atmosphere as a violation of the Sabbath. Rectors like William Douglas castigated their congregations for engaging in "vain & unprofitable & sinful conversations" at church and "gadding abroad to your neighbors' houses, paying visits" after worship.[51] The vestry of St. James Parish in Anne Arundel, Maryland complained that "sundry persons in the time of divine service make a constant practice of running in and out of the church to...the great disturbance of the rest of the congregation" while the vestry of Lynnhaven Parish

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[47] Ibid.
[48] Ibid.
[49] Ibid.
[50] Wilmer L. Hall, ed., *The Vestry Book of Upper Parish* (Richmond, VA: 1949), 56; Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish*, 61.
[51] William Douglas, "Speech after Sermon (Departure from Parish)," *The Sermons of William Douglas*, Virginia Theological Seminary, Alexandria, Virginia [Hereafter VTS], 30.

began employing someone to "look out of doors & if any person or persons are Siting & talking or Commiting any indecency dureing divine Service" to report him or her to the churchwardens for prosecution.[52] Fithian remarked after several months in the Chesapeake that "The Gentlemen go to Church to be sure, but they make that itself a matter of convenience, & account the Church a useful weekly resort to do Busines."[53] Douglas, Fithian, and the vestries all voiced their disapproval but overlooked that the legislature had invested churches and the occasion of the Sabbath with public authority and civic purpose. At worship, the community would have learned of debts, property for sale, elections, militia duties, and lawsuits when gathering for worship. The many statutory duties of the church invited socializing, speculating, and transacting. The civic role reflected its communal importance and made explicit the inextricable nature of law and piety under a religious establishment.

The legal authority of the parish church as a space and institution rested on the universality of the established church and the imagined inclusivity of all colonists as parishioners. This was, of course, a legal fallacy. There were a significant number of non-conformists, particularly Quakers and Catholics, in Maryland throughout the eighteenth century. In Virginia, the number of dissenters remained low before 1750 but grew rapidly in the decades before the Revolution. Virginians were legally required to attend their parish church once every two months. In Virginia, the system of posting notices on the parish church door and reading legal messages aloud in church reflected the compulsory nature of religious attendance in the colony. Marylanders, on the other hand, were not required to attend Anglican worship at their parish church, or elsewhere, which was an important accommodation made to dissenting

[52] Edith Stansbury Dallam, ed., *St. James' Parish, old Herring Creeke Parish: A history, including copies of the original records of the Parish, Vestry minutes and register of births, baptisms, marriages, and burials* (Lothian, Md: Vestry and Library Committee, 1976), 224-225 ; Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish,* 22.
[53] Farish, *Letters and Journal of Philip Vickers Fithian*, 137.

groups.[54] Nonetheless, Maryland's colonial governor and assembly long assumed that "all persons might have publick notice..." of announcements that were "affixed to the Church door."[55] Referring to "the church" in the singular underscored the assumption that the parish church was the default sacred space.

Despite the accommodations made to dissenters in Maryland, both colonies endowed the parish church with legal authority. Across the Chesapeake, all levels of government, from the Queen and Kings to the county Justices of the Peace, relied on parish churches to disseminate information and authorize public activity. The statutes of both colonies required notices that were essential to the smooth functioning of society and government - taxes, vital statistics, court summons, the militia, and elections - hang at the parish church. The two Chesapeake colonies shared a reliance on the parish church as a site of law enforcement, despite the different religious make-up of their populations and the higher level of accommodation in Maryland. There existed a powerful assumption that parish churches were accessible to, even if not frequented by, all colonists.

"The most able men of each parish": Parochial Officers and Law Enforcement

The legal authority of the church was embodied in and delegated to its parochial officers, the vestrymen and churchwardens. Laws in both colonies required every vestryman and churchwarden to swear a number of oaths. Every nominee for parochial office in Virginia and Maryland swore allegiance to the Crown.[56] He then took the Oaths of Abjuration and Allegiance,

[54] Archives of Maryland Online, 75: 132-133.
[55] *Archives of Maryland Online*, 19: 304.
[56] In Virginia, nominees took the "Oaths appointed to replace the Oaths of Allegiance and Supremacy under William III," in which he swore loyalty to the Crown and swore to defend the Protestant monarch "to the utmost of my Power, against all traiterous Conspiracies and Attempts whatsoever." William Meade transcribed the oath from the vestry book of Little Chuckatuck Parish (which joined the Lower Parish) in Nansemond County, Virginia. Meade, 1:307. The assembly required these oaths by law, as seen in Hening, 7:141. In Maryland, nominees continued to take

in which he declared, “I do from my heart abhor, detest and abjure, as impious and heretical, that Damnable Doctrine and Position” of Catholicism and renounce “the Pretended Prince of Wales.”[57] Churchwardens, who were also vestrymen in Virginia, took a shorter oath promising to “execute the office of churchwardens.... according to your discretion and skill, in his Majesties’ ecclesiastical laws of this Realm now in force.”[58] This vow endowed churchwardens with the power and responsibility to enforce ecclesiastical laws.

All inductees also had to sign The Test, in which they stated, “That I do Believe that there is not any Transubstantiation “ in the Sacrament of the Lord's Supper, or in the Elements of Bread and Wine, at or after the Consideration thereof, by any Person whatsoever.”[59] These oaths of office excluded both Quakers and Catholics from holding parochial office on principle but did not inherently exclude non-conformists of other persuasions.[60] Presbyterians, when chosen or elected as vestrymen, could take and uphold these oaths without necessarily violating the tenets of their faith. Indeed, in Augusta Parish in Virginia's Shenandoah Valley, most of the vestrymen were Presbyterian in the 1740s and 1750s.[61] In Maryland, all non-Anglicans were prohibited from holding parochial office.[62] In 1759, the Virginia assembly followed suit by declaring that “many vestrymen in this colony have, since the time of their election, dissented from the communion of the church of England, and joined themselves to a dissenting congregation, yet still continue to act as vestrymen,” and prohibited any dissenters from serving as vestrymen in

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the traditional version of the Oaths of Allegiance. For the text of the Maryland Oaths required by law, see *Bacons's Laws of Maryland, Archives of Maryland Online,* 75:286.

[57] Ibid.

[58] Ibid.

[59] Ibid.

[60] Quakers were allowed to take affirmations instead of oaths and therefore able to hold some public offices in Maryland. However, they would have held doctrinal objections to the Test, as would have Catholics.

[61] Joseph A. Waddell, *Annals of Augusta County, Virginia From 1726- 1871*, 2nd ed., (Staunton, VA: C. Russel Caldwell, 1902), 51.

[62] *Bacon's Laws of Maryland*, 75:286-7, 715.

the future.[63] Taking these oaths made parochial officers into representatives of the Crown and the Church and made religious adherence a requirement for "any office or Place of Trust."[64] Tying doctrinal and theological views to fitness for public office underscored the establishment of religion as an essential part of the English state.

In both Maryland and Virginia, vestries gathered as a whole to make decisions for the parish. In Virginia, vestries were a group of twelve laymen. Upon the creation of the parish, the county court would appoint the original group of vestrymen or they were elected by the freeholders of the parish. Otherwise, Virginian vestries were self-perpetuating; when a vestryman died or resigned, the remaining members of the vestry voted to fill his spot. The minister typically attended meetings of the vestry but was not a voting-member. Each year, the vestry would choose two of their number to serve as churchwardens for a term of one to two years.

As a lay institution that was self-perpetuating, the Virginian vestry held significantly more power than vestries did in England. In England, Anglican Bishops or local gentry held the advowson, or the right to induct a minister. In Virginia, the right of advowson was exercised, and often withheld, by vestries.[65] The royal governor might recommend a candidate for parish minister, but the vestry and churchwardens could choose whether or not to induct him as rector after a trial period.[66] For example, after the resignation of the Henrico Parish minister in 1733, the churchwardens and vestry made "a representation... to the Governor" about finding a replacement. Two years later, the Rev'd Mr. Anthony Gavin arrived with a "a letter from the Hon'ble William Gooch, Essqr., his Maj's Lieut. Governor of this Colony, and another from the

[63] Hening, 7:301.
[64] *Bacon's Laws of Maryland, Archives of Maryland Online*, 75:286.
[65] Nelson, *A Blessed Company*, 130-133.
[66] Nelson, *A Blessed Company,* 127-130.

Rev'd James Blair, Commissary, directed to the Church Wardens and Gent. of the Vestry, recommending the said Mr. Gavin to the care of this Parish." While the vestry had asked for the Governor Gooch's help to recruit Gavin, the vestry was "desirous of firstt hearing him performe the Office of his Ministerial function," and chose to "suspend their Opinion as to his reception till after Sermon, when they do agree to meet again." After reserving judgement, the vestry determined "the Rev'd Anthony Gavin hath performed his office both in reading and preaching to [their] General Satisfaction and appreciation" and they "unanimously agreed that he be received and entertained as Minister of this Parish." Only after testing the recommended candidate and voting did they accept the governor's recommended candidate. This certainly reflected a crucial difference between the parish systems in Maryland and Virginia.

Some Virginian parishes chose never to induct their ministers but instead hired them on an annual, contractual basis. Under this arrangement, vestries retained the power to dismiss ministers in the future, a practice that outraged many Anglican ministers. Virginian vestries also sought to exercise the right to dismiss their ministers. The vestry of St. James Northam Parish in Goochland County, VA tried to sack its rector William Douglas, after nineteen years to replace him with another minister. Douglas voiced his sense of indignation at the vestry, writing "I was unjustly voted out by their Vestry... against the laws of God & man, and the goodwill of almost the whole parish."[67] Douglas characterized the vestry as an institution unchecked by deference to laws, popular opinion, or even God. His farewell sermon, a seething diatribe against "vane and self-conceited men," reminded his listeners that "the great purpose of a serious and judicious people in attending upon ordinances should neither be to please themselves, nor to criticize their teachers, but to hear the word of God."[68] Douglas, one of these criticized teachers, condemned of

[67] William Douglas, "Speech after Sermon (Departure from Parish)," VTS, 34.
[68] William Douglas, "Speech after Sermon (Departure from Parish)," VTS, 30.

the unrestrained vestry. Ultimately, Douglas was able to retain his position as St. James Northam's rector until 1777, but he delivered this sermon again on multiple occasions, which underscored his sense that Virginians needed to be castigated for their defiance, vanity, and disregard.[69]

Parishes did remain under some legislative oversight, though. The House of Burgesses retained the right to dissolve vestries and exercised this power from time to time when they determined a vestry had failed in its legal duties. Indeed, in 1757, the assembly dissolved the vestries of both Saint Paul's Parish in Stafford County and Dettingen Parish in Prince William County for "oppressive" practices and "illegal things."[70] The legislature required serious accusations to dissolve a vestry, though, and for the most part, Virginian vestries operated autonomously.

The appointment of Maryland's vestries was more democratic than in Virginia and more closely resembled the system in England. In Maryland, the vestry was made up of six vestrymen and the incumbent minister. The place of the minister on the vestry undermined the autonomy of the local laity. By law, the two longest-serving vestrymen had to give up their office each year, and the freeholders of the parish elected two new vestrymen in their stead on Easter Monday.[71] At these annual elections, the freeholders and vestry also elected two Churchwardens, who were not members of the vestry.[72] The popular election of vestrymen and the forced retirement of the longest-serving vestrymen made the institution more accessible and responsive to parishioners than in Virginia.

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[69] William Douglas, "Speech after Sermon (Departure from Parish)," VTS, 34; W. Mac Jones, ed., *The Douglas Register: Being a Detailed Record of Births, Marriages, and Deaths, Together with Other Interesting Notes, as Kept by the Rev. William Douglas from 1750 to 1797* ; *an Index of Goochland Wills ; Notes on the French-Huguenot Refugees who Lived in Manakin-town* (Richmond: 1938), 3-5.
[70] Hening: 7:144-146, 154-55.
[71] *Bacon's Laws of Maryland*, *Archives of Maryland Online*, 75:714-6.
[72]Ibid.

Although the vestry books do not provide much detail about how many freeholders voted, or what the results of the election were, they dutifully record an annual entry from Easter Monday marking the election of two new vestrymen and churchwardens. These records closely resemble a note from the record of St. Paul's Parish in Prince George's County, MD that "at a Vestry held in St. Paul's Parish 8th April 1751 being Easter Monday...Sundry of the Freeholders who proceed to the Election of two new vestryman & do make choice of Mr. Thomas Gant & Mr. John Hawkins Junr for Vestry Men in the Room & Stead of Mr. Francis Waring & Mr. Thomas Setchworth And at the same time made choice of Mr. Sam'el Roundell for Church warden in room of Mr. Edward Clagett & Continued Capt. Ja Wilson."[73] The emphasis on the popular election of these officeholders was underscored in the election notice of 1752, in which the clerk originally wrote "the Vestrymen and freeholders then proceeded to the choice of two new Vestrymen," and then corrected the entry by changing the word "choice" to "Election."[74]

Anyone elected to the position of churchwarden or vestryman who refused to serve was fined 1000 lb of tobacco, a hefty sum. However, the laws acknowledged the existence of religious diversity in Maryland by excusing any "Persons publicly known to be of any Religious Profession different from the Church of *England* established by Law, shall not be liable to such Choice or Penalties."[75] The necessity of such a law reflected that men of prominence were non-Anglicans and might be the preferred choice of the freeholders. By excusing them from the fines, the legislature exempted religious minorities from a punishment that might have taken a serious toll on non-Anglicans.

[73] Vestry Minutes, St. Paul's Parish, Prince George's County, Md., SCM 255, 160, Maryland State Archives, Annapolis, Md. [Hereafter MSA].
[74] Vestry Minutes, St. Paul's Parish, Prince George's County, Md., SCM 225, 162, MSA.
[75] *Archives of Maryland Online*, 75:715.

While vestries and churchwardens in Maryland were under some popular control through elections, they also came under closer oversight of the governor and the county courts. The Governor in Maryland exercised the right of advowson, so the vestries did not have the same authority to reject a recommended candidate for parish rector. When St. James Parish in Anne Arundel County needed a new minister, Governor Charles Calvert, "recomend[ed] and appointed the Said Peter Tustian to be Rector of your Parrish, and Direct you to receive him as Incumbent thereof..."[76] Calvert's letter order that the new rector "Receive the full Benniftes. and perquisites, to his Office Appertaining."[77] The language in this letter reflected the full legal authority of the governor over Maryland's parishes and stands in stark contrast to the autonomy of the Virginian vestry over induction.

While the vestry as a whole made decisions in both colonies, they delegated the task of carrying out those choices to the churchwardens. These men (and they were always men in the Chesapeake colonies) were responsible for overseeing the day-to-day administration of parish affairs. Churchwardens are remarkably absent from scholarly accounts of religion in the Chesapeake, but they were the busiest officers of parochial affairs. Churchwardens maintained the houses of worship and oversaw any necessary upkeep on the glebe. Moreover, they represented the parish in court, both as officers of the court charging parishioners with crimes and in private lawsuits. Finally, churchwardens managed parish finances, distributed parochial funds, and paid for parish expenses throughout the year, including bibles, prayer books, and bread and wine for communion. In Virginia, where parishes were responsible for providing all welfare services to the poor, the churchwardens carried the responsibilities to manage poor relief services and arrange the indenture of bastard and orphaned children ordered by the court. For

[76] Dallam, ed., *St. James' Parish,* 193.
[77] Dallam, ed., *St. James' Parish,*193.

example, when George Washington served as churchwarden of Truro Parish in 1764, he oversaw the construction of a new church, arranged the indenture of "Sarah Mill's crippled son, distributed clothing and relief payments to several poor families, and reimbursed Dr. James Laurie who provided medical care to the poor.[78] The parish relief system reinforced bonds of reciprocity between elite and poor parishioners.

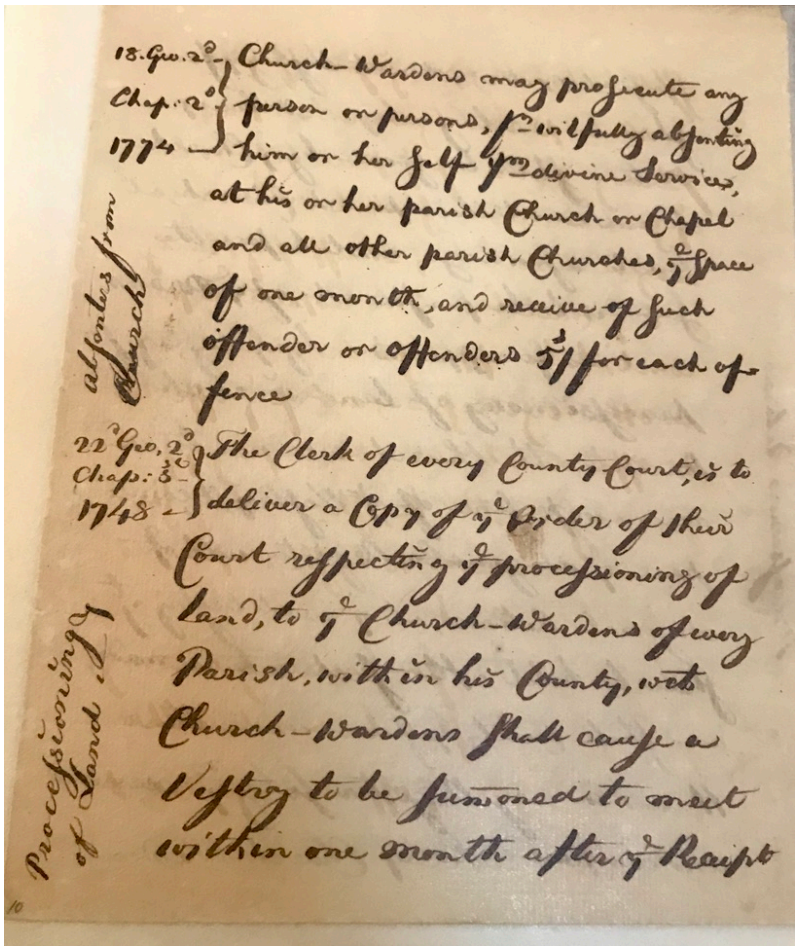


Figure 2.4. Robert Cater, "Rules for the conduct of churchwardens," 1775, Carter family papers, 1651-1861, VHS, Richmond.

[78] The Vestry Book of Truro Parish, 1732-1802, 101. Images of the vestry book are available online through Pohick Church, http://www.pohick.org/vestrybook.html.

Virginians understood that churchwardens were officers of the law. Robert Carter, one of Virginia's wealthiest planters, wrote a revealing manuscript entitled, "Rules for the Conduct of Churchwardens," which outlined all of a Virginians churchwarden's duties. Carter's handbook summarized the legal responsibilities of churchwardens and included the statutory annotations for each duty. For example, he noted that churchwardens could prosecute parishioners "willfully absenting him or her self from divine service, at his or her parish church or chapel" and included a citation to 18 George II Chapter 2, 1744.[79] The statutory framework of the established church invested its officers with power and responsibility for overseeing their communities. Perhaps no other record so clearly shows how parishes served as an arm of the state and carried out the role of law enforcement in local communities.

Born, Married, and Buried

The parish shepherded parishioners through the different seasons of life by administering baptismal, matrimonial, and funeral rites. Maintaining records of baptisms, marriages, and deaths made every parish vestry the custodian of the most intimate details of personal experiences. Parochial governance was built on and engendered familiarity between vestry and parishioners. These records were also important legal documents that were necessary to the project of statecraft. Without accurate records of the population, the state could not collect taxes, determine residency, record parentage, and prove legal status. In this respect, the role of the parish as the register for local vital statistics intertwined its spiritual and legal authority.

[79] Robert Cater, "Rules for the conduct of churchwardens," 1775, 10, Carter family papers, 1651-1861, Virginia Historical Society, Richmond. See Hening, 5:226.

Parishes in both colonies kept vital statistics. As early as 1632, churchwardens in Virginia had been responsible for recording all "burialls, christenings, and marriages."[80] Thirty years later, significant confusion persisted. The assembly complained that, "many differences doe frequently arise about the age of orphans, and inquirees are often made for persons imported into this country and here deceased, and no positive certificate can be granted of the age of the one, or the death of the other, by reason noe registers have bin kept, which might by the record there entred evidence that same."[81] The assembly thus required "the minister or reader of every parish shall well truely and plainly record all births burialls and....marriages which shall happen within the precincts of the parish in a... booke to be provided by the vestry for that purpose." They imposed a fine of one hundred pounds of tobacco on "any master of a ffamily or other person whome it may concerne shall ommitt of giving notice.... of the day of the birth death or marriage of any to him or them related the space of a month such person" to ensure compliace.[82] Several decades later, the assembly imposed a new system of fees and penalties to ensure that records would be well kept. By the terms of the 1696 act, the clerk could charge "five pounds of tobacco or sixpence for recording and registring every birth, buriall or marriage and the church wardens of the said parish or parishes or any other person or persons appointed by the vestry or vestryes are hereby authorised and impowered to collect the same, or in case of non payment to make distresse."[83] The assembly used fines and monetary incentives to win the cooperation of parochial officers and ensure that all communities kept accurate records.

In a slave society, accurate parochial records of birth were essential to determining legal status and collecting taxes. In Virginia and in Maryland (after 1724), a tithable person was any

[80] Hening, 1:155.
[81] Hening, 2:54.
[82] Ibid.
[83] Hening, 4:149-150.

man sixteen or above and any black woman, either free or enslaved, sixteen or above.[84] Because the tithable status of an individual depended on their age, keeping accurate birth records was essential for the project of taxation. The 1702 Statute that firmly established the Anglican Church in Maryland required the parish to employ a clerk who was required to "make due Entry of all Vestry Proceedings, and of all Births, Marriages and Burials (Negroes and Mulattoes excepted) *that is to say*, the Christian and Sir-Name, with the Day, Month and Year of every such Births, Marriages or Burials."[85] The law put the onus on, "the Inhabitants of each Parish, that are either Parents, Guardians, Overseers, Masters, or Mistresses of any Person born married or buried, to give Notice to the Register" of the parish where they resided.[86] This legal exclusion of black men and women made the correlation between race and membership in the civic and spiritual community. Only white individuals could prove their parentage, which significantly disadvantaged free black or mixed-race Marylanders who lacked parochial documentation of their births.

For John Anderson, a young man living in Virginia's Augusta Parish, his very freedom rested on the accuracy of parish birth records. In June of 1763, Anderson petitioned the court accusing the parish minister, "Rev. John Craig [of] detaining him as a slave."[87] The Augusta County Court relied on evidence from the vestry records of Saint Andrews Parish in Brunswick County, more than 150 miles away in the southeastern part of the colony, to prove that "Anderson is the son of a free white woman and was bound by the Church Wardens of the Parish of Saint Andrews, in Brunswick County, to serve till 21, and he is now of that age."[88] The

[84] Hening, 3: 258-261; *Bacon's Laws of Maryland, Archives of Maryland Online,* 75:360, 708-709.
[85] *Archives of Maryland Online*, 19:268.
[86] Ibid.
[87] Augusta County Court, Order Book 8, June 22, 1763, in Lyman Chalkley, ed., *Chronicles of the Scotch-Irish Settlement in Virginia, extracted from the Original Court Records of Augusta County, 1745-1800,* 3 vols. (Rosslyn, VA: National Society of the Daughters of the American Revolution, 1912), 1:112.
[88] Ibid.

Augusta Court ordered that he be released immediately. Parish records could prove race, parentage, age, and legal status. Anderson was born and indentured across the state, and the Augusta County Court relied on the Churchwardens of Anderson's home parish to consult their records and determine his legal status. A slave society built on a racial caste system relied on accurate records of parentage and parishes carried out this duty.

Marriage knit together the religious and legal power of a religious establishment to maintain social order. Marriages, like births, were recorded by the parish. On March 21, 1767, the Augusta County Court charged a yeoman named Joseph Bell for tampering with the parish marriage records. Perhaps the act of a spurned suitor or a prank gone too far, the young man purportedly "did forge and counterfeit... the banns of matrimony" between a single woman, Anne Wallace, and Edward Sampson, "a deformed little tailor."[89] Bell purportedly slipped a false marriage announcement to the unwitting parish clerk, who read the banns out loud during a Sunday service, without "their knowledge or consent."[90] The court unleashed a torrent of adverbs against Bell by accusing him of "falsely, unlawfully, and wickedly devising, contriving and intending...maliciously and injuriously to aggrieve, oppress, ridicule, and to bring [Anne Wallace] and her parents into discredit and disgrace."[91] The stakes of this counterfeit were high. The court's virtriol reflected the seriousness of maintaining accurate vital statistics. Significantly, this case was not brought by the Wallace family or any individual, for that matter, but instead was prosecuted by the county on behalf of the Crown. This crime had not only caused "discredit and grief" to Wallace and Sampson but amounted to an attack on "the peace of our said Lord the

[89] Augusta County, County Court Judgments, May 1767, Record Book E, reproduced in Chalkley, ed., *Chronicles of the Scotch-Irish Settlement in Virginia,* 1:464.
[90] Ibid.
[91] Ibid.

King, his Crown, and dignity, etc."[92] The venomous reaction of the court also recalled the large fines imposed on Reverend Thomas Bacon for the two unpublished marriages he performed, which were discussed in Chapter 1. The steep penalties against unlawful marriages grew out of the same anxiety as the court's tirade against Joseph Bell. The parish's duty to regulate marriage maintained the legal and social fabric of the colonies. Inaccurate marriage records were subversive, even treacherous, because they undermined the ability of the church to maintain order and enforce laws at the behest of the Crown.

In Virginia, the parish's power over marriage went beyond keeping records for most of the colonial era. Performing the rite of matrimony was an exclusive legal privilege granted only to Anglican ministers in Virginia. Marriage was not only a sacrament to be performed before God but also a specific legal institution that had to be sanctioned by a representative of the state. Virginia overhauled its law in 1748 by allowing licensed dissenting ministers to marry parishioners, but fees for these marriages still went to the incumbent Anglican rector in the parish. Weddings were a valuable source of income to Anglican ministers. Couples had to pay a fee of twenty shillings Virginia current money for the minister to perform their marriage in Virginia and five shillings sterling in Maryland.[93] Anglican ministers were eager to protect this source of revenue. In one exceptional instance, the parish rector of Augusta Parish, the Rev. John Jones, sued the minister of the neighboring Botetourt parish, Rev. Adam Smith, for fees collected by Smith after marrying eight couples from Augusta Parish. The law was clear that no matter who performed the ceremony, the marriage fees were for the rector of the parish where the bride resided. Jones won his case and recovered 2 pounds, 2 shilling and six pence.[94] Even when a

[92] Ibid.
[93] However, publishing marriage banns cost only 5 shillings current money in Virginia. Hening, 6: 84; *Archives of Maryland Online*, 75:686.
[94] Waddell, *Annals of Augusta*, 292.

dissenting minister performed the marriage, the parish rector was still paid when the marriage was listed in the parish register.

Maryland exempted Protestant dissenters, but not Catholics, from being married by Anglican parish rectors. The colony's accommodation for Protestants also made the exclusion of Catholics all the more targeted. The prohibition against Catholic marriages reflected the deep distrust towards Jesuit priests and the state's denial of an important legal power to this dreaded group of ministers. This stipulation underscored the ongoing legal framework in which Catholicism was incompatible with loyalty to the Crown.

The Maryland assembly laid bare its views on the political significance of marriage in a measure passed during the Seven Years War. 1756, the assembly approved an omnibus spending bill to raise funds for the military campaign that also included a host of other provisions seemingly intended to enforce political allegiance. Among other things, the law imposed a penalty on young men of means. The provision included a broad statement about the political significance of marriage, declaring "forasmuch as Divine Institutions ought to be strictly observed in every well-regulated Government... entering into the holy Estate of Matrimony may tend to the more orderly Propagation of Mankind, it ought, not only in a religious, but political View, to be promoted"[95] This language of the law laid bare the interwoven spiritual and political nature of marriage, as well as the assembly's claim to have legal authority over both realms. The assembly declared that "continuing in a State of Celibacy" should be "discountenanced, especially in every Infant Country." Framing the vow of celibacy as a threat toward the growth of society and, this statute took ideological aim at the vow of celibacy taken by Catholic priests and financially targeted young Catholic men who might be considering the priesthood. This

[95] *Archives of Maryland Online*, 52:503

coded attack on Catholics aligned with other anti-Catholic provisions in the military measure, including a tax on all Catholic landholders over eighteen who refused to take the "Oaths to the Government, and sign the Oath of Abjuration and the Test, now by Law established," and a command for sheriffs to make a "clear and distinct Account of all Lands, with their Names and Quantities, held by Papists, or reputed Papists."[96] The strident anti-Catholicism reflected rising tensions during the Seven Years War and the paranoia of Maryland's Protestants that their Catholic neighbors would revolt and ally with the French.

The law justified taxing bachelors by arguing "the Rank of Men called Batchelors are not burthened with the Charge and Expence that usually attends a Matrimonial Condition, they may be better enabled to contribute a larger Tax towards the Support of the Community."[97] The law reasoned that men who remained single were not contributing towards the community as husbands, who provided financially for their families; therefore, these single men ought to be taxed to make up for their lack of social contribution. The law required "batechelors" whose estates were valued between 100 and 300 pounds Current Money to pay 5 pounds of current money; those with estates over 300 pounds current money were taxed at a rate of 20 pounds of current money.

This program of taxation relied on the vestry's intimate knowledge of parishioners and its power as a taxing body. The vestry had to determine the age and marital status of the young men of the parish, and then accurately assess the approximate value of these bachelor's estates. Records suggest that parishes readily complied with this law and regularly presented at least a dozen bachelors to the Sheriff for the additional tax.[98] The lists of bachelors made by the vestry

[96] *Archives of Maryland Online*, 52:508-510.
[97] *Archives of Maryland Online*, 52:503
[98] Dallam, ed., *St. James' Parish*, 291; Vestry Minutes, Shrewsbury Parish, Kent County, Md., Microfilm 339-1, 87, MSA.

were checked against the birth records kept in parish registers and men who were not yet twenty-five were taken off of the list. For example, in St. James Parish the vestry removed Richard Brown, Richard Lewing, and Robert Norris in 1761 from the initial list of bachelors after consulting the "Redgestor" to confirm their ages.[99] Not surprisingly, many young men objected to the tax and claimed that the vestry had gotten their ages or amount of property wrong, and they mounted "legal" appeals, which were heard by the vestry.[100] For example, in 1763, after the Saint James Parish Vestry had placed Jon Chew on its list of taxable bachelors, "Mr. Jon Chew Came Before This Vestry and Made Oath that he was not the Edge of Twenty five years old."[101] The vestry accepted his appeal and "Discharge[d] him from paying a Batchlors Tax." [102] Taxation, like marriage and vital records, were essential responsibilities of parishes. The workings of the state at its highest level relied on raising revenue and maintaining social order. Parishes carried out these responsibilities and expressed their interwoven power as spiritual and legal bodies.

Regulating Sin

Established religion had long been defended on the grounds that only a state church could enforce moral order in society. In both Maryland and Virginia, crimes related to sexual mores, drunkenness, swearing, and blasphemy were all prosecuted by the county courts. The criminal

[99] Dallam, ed., *St. James' Parish,* 299.
[100] *Archives of Maryland Online*, 52:504
[101] Dallam, ed., *St. James' Parish,* 305.
[102] Ibid.

code bolstered the establishment of religion by promoting the morality of society and using civil law to enforce godly behavior.

From the earliest days of the Virginia colony, laws created a punitive system to enforce moral behavior and compel adherence to the established church. Invoking the "zealous indeavors, and intentions of the whole body of Adventurers for this pious and Christian Plantation," the Virginia Company approved *The Lawes Divine, Politique, and Martiale* in 1610. This legal code tied the success of the colony with the morality of its settlers and imposed a host of moral regulations, from prohibiting work on Sundays and blasphemy to requiring attendance at divine services and outlawing sodomy and adultery. The colony criminalized "dishonest and deceiptfull" dealing in foodstuffs and other provisions, which was especially important given the starving conditions of the colony in its first decades. The punishment for these crimes ranged from public whipping to being sentenced to work in the gallies. This code of laws predated the creation of a formal parish system, invoked magistrates, local ministers, and the churches as the bodies responsible for their enforcement and reflected an intertwined system of ecclesiastical, civil, and criminal laws. After the creation of the parish system in the 1630s, Virginian counties and parishes shared power over the regulation and punishment of moral crimes in the colonies. In the middle of lawless, failing colonial project where disorder, disease, and distrust ran rampant, this text underscored that obedience to the laws was obdience to God, and reminded colonists that above all, "our highest and supreme duty, our greatest, and all our allegeance to him, from whom all power and authoritie is derived."[103]

The formation of a religious establishment in Maryland had been defended on the grounds that the colony's failing moral standards were a direct result of the absence of the

[103] William Strachey, *For The Colony in Virginea Britannia. Lawes Divine, Morall and Martial &c*, (London: 1612), Virtual Jamestown Project, http://www.virtualjamestown.org/exist/cocoon/jamestown/laws/J1056.

Anglican Church. Anglicans in the colony claimed that without enough ministers or public funds for religious organization, Maryland's society as a whole had become depraved and vice-ridden. Clergymen John Yeo provided a bleak assessment of religious and moral life in the colony in 1675:

> Here are in this Province ten or twelve countys, and in them at least twenty thousand soules, and but three Protestant misters of us yet are conformable to ye doctrine of ye discipline of ye Church of England... no care is taken, or provision made, for the building up Christians in the Protestant Religion, by means whereof not only many dayly fall away either to Popery, Quakerism, or Phanaticisme, but also the Lord's Day is profaned, religion despised, and all not so that it is become a Sodom of uncleannesse, and a pest-house of iniquity.[104]

Like generation of defenders of religious establishment before him, Yeo equated religious diversity with the spread of immorality. Without an establishment to "build up" the Anglican communion, colonists fell under the sway of other religious persuasions, most worryingly Catholicism, and wickedness reigned supreme. Of course, propagandistic calls for Anglican establishment like Yeo's ignored the fact that the Maryland toleration laws had already imposed Sabbatarian restrictions on labor and prohibited blasphemy; these pleas suggested that without an established church, moral laws were ineffective. The execution of moral law relied on Anglican establishment in Yeo's view.

The series of laws that eventually established the church in Maryland rearticulated regulations against swearing, drunkenness, profaning the Sabbath, missing worship, and bastardy, among other things. However, Maryland's county courts retained jurisdiction over these crimes. If convicted, colonists paid fines to county magistrates "for the use of the Poor of the Parish Citty or Bourrough where such Offences" were committed. The invocation of the parish here acknowledged the existence of a parochial system but also highlighted that counties

[104] George Yeo to the Archbishop of Canterbury, May 25, 1676, in John H. Seabrook, "The Establishment of Anglicanism in Colonial Maryland," *Historical Magazine of the Protestant Episcopal Church* 39 (1970): 288.

were the legal prosecutors of moral crimes and recipients of all monetary fines. County court records reflect that fines for moral crimes did not specifically fund poor relief but simply added the county's general pool of funds.

Nonetheless, the established church in Maryland did bear some responsibility for enforcing moral laws. By law, parish ministers were required to read "the Act to punish Blasphemers, Cursers, &c. Four Times a Year; *viz*. On some Sunday in *March, June, September* and *December*, in their respective Parish Churches, between Divine Service and Sermon."[105] The assembly imposed a penalty of 1,000 pounds of tobacco on any minister who failed to perform this duty. The crimes of adultery, lewdness, or fornication were known euphemistically as "incontinent" living or unlawful cohabitation, and the parish served as the first line of defense against these crimes. If someone suspected their fellow parishioner of having committed one of these crimes, he or she reported their allegations to a churchwarden, the minister, or the vestry for further investigation.[106] The vestry then legally summoned the suspects, questioned them, and could admonish any guilty parties. The vestry could elect to present anyone to the county court who had refused to attend the meeting, had not adequately explained themselves, or continued to break these laws after being admonished. The parish's judgement, along "with Proof of their Cohabitation or frequenting each other's Company, contrary to, and after Admonition, shall be Evidence in any Court to convict such Persons."[107] In this system of moral oversight, vestriesserved an important role by investigating suspected cases of immoral conduct, reproving those individuals whom it deemed guilty, and using its discretion to pass certain cases to the courts for formal punishment. Counties relied on the vigilance of neighbors to report one another

[105] *Archives of Maryland Online*, 75:687.
[106] "An Act for the Punishing the Offences of Adultery and Fornication" (1715), *Archives of Maryland Online*, 75:222.
[107] Ibid.

and deferred to the wisdom of vestries who investigated allegations. Thus, the parish as community and as an administrative unit worked on behalf of the county to stamp out immoral behavior.

Records from Maryland parishes document the proceedings from vestry investigations into adultery, bigamy, fornication, interracial relationships, incest and other sexual relationships deemed immoral. Parishes condemned marriages that ran counter to colonial statutes against interracial marriage or the marriage of servants but also policed marriages according to the "Rules and Canons of the Church."[108] The St. James Parish Vestry Book records eight instances of investigating couples for unlawful cohabitation between 1710 and 1776.[109] However, all of these investigations took place between 1720 and 1748; and five of the cases took place in just two year, 1733 and 1748. The distinctive clustering of these records and the low aggregate amount suggests that it took either an exceptional situation to warrant parochial attention or an exceptionally vigilant vestry. In 1733, John Conner was summoned before the vestry for "keeping company unlawfully with William Dove's daughter."[110] Because she was named only as the daughter of William Dove, perhaps she was well under the age for lawful marriage.

Shrewsbury Parish in Kent County, MD was even more vigilant. The parish summoned eleven couples for unlawful cohabitation, as well as a man and two women for individual offenses, between 1746 and 1756.[111] The language of the vestry records is distinctly legal and reflected the authority of the parish to summon the accused, to find someone guilty, and to present them to the court if they were found guilty. In all fourteen cases, the vestry found the

[108] This phrase comes from the vestry's investigation in 1775 into the marriage of William Merritt and his deceased wife's granddaughter, Martha Vansant. The parish condemned the marriage and presented the pair to the Kent County Court for an incestual relationship. Vestry Minutes, Shrewsbury Parish, Kent County, MD., Microfilm 339-1, 127, MSA.
[109] Dallam, ed., *St. James' Parish*, 187, 210, 211, 223, 253, 254, 266.
[110] Dallam, ed., *St. James' Parish,* 210-11.
[111]Vestry Minutes, Shrewsbury Parish, Kent County, Md., SCM 339-1, 25, 27, 33, 35, 38, 40, 43, 47, 72, MSA.

charges credible and admonished the offenders. This remarkable rate of guilty outcomes suggested either that parishioners were only summoned when there was a significant amount of evidence that they were culpable, or that the vestry was willing to admonish anyone suspected of committing such a crime. These investigations were not a forum for discovery and adjudication but a display of moral censure before the community. The parish chose to present offenders to the county court for prosecution only in the four instances when the parishioners refused to attend the vestry proceedings. What mattered in these instances was deference to the parish as the arbiter of morality.

Parish churches in both Maryland and Virginia served as the site of public punishment for moral crimes. St. James Parish in Anne Arundel, MD built a pair of stocks in its churchyard in 1720. Twenty-seven years later, in 1747, the parish built a new "pr of stock & a whipping post" in addition to other renovations to the church. While the vestry book does not list when the stocks or whipping post were used, presumably when the Anne Arundel County Court imposed these punishments for moral crimes, they were inflicted on the bodies of parishioners on the grounds of the church. The court sentenced people for lashing for a wide variety of crimes, and multiple offenders were sentenced to be whipped publicly each year. Recall, too, the inquisition of Grace Sherwood, discussed in Chapter 1, during her trial witchcraft. Lynnhaven Parish served as the site of a humiliating and painful punishment, which intertwined the moral authority of the church with the power of the colony to punish. In 1734, St. Peter's Parish in New Kent County, Virginia ordered, "That the Church Wardens cause a good & substantial Pair of Stocks to be forthwith erected near the Church yard Wall for the Restraint of licentious and disorderly Persons several such having lately appeared."[112] The parish church was a highly visible and

[112] *The Vestry Book of Saint Peter's Parish, 1682-1758 New Kent County* (Richmond, Va.: The National Society of the Colonial Dames for the State of Virginia), 168.

symbolically effective site for moral condemnation where churchwardens punished deviance in the presence of God and the community.

Virginian churchwardens presented parishioners to the county courts for breaches of moral laws such as swearing, blasphemy, gaming, bastardy, fornication, using false measure, and drunkenness to the county courts and collected payment from those convicted. In addition to regulating the personal behaviors of parishioners, churchwardens could also submit parishioners for misdemeanors such as missing worship, breaking the Sabbath, and blasphemy. In this capacity, they had a unique legal power to make presentments to the court along with grand juries and justices of the peace to bring charges. Churchwardens served as important officers of law enforcement by superintending the personal mores of their parishioners and indicting offenders.

Scholars have shown that churchwardens' presentments to the court became less common after 1750 when grand juries began presenting the majority of offenders.[113] However, records from several county courts show that churchwardens still made presentments. The Fairfax County Court Order Book from 1754-1756 shows that both grand juries and the county's two parishes presented women for bastardy. Cameron Parish presented three women, Margaret Anderson, Patience Graham, and Jane Slater. Truro Parish also presented three female parishioners, Elizabeth Barry, Phebe Cole, and Sarah Pardis. Grand Juries presented an additional four women in the same time span. The court dismissed the charges against all of women who came before the court; however, the outcome was different for those who refused to attend the proceedings. Joyce Tomlin was one of at least five women convicted for bastardy in that eighteenth-month period after failing appear before the Fairfax County Court. The pattern of

[113] Najar, *Evangelizing the South,* 91.

dismissing charges against those who appeared while convicting absentee individuals suggests that the primary reason for bringing the charge was to publicly shame women suspected of bastardy, either in a public hearing or through a conviction, rather than determining their guilt. [114]

County courts convicted individuals of moral crimes like gaming and bastardy, but parishes were the recipients of these fines. When Joyce Tomlin was convicted of bastardy in 1756, she paid her 50-shilling fine to the churchwardens of Truro Parish.[115] A few brief entries in the Vestry Book of Bristol Parish from January of 1757 reveal that while the court convicted, the parish collected: "John Jones, Haulkey Pride, Sheppyallen Puckett being fin[e]d for gameing by the Judgement of Pr[ince] George Court, Order'd that the Churchwardens receive the said Judgment."[116] Parishioners like Tomlin, Jones, Pride, and Puckett had not only committed a personal sin but also threatened the community more broadly. The court convened as an arbiter to decide guilt or innocence, but the parish represented the community's interest. When sinners paid their fines, these funds went to the communal purse of the parish.

Surviving churchwardens' accounts reveal that the parish pocketed money every year through moral fines. The churchwardens of Upper Parish in Nansemond County raised anywhere from five to fifteen pounds current money through fines in the in 1750s and 1760s.[117] Fines collected by the churchwardens were then used to provide additional funds for poor relief. One of the parish churchwardens, Daniel Pugh, "acknowledged to have in his hands "five Pounds for Sarah Johns and Ann Nails fines for having Bastard children." The other churchwarden, William Moore, had "in his hands five pounds for Sarah Hines fines for haveing a Bastard Child. Ordered

[114] Fairfax County, Order Book, 1754-1756, Mircofilm Reel 37, passim, LVA.
[115] Ibid.
[116] Chamberlayne, ed., *The Vestry Book and Register of Bristol Parish, 1720-1789,* 167-8.
[117] These were small sums in proportion the parish's total budget, at most 2-4%, but still allowed the parish to provide additional relief disbursements.

that the said Daniel Pugh pay to Issabella Flint fifty shillings of the said fine and to Sarah Metcalf fifty Shillings, and that William More pay to John Coupland fifty shillings."[118] For every crime of swearing, drunkenness, bastardy, betting, dishonest dealing, and sabbath-breaking, there was an additional allowance made to the poor. This system engendered a transactional morality in which the sinful paid the worthy, and the established church policed the line between right and wrong. Indeed, these payments were often paid out on Easter, which tied the liturgical calendar to the material welfare of the poor. While the pious marked the resurrection of Jesus Christ each year, the poor must too have celebrated receiving a material form of deliverance from the parish.

In addition to presenting parishioners and collecting court-imposed fines, Virginia's churchwardens also arranged indentures for poor, orphaned, and bastard children on behalf of the court. In this capacity, churchwardens exercised a significant amount of responsibility and discretion over the daily lives of their most vulnerable parishioners. Churchwardens first attempted to prevent bastard child and theirs mothers from becoming "chargeable to the parish," or dependent on financial support from the parish. Customarily, an unmarried woman who was pregnant or had given birth recently could name the father her bastard child voluntarily before any Justice of the Peace or before the court after being presented. The churchwardens sought out the alleged father and forced him to sign a bond with the parish promising to provide financial support for the child. These legal agreements established paternity and attempted to indemnify the parish of any financial responsibility for the child by brokering a childcare agreement. These contracts imposed steep financial penalties ranging from fifty to one hundred pounds current money against the father and his guarantors if he failed to pay adequate child support.

[118] Hall, ed., *The Vestry Book of Upper Parish*, 55.

Orphaned children, children whose parents were unable to care for them, and bastard children without financial support were bound out by the churchwardens as indentured servants. Virginian law also required all mixed-race children born to white mothers to be bound out. These agreements typically bound children to learn a specific trade like coopery or weaving and sometimes required they be taught to read the Bible. In 1749, the Augusta churchwardens signed five indentures contracts and three bastardy bonds; in 1750, they signed fifteen indentures and two bastardy bonds.

"To promote public utility": The Regulatory Power of the Parish

As stewards of the public good, parishes not only exercised authority over moral affairs in their communities but also played important regulatory roles in the local economy. In Virginia, the most significant regulatory role of the parish was its oversight of processioning. In 1705, the Virginia House of Burgesses formalized processioning, or the practice of affirming all private property boundaries. A custom that dated back to medieval England, processioning had been required by law in the colony since 1662 but only haphazardly enforced.[119] The new law laid out specific regulations and a new set of penalties to ensure compliance. Every county court would order the parish to procession all land in its boundaries every four years. The vestry had ten days (later changed to a month) to comply with the order. Vestries laid out their parishes into precincts and chose parishioners from the community to process, or literally walk along all private property limits. The churchwardens were required to inform the processioners of their appointment and to publicly announce the date and time for parishioners to attend. The processioners were responsible for establishing agreement between neighbors about the limits of

[119] Hening, 2:102.

their property and recording the proceedings. The parish collected these records, called processioners' returns, for safekeeping. By the terms of the 1705 Act, Justices of the Peace and vestrymen were personally fined if they failed to organize processioning. The regular entry of processioners' returns into vestry books from across the colony reflected that the legislation was closely observed.

Documenting private property boundaries offered an invaluable way to ensure accord among neighbors. Clarifying land claims from generation to generation and between individuals was essential in a tobacco society where land was a prized asset. A typical set of processioners' returns listed specific landmarks that bounded private property and often how much land every inhabitant owned. These records sometimes noted who heled patents and deeds over undeveloped tracts of land, which was particularly important in a frontier parish like Augusta which, at least theoretically, had no western boundary and where speculators and residents often held competing land claims.

Records from Augusta Parish's processioners' proceedings for 1748 offer a clear example of the process unfolded. In September of 1747, for example, the vestry appointed forty processioners and assigned pairs of men to "Procession all the Lands "in a certain area" defined by local landmarks or by their owners.[120] For example, Thomas Stevenson and David Edmonton were ordered to procession the ground "Alexander Balaires to Capt. Samuel Gays."[121] Less lucky were John Denton and Abraham Collet, who had the arduous task to survey the county line "from mountain to mountain."[122] The Augusta Vestry ordered each pair of processioners to return their records to the vestry "before the last of March next" and "return an exact account

[120] Vestry Book, Augusta Parish, Augusta County, Va., 4-7, LVA.
[121] Vestry Book, Augusta Parish, Augusta County, Va., 7, LVA.
[122] Vestry Book, Augusta Parish, Augusta County, Va., 10, LVA.

thereof to the vestry together with the persons present at the same and of which land in their precinct they shall fail to procession and of the particular reasons of such failure according to law." In Augusta, the processioners returned the total amount of land per person as well as the specific boundaries. The records noted, for example, that John Peter Sally owned four hundred acres of land "bounded with the mountain on the one side and the river on the other." Sally's neighbor, Michael Finley, served as a witness to the proceeding. The process laid bare the relative wealth and standing of every parishioner for examination.

Processioning sought to prevent communal disputes over the boundaries or the ownership of lands. For example, one set of 1748 processioners' returns in Augusta noted that "the lower corner" of Robert Young's land had been denoted by three black walnuts but these trees had been cut down recently, which made the property line ambiguous. Through the careful notation of boundary changes, the tradition sought to stave off conflict between neighbors. Heirs could also refer to earlier processioners' records to clarify their inheritance, as was the case when the Robert Huston and Alexander McClure "Processioned for William Gwinns heirs one hundred & thirty two acres tow rood and twenty nine pole of land." Gwinn's heirs could clarify their claims with this documentation.

The system of processioning was meant to prevent individuals from resorting to the courts and enduring costly lawsuits to ascertain the boundaries of private property. The practice included a parochial means for dispute resolution. In this regard, parishes used processioning to ensure order and consensus among community-members. However, there were instances when processioning failed to achieve a peaceful resolution and neighbors turned to the courts for resolution. John Munden and Edward Holmes, two parishioners in Lynnhaven Parish, argued over the boundary between their plantations in the 1728 processioning. Unable to agree with his

neighbor, Holmes "stopp'd the processioners."[123] The feud escalated when Holmes and his wife Sarah charged Munden with trespassing on their land in 1730. The neighbors resorted to litigation in the county court to resolve their squabble where a jury formally drew a boundary between the two holdings in December of 1731. The vestry carefully recorded a complete entry of the court's judgement, as well as a map of the disputed area, in the vestry book to definitively clarify legal ownership of the lands. The rarity of processioning disputes in the records highlighted the intrinsic value of the practice.

Another contested property case, which wound up before Virginia's General Court in 1769, *Bradford v. Bradford*, expressed the ultimate civic goal of processioning. In the case, "two coterminous landholders," who were very likely relatives, disagreed about the boundary between their holdings. In the lower county court, the "jury found specially, that the line in truth was as the plaintiff below suggested, but that it had been six times processioned according to the line which the defendant below would establish." The plaintiff had been absent for the previous five processionings, or for a period of twenty years. The county court ultimately decided that the processioners' returns were not binding because the plaintiff had been absent, and therefore upheld his claim to the land. The defendant appealed to the General Court, where George Wythe represented him. Wythe argued that twenty years of processioners' returns legally established the defendant's claim to the property. He defended the "importance of the method of processioning towards preserving boundaries in quiet," and invoked the maxim "that institutions tending to promote public utility, must prevail, though injurious in particular instances." To preserve public harmony, processioning as a legal institution had to be observed. The plaintiff had failed to respect the parish custom and therefore lost his claim to the land.

[123] Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish*, 14-15.

Edmund Pendleton, representing the plaintiff, did not dispute the significance of processioning. However, he argued that the very merit of the practice stemmed from the participation of all parties. The absence of a landholder inherently invalidated the act of processioning. Property-holders must "be present, or at least have notice" of the processioning, which Pendleton claimed the plaintiff had not received. Though Wythe argued the point, the court sided with Pendleton. Its decision affirmed that "a procession of land of two conterminous landowners is not binding unless they are present or have notice of the proceedings." With this holding, the court expressed that the deeper purpose of processioning was securing consensus among community members. This decision did not undermine Wythe's claim that the institution served to promote public harmony; rather, the court necessitated the participation of all individuals in processioning to uphold its legitimacy. In this sense, the parish was responsive to its parishioners and its authority rested on their presence. Processioning was time-consuming and difficult to coordinate, but its continuation over generations attest to its importance. Though non-judicial, processioning carried legal weight and sought to preserve a public record of property lines. By overseeing and closely documenting processioning, the parish fulfilled its mission to oversee an orderly and harmonious community.

Securing private property was an important regulatory act in an economy built on the cultivation of tobacco, and in Maryland also parishes exercised an important role in the tobacco economy by appointing tobacco inspectors. In both Chesapeake colonies, tobacco was not only the staple crop but the currency, and its regulation was of paramount importance to colonial officials and local planters.

Maryland's Tobacco Inspection Act of 1747 overhauled the export of the crop in an attempt to increase the quality and prices of the crop. Modelled on Virginia's 1730 Tobacco

Inspection Act, Maryland's 1747 law set up a new system in which all tobacco had to be inspected at one of 75 public warehouses by two parish-appointed inspectors.[124] Inspectors were required to unpack all hogsheads of tobacco, burn any "trash" tobacco, and repack all of the high-quality remainder. Interestingly, there was a moral value attached to growing low-quality tobacco. Producers of poor-quality tobacco were decried as "slovens," moralizing language that blamed trash tobacco on the character of the men who grew it, rather than on the quality of the soil or availability of labor.[125] By rooting out the sale of trash tobacco, the inspection system was designed to improve the quality of Maryland's cash crop but also to reform the character of Marylanders themselves.

While much has been written about the beneficial economic effects of the act, the role of the parish in the administration of tobacco inspection has been overlooked by scholars. The legislature gave every vestry the power to appoint tobacco inspectors each year. Churchwardens and vestrymen had to take an additional "Oath on the holy Evangelist of Almighty God According to the direction of the Act of Assembly passed in the year 1748 in Order to Qualify them for the Choise of the inspectors in this parish." Even though these men had already taken oaths to fill their parochial offices, they were required to reaffirm their vows to God before selecting inspectors.

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[124] A 1723 law in Virginia, "An Act for the better and more Effectual Improving the Staple of Tobacco," had given parishes the right to appoint tobacco inspectors. Hening only includes the title of the act, see Hening, 134. For the full text of the 1723 and 1727 acts, see C. G. Chamberlayne, "The Tobacco Acts of 1723 and 1729," *The Virginia Magazine of History and Biography*, 20 (1912): 158-178. For an example of Virginian vestries appointing inspectors, see Churchill Gibson Chamberlayne, *The Vestry Book of Petsworth Parish, Gloucester County, Virginia, 1677-1793* (Richmond: 1933), 214. In 1730, the legislature transferred this power from vestries to the county courts. For a discussion of the 1730 law, see Stacy L. Lorenz, " 'To Do Justice to His Majesty, the Merchant and the Planter': Governor William Gooch and the Virginia Tobacco Inspection Act of 1730," *The Virginia Magazine of History and Biography*, Vol. 108, No. 4 (2000), pp. 345-392.

[125] Mary McKinney Schweitzer, "Economic Regulation and the Colonial Economy: The Maryland Tobacco Inspection Act of 1747," *The Journal of Economic History,* Vol 40, No. 3 (1980): 551-569, 559.

Most years, the vestries appointed four inspectors, though there was some variation from year to year and from parish to parish. This delegation of responsibility reflected the assembly's trust in parish vestries to select the right gentlemen for the office. The vestry and churchwardens received an opportunity for lucrative patronage. The inspector not only received a good annual salary but also had a significant amount of personal discretion over the fortunes of his neighbors. The records of several parishes show that the vestrymen often appointed themselves and their family-members for the position year after year. For example, Shrewsbury Parish selected tobacco inspectors sixty-seven times between 1750 and 1770, and of these sixty-seven selections, only thirteen individuals were ever chosen for the post. Eleven of the thirteen men selected also served as vestrymen or churchwardens during this twenty-year stretch. All of the men chosen were pew-holders in the church and made private donations to church construction and maintenance over the years.[126] The vestry had no qualms about using their power as an opportunity for self-promotion. Apparently when looking for the most "able and sufficient planters" for the important post, the vestry felt no need to look beyond their own number.[127]

By giving the parish the power to choose inspectors, the inspection system made the appointment of non-Anglicans unlikely. Not only did this nepotism reflect the entrenched power of elites but also further privileged members of the established religion and excluded non-conformists. The most visible and powerful administrator of the local economy, the tobacco inspector embodied yet another privilege of the elites and underscored the link between ecclesiastical and civil government. The establishment of religion was cemented through the institutional cooperation between parishes and counties; together, they administered, enforced,

[126] Vestry Minutes, Shrewsbury Parish, Kent County, Md., SCM 339-1, 36-109, MSA.
[127] Vestry Minutes, Shrewsbury Parish, Kent County, Md., SCM 339-1, 87, MSA.

and regulated local society. The legal establishment of religion was embedded in the administrative and regulatory power of parishes over daily life.

Laying the Levy

One of the definitive features of an "established" church is public financial support for a religious institution. Both in Maryland and Virginia, the established Anglican church relied on compulsory taxes to support its ministry and parishes. The power to tax gave the parish authority in many realms of civic life. As public institutions with ready access to cash, parishes played a vital role in disbursing public funds and facilitating local economic networks. Armed with significant resources, parishes paid salaries to religious officials and but also compensated carpenters, cleaners, midwives, and many other individuals who performed services for the parish and its parishioners. Parishes were powerful patrons and their access to cash through the levy made them important financial institutions.

Comparing the 1761 levy from Lynnhaven Parish in Princess Anne County, Virginia and a levy from the same year in St. James Parish in Anne Arundel County, Maryland offers a useful way to explore the levying system that supported the established church in either colonies (see Appendix A for complete levies). Though specific record-keeping practices and parochial duties varied from parish to parish and from year to year, parish levies followed a familiar form in each colony. In both colonies public funds flowed through parishes into the hands of private individuals through construction, loans, and other forms of patronage. In Virginia, parishes acted independently and wielded legal authority equal to the county court in their ability to tax residents at their discretion. Virginia's Anglican church administered essential social services, employed the minister, and oversaw worship. On the other hand, Maryland's parishes were far

less autonomous and had to petition the county court or the assembly to levy parishioners. Maryland's Parishes did not oversee welfare services, nor were they in charge of paying the minister. Side by side, parish levies from the colonies illustrate the more limited civic role and restricted legal power of Maryland's parishes in comparison to Virginia's

In both colonies, the vestry, churchwardens, and usually the minister gathered in the late autumn to raise a tax, which they called "laying the levy." The levy coincided with the tobacco-growing season; planters had finished their harvesting but not yet shipped their tobacco crop when their taxes were due. The parish needed an updated list of residents with their age, race, and gender to determine which individuals were taxable. The result was the tithe per poll, typically a sum of tobacco between 10 and 100 pounds of tobacco in Virginia, which was collected by an appointed administrator known as the Collector early in the new year. The collector was often but not always the county Sheriff, who collected the parish levy at the same time at the county levy.

Parish levies reveal the wide-ranging civic power and responsibilities of the established church. Virginia's parish levies were usually higher than either the county or colony levy.[128] The highest tax most colonists paid was to their parish, which begs further inquiry into how parishes spent public funds. The vestry, churchwardens, and minister met after the fall harvest in either in late October or early November. At this meeting, the vestry would agree to reimburse expenditures from the past year. Individuals could present receipts for services, goods, and labor provided to the parish or parishioners during the previous year. Medical practitioners and midwives could present bills for the care they had provided to the public. Ordinary people could

[128] John Nelson shows that parish levies were usually higher than the county or provincial levy, Nelson, *A Blessed Company,* 43-45. Over a century ago, Phillip Bruce came to the same conclusion. Phillip A. Bruce, *Institutional History of Virginia in the Seventeenth Century,* 2 vols (New York: 1910), 1:77.

also seek repayment for the assistance they had provided neighbors and fellow parishioners in the previous year - whether it was making a coffin or feeding the poor. However, many appropriations were also made in anticipation of costs for the ensuing year. The minister's salary and the cost of construction would be included in the levy to provide for future expenses. Moreover, the system of poor relief would either make provisions to pay needy individuals directly or pay a third party to care for a poor, disabled, orphaned, elderly or sick person.

Lynnhaven Parish Levy, Spending by Category, 1723-1776

	1720s	1730s	1740s	1750s	1760s	1770-76	Colonial Average
Administrative	1%	0%	0%	0%	0%	0%	0%
Care of the Poor	15%	11%	18%	26%	24%	31%	21%
Church Maintenance	0%	1%	2%	2%	4%	1%	2%
Clerks	12%	9%	8%	8%	10%	8%	9%
Collection	16%	9%	9%	7%	6%	6%	9%
Construction	8%	20%	11%	12%	0%	18%	12%
Glebe	0%	6%	5%	2%	0%	0%	2%
Insolvants	2%	0%	2%	0%	1%	0%	1%
Minister	44%	43%	43%	36%	40%	27%	39%
Legal	0.0%	0.0%	0.0%	0.1%	0.2%	0.0%	0.1%
Personal Account	2%	0%	2%	5%	14%	8%	5%
Religious Materials	0%	1%	0%	1%	2%	1%	1%

Figure 2.5. This table shows spending patterns in the Lynnhaven Parish Levy between 1723-1776. **Source:** George Carrington Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish, Princess Anne County, Virginia, 1723-1786* (Newport News: VA, 1949), passim.

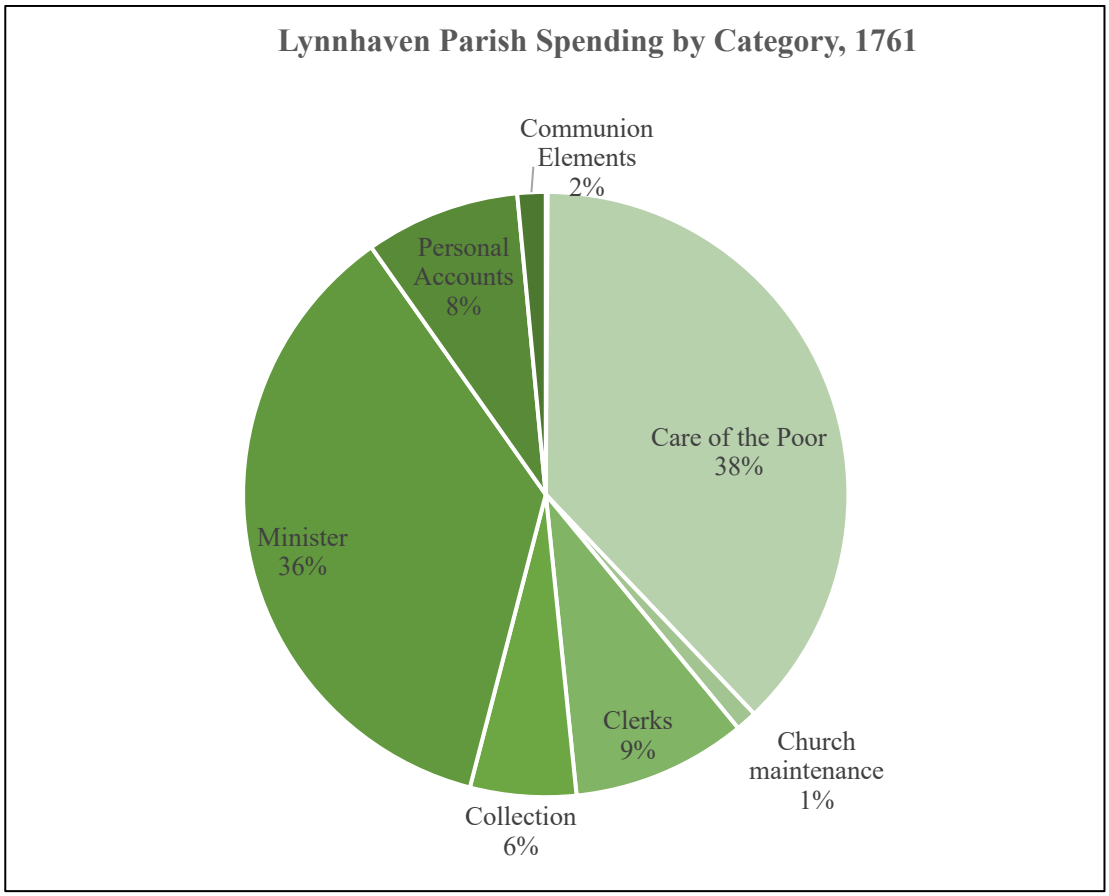


Figure 2.6. The Lynnhaven Parish Levy of 1761 by type of expenditures. **Source:** George Carrington Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish, Princess Anne County, Virginia, 1723-1786* (Newport News: VA, 1949), 67-68.

The levy from 1761 found in Lynnhaven's vestry book shows that the parish raised a total of 47755.25 pounds of tobacco. The entire amount levied was actually short 403 pounds of tobacco of the total amount spent, but the parish seems to have covered the difference by spending additional funds it already had on hand. To raise this amount, the parish imposed a levy of 24 pounds per person on the 1,793 tithable persons in the parish. This figure was on the lower side, though not exceptionally so; on average Lynnhaven's annual levy raised 50,516 pounds of tobacco but some years the total topped 118,000 pounds of tobacco. Annual spending fluctuated dramatically. When the vestry decided to build a new church, or following an epidemic, the

annual levy increased significantly. When there was no resident minister, the annual tax fell dramatically.

The parish also paid 6% of its budget to the Sheriff for collecting the levy. This administrative fee, also included in the county levy, compensated the Sheriff for his time and effort in collecting taxes due for the 1,793 tithable persons in the parish. On the whole, the 1761 levy reflected that it had been an unexceptional year in the parish. The parish was not involved in any major construction projects. It made no major renovations or purchases. Lynnhaven's vestry raised a significant amount of money to pay its minister, to provide for the ill and the poor, to provide the necessities for worship, to maintain vital statistics, and to clean and maintain its churches. This spending supported the major responsibilities of the parish to oversee worship, maintain communal order, and care for the health and welfare of the parishioners. These numbers were representative of average annual spending in the parish.

The single highest payment that year, 17,280 pounds of tobacco, went to the incumbent minister, Robert Dickson (alternately spelled Dixon). The Virginian colonial legislature set the minister's salary at 16,000 pounds of tobacco.[129] The parish also paid him an additional 1,280 pounds of tobacco for the cost of shrinkage and casking of his tobacco, which was not legally required but dictated by custom. The minister's income accounted for 36% of the entire levy. Dickson's example highlights that between his annual salary and additional income from the glebe lands, a parish minister could make a good living. He served as rector of Lynnhaven Parish from 1748 to 1776, and during his long tenure, he accumulated significant wealth. His probate inventory included seven horses, fine furniture, china, silver, 32 bottles of rum, and many other

[129] Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish,* 44.

markers of a materially comfortable lifestyle.[130] Upon his death, he left the parish a bequest of several hundred acres, as well as four enslaved people: Harry, Lewis, Gefford, and Lydia. He instructed that this legacy should be used to fund a school for orphaned boys.[131] We will return to the corporate property of parishes in the next chapter, but it is worth noting the significant wealth of some ministers. While Dickson may have been born well-to-do, the dependable annual income that parishes could provide, along with the rights to the income from glebe property, evidently helped ministers like Dickinson maintain significant personal wealth.

In 1761, the parish also made payments to eight individuals "on account," which amounted to 8% of the total budget. These payments provided compensation to individuals who had provided services, goods, or loans made to the parish. These vague appropriations merely list that the recipients but provide no details about why. However, it was a common practice for vestrymen, churchwardens, and other parishioners to purchase items for the parish on the understanding that they would be repaid through the annual levy. Though impossible to trace all of these payments, it is feasible to understand what some of this money was likely used for. Of these eight individuals, Col. Anthony Walke, Major Thomas Walke, Col. Nathaniel Newton were former churchwardens and vestrymen, who often paid out of pocket to purchase necessities for the parish. Another man, William Garton, may have been purchasing items for the glebe for the use of the minister, as he would the following year. Another payment, to Anthony McKeel, was likely related to church maintenance. McKeel was paid for "keeping up" the church throughout the 1750s and 1760s, which suggests that he may have been working for the parish in 1761 to care for its buildings and property. The churchwardens were responsible for acquiring

[130] "Inv. & Appr. Rec. July 1777," Princess Anne County, Land Records, Deed Book 15, 1777-1779, 7-7a, Microfilm Reel 12, LVA.
[131]Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish,* 141.

the "elements," wine and bread for holy communion. Providing these liturgical elements cost the parish just under 2% of its total annual budget.

The parish also paid a number of individuals who worked on behalf of the parish. The church had three different houses of worship by 1761 - the Brick Church, the Eastern Shore Chapel, and the Upper Chapel. The parish employed a different parishioner to clean and maintain each of these buildings. Traditionally called the sexton, the role of cleaning and looking after church provided a way for individuals to receive financial support from the parish. The parish also required the sexton to "keep up" the sources of freshwater found near both chapels, the well at the Upper Chapel and the spring at Pungo Chapel, another example of how parishes undertook necessary projects as part of their responsibility to provide for the public welfare. Sextons received slightly less than the amount of an average relief payment, but the sum would still have been a substantial augmentation to a needy individual's yearly income. The position seems to have been shared by family members. The Dyer family were longstanding sextons of in Lynnhaven. Every year from 1743 to 1765, either Elizabeth or her husband, William, received a salary for cleaning a church or chapel in the parish.[132] In the case of the Dyers, whose daughter eventually ended up receiving poor relief, the 200-pound tobacco payment likely made an important difference in their family's economic well-being. Similarly, Anthony McKeel served as sexton in the brick church most years from 1752 to 1772, in addition to receiving reimbursements for medical care and poor relief payments some years.[133] Thereafter, Frances

[132] Either Elizabeth Dyer or William received Dyer received an annual payment for the upkeep of Pungo Chapel or the brick church every year from 1743-1765. Their daughter, Pheby, received poor relief annually from 1763-1765 for the care of her children. Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish*, 12, 23, 28, 34, 36-38, 40-42, 44, 46, 48, 51, 53, 57, 59, 61, 63, 65-74.

[133] Anthony Mckeel received payments for acting as sexton for the brick church in 1752-1753, 1758, and 1761-1772. Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish*, 46, 48-51, 61, 64, 68-74, 76, 78, 81, 83, 86, 88, 92, 95, and 105.

McKeel, likely his wife or daughter, took over the role from 1773 to. 1778.[134] Using the levy, parishes distributed funds back to selected members of the community.

Moreover, every parish church or chapel also had a clerk who kept a record of its vital statistics and often served as a lay reader when the minister was not present for services. In 1761, the parish employed three clerks; Mr. Richard Collinson served as clerk of the Brick Church, Mr. Cason Moore was clerk of the Upper Chappel, and Charles Gaskin worked the clerk of the Eastern Shore Chapel and the Vestry. The parish clerks kept the community's vital statistics including birth, marriage, and death records while also taking meeting minutes at each church or chapel. The role of keeping the parish register, discussed earlier in this chapter, was essential to maintaining accurate vital statistics for the community and was one of the most important positions in the parish. The costs of employing the sextons accounted for only 1% of the annual budget, while paying the clerks cost 9% of the 1761 budget. Clerks were well-compensated, which reflected the importance of the work and the valuable skills needed for the role.

Finally, Lynnhaven's largest category of spending in 1761 was poor relief, which accounted for 38% of its budget. Poor relief is a catch-all term to describe a broad range of services on behalf of needy parishioners. Widows, orphans, the ill, the disabled the elderly, and bastard children were all seen as individuals who deserved support, and their care fell under the broad umbrella of poor relief. Parishes often subsidized the cost of medical care, funeral expenses, and the purchase of clothing and food. The way in which parishes administered funds to the needy varied widely. There were direct payments to poor, disabled, and elderly individuals; indirect payments made to a third party on behalf of an individual; and repayment for services or goods provided to the impoverished.

[134] Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish*, 99, 101, 103, 105, 107, 109, 111, 112.

Poor relief was understood as the civic expression of Christian charity, and the care of the poor was a spiritual duty for all Christians. However, as the petition of one Virginian, Samuel Ferguson, made clear, Christian charity sometimes had to be compelled by the power of the state. Ferguson's request for relief explained that he was "by reason of his age... and weakness... entirely unable to" support himself. [135] He lamented, though, that "when he applys to Christian neighbours they seem not willing to supply him but in the Legal way altho' they look upo him as a real object of charity." Ferguson's neighbors, though perhaps viewing him sympathetically, deferred to "legal" relief system to determine whether he deserved their support.

Lynnhaven Parish made twenty relief payments that year. Some of these funds went directly to indigent persons, particularly in the case of older, single women. Ann Williamson, Sarah Edmons Elizabeth Olderson, and Elizabeth Haverson all received direct allowances from Lynnhaven parish ranging from 180-300 pounds of tobacco for their sole support. More commonly, caretakers received allowances on behalf of an aging, orphaned, ill, poor, or disabled parishioner whom they were boarding. In these cases, caretakers agreed to provide room, board, nursing, clothing, and food for a fellow parishioner over a certain period of time and received an allowance in return. Parishes also sometimes bought necessities for needy parishioners; in 1761, the vestry paid for clothing for Joshua Pasley, a poor man unfortuantely afflicted with "scald head," known today as ringworm.[136] The distribution of poor relief reflected and reinforced the hierarchical and racialized boundaries of this slave society. In theory, public assistance was supposed to cover those without a social guardian overseeing and providing for them. Therefore, indentured servants were deemed ineligible for public support. Race also circumscribed accessed to assistance. There is only one recorded instance in which an individual who is identified as

[135] Vestry Book, Augusta Parish, Augusta County, Va., Accession 20429, 345, Church records collection, LVA.
[136] Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish,* 71.

black received financial support from Lynnhaven Parish in the fifty-two year years of poor relief records of the parish; in 1773, the parish paid William Capps for keeping "Mary Lester (Orphan of James Lester) and her negro one year."[137]

In addition to these personal allowances, there were two large lump-sum payments made for the general care of the parishioners. The parish raised 10,000 pounds of tobacco for "the support of the parishioners of the ensuring year," which was given to the Churchwardens. This money would have helped the parish pay for any unforeseen relief expenses that arose during the year and purchase food, clothing, and other necessities for pensioners. The churchwardens exercised a significant amount of discretion over how to spend public funds, so it is impossible to trace exactly how these funds were spent. However, based on surviving churchwardens' accounts from other parishes, it seems likely that the churchwardens used this money to provide ongoing support to poor individuals, purchase goods for the use of the parish, and address unexpected expenditures. Often, neighbors applied for repayment from the churchwardens after they provided goods, accommodation, or services to the poor. In a region with dispersed settlement and few towns, financial compensation for relief services helped incentivize neighborly conduct and minimized the day-to-day responsibilities of the parish in this system.

Dr. Lewis Price, a local physician, also received a salary of 2400 pounds of tobacco for "tending the Parishioners." The practice of employing a parish physician became increasingly common in mid-eighteenth-century Virginian parishes. By hiring a physician to treat parishioners throughout the year, parishes helped fund a form of accessible public healthcare in their communities. Dr. Price was "to take care and look after the Parishioners the ensuing year and to apply such means as is necessary for them, & that the said Price gives Good attendance

[137] *The Colonial Vestry Book of Lynnhaven Parish,* 120. Though beyond the scope of this project, more detailed analysis of the relationship between parochial poor relief and race deserves closer attention in future studies.

unless hindred by sickness then the Churchwardens send for any other Doctor and he be paid out of the said Prices Salary."[138] Women acting as midwives and nurses were also reimbursed for their services across Virginia. Barbara Keeling received at least one payment from Lynnhaven every year between 1743 and 1753 for nursing or looking after her fellow parishioners.[139] As medical practitioners, midwives, and nurses who offered specialized forms of care, women played essential roles in the local welfare system.

Dissenting groups such as Quakers and Baptists made separate provisions for the poor of their communities, which suggests that non-conformists were excluded from parochial welfare.[140] Moreover, evidence suggests that dissenters did not receive allowances from parishes. For example, no Friends whose names appeared in the Henrico Monthly Meeting of Friends between 1731 and 1776, nor any individuals appearing in the Presbyterian Hanover Synod between 1755 and 1776, received welfare payments from nearby Henrico Parish or St. Paul's Parish Hanover.[141] Despite the supposed universality of the parish, vestries made clear choice about who deserved the benefit of welfare and parish services. Race, religion, and age all circumscribed access to the parish support.

The willingness of the public to accept its duty of Christian charity even toward fellow Anglicans seems to have been tested past its limits in the mid-eighteenth century as the cost of care rose. In the 1730s, Lynnhaven Parish allocated roughly 10% of its budget to poor relief. By the 1760s, Lynnhaven was regularly spending anywhere from 20-40% of its levy annually on

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[138] Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish,* 72
[139] Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish*, 40-55.
[140] For example, the Meeting Minutes of Cedar Creek Monthly Meeting note, "Thomas Clark was appointed to inspect the needs of the poor," in 1747. Mary Marshall Brewer, ed., *Quaker Records of Cedar Creek Monthly Meeting*, *Virginia, 1739-1793* (Lewes, DE: Colonial Roots, 2002). See also Najar, *Evnagelizing the South,* 91-93.
[141] Available records of nearby non-conformist communities do not mention any of the relief recipients of the parish. See F. Edward Wright, ed., *Quaker records of Henrico monthly meeting and other church records of Henrico, New Kent and Charles City counties,* Virginia (Lewes, DE: Colonial Roots, 2002).

supporting the poor. In both Maryland and Virginia, contemporaries spoke of a crisis and blamed spiraling costs on an increase in vagrancy.[142] However, there are other explanations. One possible reason was rising life expectancy. As colonists began living longer and having more children in the late seventeenth and early eighteenth centuries, there would have been a larger aging population by the mid-eighteenth century.[143] Another cause for the sense of crisis stemmed from the growing lack of resources, particularly land, in these eastern areas of the Chesapeake colonies. Tenancy increased in the region in the decades before the Revolution as young adults and newly freed indentured servants faced land scarcity land. [144] In fact, though the public supported an increasing number of pensioners, the ratio of pensioners to the population of tithables did not increase much in Lynnhaven. The growing financial burden of the system reflected an increase in spending-per-person. The average support payment per pensioner went up over the course of the eighteenth century, from 229 pounds of tobacco per person in 1735 to 486 pounds of tobacco in 1750 in Lynnhaven. The vestry was funding each pensioner more generously, even in years when the real price of tobacco climbed.[145] The perception of increased poverty likely stemmed from the very real increases in spending per-person, not an increase in the proportion of tithables supported by the public.

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[142] By introducing poor relief reforms, both colonies moved away from traditional patterns of care, mainly out-of-door relief and direct payments to the indigent, and instead encouraged the marking of pensioners, the centralization of relief services like medical care, and the construction of almshouses. See *Archives of Maryland*, 61:486. Maryland's governor, Horatio Sharpe, lamented the "excessive charge and burthen this Country is at present Subjected to by the great Increase of Pensioners in Several of Our Counties." He argued that the "distribution of the great Sums annually collected for the Relief of the poor, as it is now made, instead of being an Encouragement to and a reward for Industry, proves too frequently an Incitement only to Debauchery and Idleness." See "Address of Governor Sharpe, May 8, 1754," *Archives of Maryland Online*, 50:449.

[143] Daniel Blake Smith, "Mortality and Family in the Colonial Chesapeake," *The Journal of Interdisciplinary History* 8 (1978): 403-427.

[144] For discussions of rising tenancy and land scarcity in the eighteenth-century Chesapeake, see Kulikoff, *Tobacco and Slaves,* 428-432*;* Steven Sarson, "Landlessness and Tenancy in Early National Prince George's County, Maryland," *William and Mary Quarterly*, 3rd ser. 57 (2000), 569-598; Billy G. Smith, *Down and Out in Early America* (State College, PA: Pennsylvania State University Press, 2010), 96.

[145] Schweitzer, "Economic Regulation and the Colonial Economy," 561.

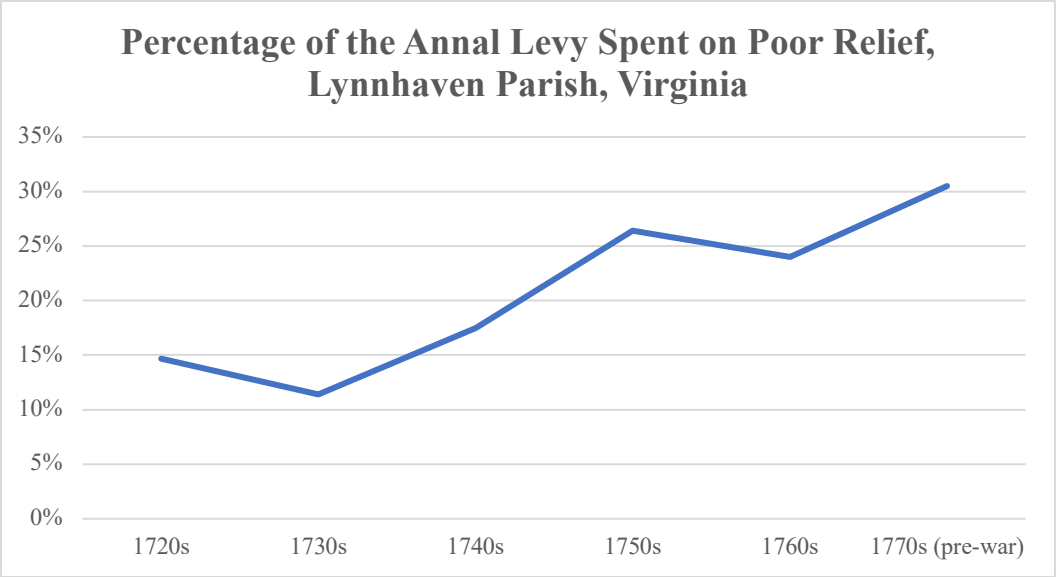


Figure 2.7. This graph tracks the percentage of the parish levy spent on poor relief in Lynnhaven Parish 1723-1776. **Source:** George Carrington Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish, Princess Anne County, Virginia, 1723-1786* (Newport News: VA, 1949), passim.

During the 1750s and 1760s, Virginians embraced several new schemes to reform poor relief while cutting costs.[146] Virginia introduced legislation to try to reform poor relief, which encouraged the construction of poorhouses while also ordering anyone who received relief to wear a badge "with the name of the parish to which he or she belongs, cut either in blue, red, or green cloth."[147] Virginia's law not only stipulated punishment for those who failed to wear their badges but also for "any person, not entitled to relief" who "presumed to wear such badge."[148] Marking the poor by their parish would have decreased the likelihood of parishes mistakenly supporting non-residents. The residency of relief recipients became a frequent gripe between parishes that sparked expensive lawsuits.

[146] Anxiety over the apparent increase in poverty was widespread in Maryland too, and the colonial assembly also introduced increased regulation and poor houses in the mid-eighteenth century. However, in Maryland, poor relief was administered by counties, not parishes.
[147] Hening, 6:449.
[148] Ibid.

Twenty-two Virginian parishes, including Lynnhaven, undertook plans to open poor houses before the Revolution.[149] These institutions were meant to centralize medical and relief services. However, poorhouses had mixed results. In Lynnhaven Parish, the poorhouse was opened on a fifty-acre farm in 1762. The parish purchased four individuals to work on the land, hired an overseer, and built a house with several outbuildings. Indeed, poorhouses expanded the slaveholding of parishes across Virginia, which will be discussed in Chapter 3. The project lowered costs initially, but poor relief spending ballooned in the late 1760s and early 1770s. It seems that the parish had difficulty compelling longtime pensioners to relocate and perhaps saw less of a reason to force those deemed unable to work to move to the farm. The parish continued to pay a significant percentage of pensioners out-of-door relief payments while also bearing the cost of supporting the new poorhouse. The workhouse built by Augusta Parish in 1766 ran into similar problems as relief recipients refused to enter the workhouse.[150] The vestry eventually closed the poor house, declaring it had become a "burden" and returned to the traditional system of "letting out of the poor... to the lowest bidder."[151] Despite their attempts to centralize relief services, the Augusta and Lynnhaven vestries could not easily eradicate longstanding customs of poor relief.

Parish levies in Maryland provide an important point of comparison to the records of Virginian parishes. The Maryland parish not only made far fewer appropriations than did those in Virginia, but the total sum was also far less. The Maryland assembly had imposed a limit of ten pounds of tobacco per person on all parochial levies, which meant that parishes could not

[149] Nelson, *A Blessed Company,* 22. The rise of poorhouses and other attempts to centralize welfare occurred as early as the 1750s in the dispersed communities of the Chesapeake. Narratives of welfare and relief often concentrate on urban centers, particularly in the northeast. Moreover, much of the excellent scholarship on poor relief focuses on developments after the Revolution. This story extends the narrative of poor relief both chronologically and geographically by emphasizing events in rural areas of the colonial South.
[150] Vestry Book, Augusta Parish, Augusta County, Va., 484, LVA.
[151] Vestry Book, Augusta Parish, Augusta County, Va., 431; 465, LVA.

raise very large sums of money through the levy.[152] To raise additional funds, parishes had to seek permission from the county court and assembly. Parishes still played an important role in raising, investing, and distributing public funds, just on a smaller scale. Looking closely at 1761 levy from St. James Parish in Anne Arundel County, Maryland highlights the differences between the parochial systems in the two colonies. Though Maryland accommodated dissenting Protestants in a number of way Virginia did not, all parishes in the colony still collected tithes from non-conformists.[153]

The language of the St. James' Parish vestry records provides the first clue to the inferior legal power of the vestry in Maryland. The parish record notes that after approving a list for expenses for the year, the vestry agreed to petition the county court "for an 'Sesment[sic] of Ten pounds of Tobo pr poll to Defray the Parrish charge."[154] The necessity of petitioning the county to impose the parochial levy reflected a clear institutional hierarchy in which Maryland county courts sat above parishes. While there is no evidence that counties refused these requests, the fact that parishes relied on counties to raise public funds limited the civic power of the established church in the colony. At the establishment of the Anglican Church in 1692, counties had kept hold of the communal purse strings and prevented an autonomous parish system like Virginia's from forming.

Maryland's parish levies are missing two of the largest line-items expenses of Virginian parishes - poor relief and the minister's salary. In Maryland, parishes were not responsible for providing any form of welfare. Instead, county courts oversaw poor relief, the indenturing and

[152] 1704 and 1727 Statutes; Regulation for Payment of Parochial Charges, see *Bacon's Laws of Maryland*, *Archives of Maryland Online*, 75:131.
[153] The laws regulating marriage and worship exempted non-conforming Protestants from its requirements, but parishes still collected the levy from all householders. *Bacon's Laws of Maryland, Archives of Maryland Online,* 75:660.
[154] Dallam, ed., *St. James' Parish*, 300.

care of orphans, and providing for the sick. The system of public welfare in both colonies was relatively similar as there were forms of direct and indirect relief, as well as the employment of public physicians to treat the sick, but these services were administered by county courts in Maryland, not parishes.[155] Moreover, ministers' salaries in Maryland were paid directly by a tax imposed by the county court of 40 (later 30) pounds of tobacco per tithable.[156] This funding system gave Maryland's vestries less control over the minister whereas in Virginia vestries could threaten clergymen with non-payment. Without these two major expenditures, parish levies funded a much smaller realm of activity in Maryland than in Virginia.

The record of the 1761 St. James' Parish levy listed just nine appropriations. The parish had imposed a levy of 10 pounds of tobacco per taxable, which amount to a total of 12,910 pounds of tobacco. Maryland parish records tended to be less detailed and more haphazard than those in Virginia. The system of record-keeping used by Maryland's vestries was sporadic and disordered; perhaps there was less incentive to keep clear annual records because there was a smaller amount of money was changing hands. The financial accounts of St. James' Parish Vestry Book, like those in many other Maryland vestry books, were recorded wherever the clerks found available space. This type of accounting makes it more difficult to write comprehensively about the spending patterns of Maryland parishes. But, using the orders of the vestry, it is clear

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[155] Zachary Ryan Calvo reviewed sixty decades of county and parish records in his study of poor relief in eighteenth-century Maryland and concluded that "poor relief was not a significant concern of the local parish." See Zachary Ryan Calvo, "From Poor Relief to Poorhouse: The Response to Poverty in Prince George's County, Maryland, 1710-1770," *Maryland Historical Magazine* 93 (1998): 393-428. The records of Shrewsbury Parish in Kent County had a fund of "charity money" or "poor money" that it raised through renting out the glebe lands, growing tobacco on church land, and from private donations. This fund provided additional alms to needy parishioners. Vestry Minutes, Shrewsbury Parish, Kent County, Md., SCM 339-1, 76, 103, MSA., However, Shrewsbury's program of parochial relief was exceptional in Maryland. The parish records from Anne Arundel County, Prince George's County, and Talbot County also show no evidence of organized relief efforts in parishes.

[156] *Archives of Maryland,* 75:687. The decrease in salary from 40 to 30 pounds per poll was enacted after the tobacco inspection laws raised the standard of tobacco. The law lowered a number of public salaries and rates in order to account for the increase the real price of the tobacco that served as currency. Mary McKinney Schweitzer, "Economic Regulation and the Colonial Economy: The Maryland Tobacco Inspection Act of 1747," *The Journal of Economic History* 40 (1980): 563.

that the parish regularly spent funds to pay clerks and sextons annual salaries, to provide communion wine, to maintain their houses of worship and to purchase goods for their churches.

The 1761 St. James parish levy reflects all of these types of expenditures.[157] There was a payment to George Taylor for 750 pounds of tobacco, presumably his annual salary as sexton, as well as a disbursement to the parish clerk, Benjamin Lane, for 1000 pounds of tobacco. Maryland's parishes thus helped distribute public funds into private hands by employing parishioners to work for the parish. However, the honorific of Mr. given to each of these men, suggest that they held a higher status in the community. Perhaps they pocketed the money as sexton but sent an enslaved person or servant to work on their behalf. Unlike in Virginia, where the role of sexton served as a form of poor relief, in Maryland the position was held by men of status. In addition to these two salaries payments, Caleb Conner, a former vestryman, received 200 pounds of tobacco and two pounds twelve shillings Maryland current money. Levies from numerous years list an appropriation of two hundred pounds of tobacco paid to a vestryman, which suggests this money supported some sort of routine annual expenditure such as wine and bread for communion.[158] The payment of two pounds and twelve shillings in current money was most likely for the "Superfine Linning" to make a "Surplias and Thread the make the same," which the vestry had ordered Mr. Conner to procure the year before.[159] That same year, a woman named Sarah Hill was granted 20 shillings, perhaps a payment for making the new surplice with the cloth and thread purchased by Conner.

[157] Records of the annual levies in the St. James vestry book are vague. The accounts often list the name of the recipient and the amount of money he or she received without any additional explanation. Although the levy itself provided very little information about these expenses, there are orders for goods and services in the meeting minutes that clarify these expenses. See, for example, the 1761 levy in Dallam, ed., *St. James' Parish,* 385.
[158] For example, see also the levies of 1762-1764, Dallam, ed., *St. James' Parish,* 384-6.
[159] Dallam, ed., *St. James' Parish,* 295.

Perhaps the most intriguing and mysterious line item from the annual levy was a large payment of 8000 pounds of tobacco made to Stephen West.[160] This one expenditure amounted to roughly 65% of the total parish budget but no order in the vestry minutes explains why Mr. West received such a sum. In fact, the money was most certainly a personal loan. St James Parish regularly lent money with 8% annual interest to male and female parishioners. The parish apparently kept running lists of "debitors to the vestry" who had received personal loans.[161] There are numerous notes of these transactions, for example when the parish "lent Mr. Charles Drury 3500 pounds of tobacco" in 1754 or the 31,282 pounds lent to Dr. William Champan.[162] These loans, appeared in the annual levy as appropriations in the same manner as the line noting the payment to Stephen West in 1761. Lending with interest could provide an additional source of revenue for the parish. It took the unlucky Dr. Chapman five and half years to repay his loan, and the parish received a whopping 13,764 pounds of tobacco in interest, in addition to the principal.[163] As a public institution, the parish was uniquely well-positioned in the cash-scarce Chesapeake to act as a lending institution. The levy gave the parish ready access to cash year in and year out, a rare type of security in the boom and bust economy of the tobacco colonies. With its legally ensured means of raising cash each year, the parish was a particularly secure creditor.

When a Maryland parish sought to build a new church or make a large purchase, they had to petition the legislature for a special act empowering the county to raise the necessary money through a separate tax. At a meeting in June of 1760, the St. James parish vestry noted that their "present church was Incapable of Standing Long, after condemning the Old Church we vote to

[160] Dallam, ed., *St. James' Parish,* 385.
[161] Dallam, ed., *St. James' Parish,* 247.
[162] The levy of 1754 makes no mention of the loan but simply lists a payment of 3,500 pounds of tobacco to Cha. Drury as a line-item expense. Dallam, ed., *St. James' Parish*, 394.
[163] Dallam, ed., *St. James' Parish*, 233.

petition the Insueing assembly to give us leave to build one, and Grant us Assesment to Inable us to do the same."[164] A few months later they collected signatures from the minister, vestrymen, churchwardens, and just six additional parishioners endorsing the plan to rebuild the "decaying" church and submitted it to the assembly for consideration. The colonial legislature finally assented to the petition in April of 1762 and gave the parish permission to raise "one hundred and thirty thousand pounds of tobacco, at two even and equal assessments" to replace its "decayed" and "irrpairable" church.[165] After securing the passage of this act, the parish had to petition the county court to carry out its terms by imposing a tax to raise 65,000 pounds of tobacco in 1763 and again in 1764.[166] This manner of fundraising underscored the dependency of Maryland's parishes on other governmental institutions.

Maryland's parishes frequently failed to raise enough funds to support their construction projects. Parishes across the colony resorted to selling pews to raise money, as well as soliciting private donations from parishioners. The Vestry of Saint Peter's Parish in Talbot County declared their old church was "much decay'd and unfit for Divine Service" in 1728 and raised over 55,380 pounds of tobacco from 84 donations to build a new church.[167] Similarly, the parishioners of Shrewsbury Parish in Kent County raised more than 11,400 pounds of tobacco for a new chapel in the late 1740s through private subscriptions after receiving permission to raise only 8,000 pounds of tobacco through a levy from the assembly.[168] The necessity of raising funds for major expenditures through private donations suggests that vestries were unwilling to request or the assembly was unwilling to approve extraordinarily large taxes for parochial building projects.

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[164] Dallam, ed., *St. James' Parish,* 295
[165] "An Act for Building a Church in Saint James's Parish in Anne- Arundel County." *Archives of Maryland Online*, 58:205.
[166] Dallam, ed., *St. James' Parish,* 303, 306
[167] Vestry Minutes, St Peter's Parish, Talbot County, Md., SCM 295-1, 95-98, MSA.
[168] *Archives of Maryland Online*, 46:122; Vestry Minutes, Shrewsbury Parish, Kent County, Md., SCM 339-1,61-62, MSA.

Though supported by taxation, Maryland's parishes also relied on voluntary contributions for a significant proportion of their spending.

By contrast, when Lynnhaven Parish built a new chapel of ease known as the Eastern Shore Chapel a few years earlier, the Virginian parish simply included the costs of construction in the annual levy over four years. The parish raised a total of 55,690 pounds of tobacco between 1752 and 1755 with high appropriation each year for the project. In 1763, the same year that St. James Parish was in its fourth year of trying to secure funds for its new church, Lynnhaven raised another 10,000 pounds for whitewashing and repairing its many churches and chapels. Lynnhaven Parish used public funds to finance major construction projects including churches, chapels, a glebe-house, and a poorhouse seven times in fifty-five years.[169] Each project cost tens of thousands, if not hundreds of thousands, of pounds of tobacco. To raise these funds, the parish typically appropriated a higher-than-normal levy over the course of two to four years. The ease with which Virginian parishes could raise funds unchecked by any other public institution stands in stark contrast to the bureaucratic processes that restrained parochial action in Maryland. The autonomy of the Virginian vestry to raise funds independently of the assembly or the county court reflects one of the most significant differences between the power of the religious establishment in the two colonies.

In both colonies, though, the construction of a new church or chapel reflected an important investment in the community and an opportunity for a significant distribution of public funds. Over the years, the desire for fine churches meant that public funds were regularly spent on building, decorating and maintaining houses of worship in Virginia and Maryland.

[169] The parish undertook major construction projects to build and rebuild the church, the chapels, the poor house, and the glebe house in 1727-1729; 1731, 1733-35; 1740-1743, 1751-1755; 1757; 1770-1773. Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish,* 6-8, 10, 12-13, 17-21, 24, 28-31, 41, 43, 52, 54, 60, 87 90, 87, 91, 93-95, 97.

Throughout the eighteenth century, most colonists in the Chesapeake lived in small, impermanent, wooden houses.[170] The homes of most ordinary colonists stood in stark contrast to the imposing brick churches built by the parish. With their large glass windows, gilded and painted decor, and high ceilings, churches were some of the grandest and most expensive buildings in the colony. The power of parishes to undertake such large construction projects reflected their ability to raise revenue and invest in property. The ideological underpinning of established religion drove the parish to create spaces for public worship that reinforced the strength and authority of the state and its church. Vestries saw the high cost of these churches as a worthy investment in public order and the stability of the state. These building projects infused cash into the local economy by purchasing materials and employing workmen. The parish's patronage would have been an important source of revenue to a local artisan, and the frequency of costly parochial building programs would have outpaced building projects of gentry families over the course of the century.

Looking closely at parish levies changes our impression of the established church and the colonial Chesapeake more broadly. As civic bodies, parishes raised taxes and used these funds to buy a significant amount of property. Parishes owned churches, vestments, silver, books, poorhouses, glebes, churchyards and enslaved men and women. Fundamentally, this property was a material expression of legal establishment, and this extensive property-holding will be explored in the following chapter.

Conclusion

For generations, scholars have described the tobacco colonies as just that - a society built

[170] Cary Carson et al., "Impermanent Architecture in the Southern American Colonies," *Winterthur Portfolio* XVI (1981): 135-196.

on an economic foundation that was individualistic, irreligious, and without strong community institutions. The established Anglican church was held up in comparison to the Puritanism of New England and found lacking, if not altogether absent.[171] However, this rendering often overlooked much of the communal power that the established church exercised as a local institution. When civic power is taken seriously as part of the animating orthodoxy of Anglicanism, parishes emerge as robust, powerful institutions of religion and government.

Looking at Maryland and Virginia together underscores all that the two colonies shared. Statutes regulating taxation, suffrage, marriage, private property, court proceedings, tobacco inspection, and bastardy relied on parishes to execute the law. The Anglican establishment was an essential legal framework across the colonial Chesapeake. Race circumscribed parochial belonging, and parishes played an important role in publicizing the slave code and sanctifying the system of racial slavery. The parish systems were not identical in Maryland and Virginia, though. Maryland's counties paid its ministers and oversaw the administration of poor relief, often the two largest expenses in a Virginian parish. Maryland's annual per-person levy was capped at a fraction of what parishes in Virginia raised every year, and thus vestries had to seek express permission to undertake costly construction. Maryland had long made accommodations to Protestants. Catholicism remained the guiding religious fault line in Maryland, whereas Virginians sought to maintain Anglican orthodoxy amidst a proliferation of Protestant dissenters.

[171] In particular, see Timothy Breen, *Tobacco Culture: The Mentality of the Great Tidewater Planters on the Eve of the Revolution* (Princeton, NJ: Princeton University Press, 1985); Allan Kulikoff, *Tobacco and Slaves: The Development of Southern Cultures in the Chesapeake, 1680-1800* (Chapel Hill, NC: Published for the Institute of Early American History and Culture, Williamsburg, Virginia by the University of North Carolina Press, 1986).

CHAPTER 3

"As A Body Politick": The Corporate Parish

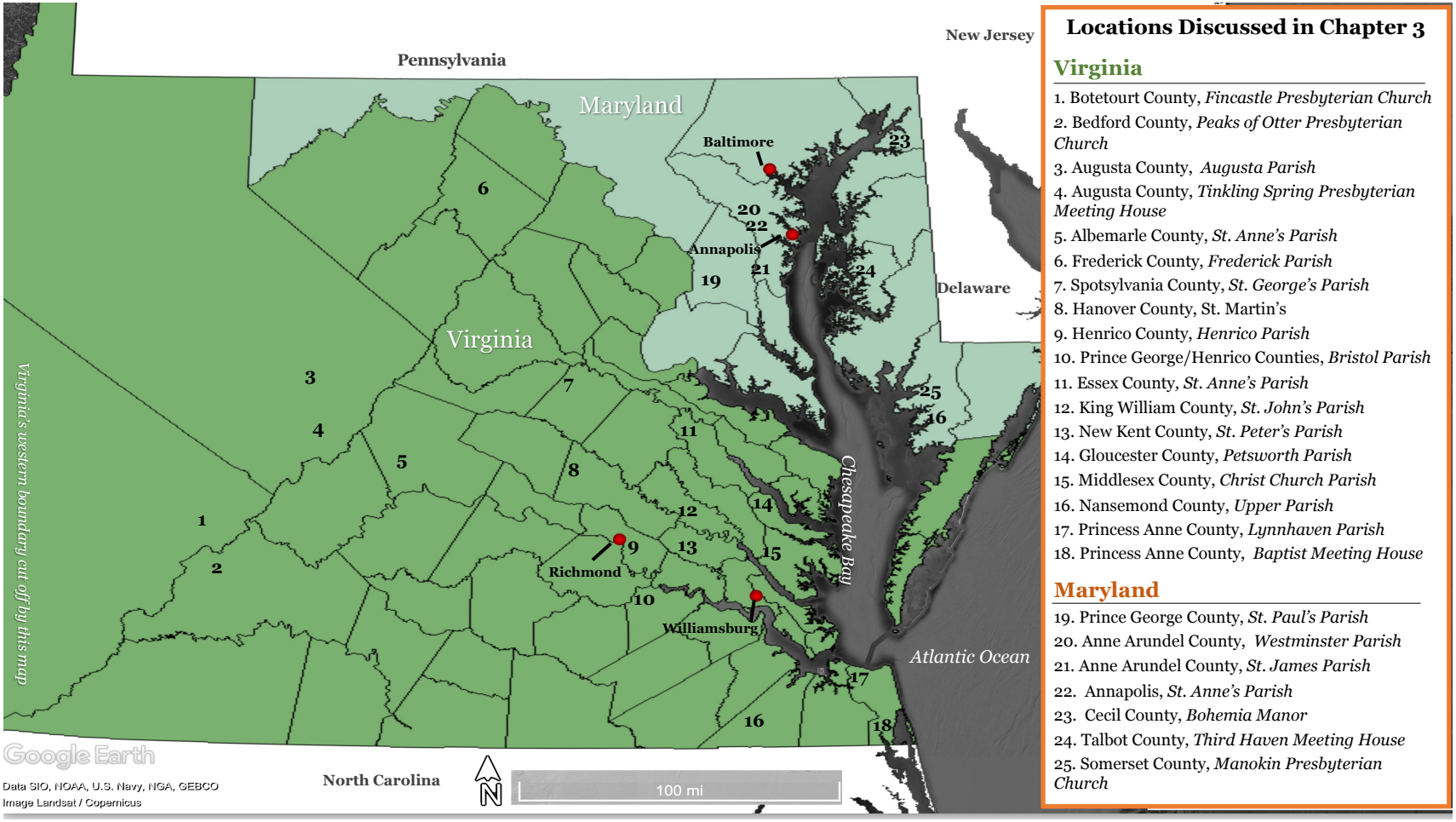


Figure 3.1. Map of locations discussed in Chapter 3. Map created by Alyssa Penick using data from the *Atlas of Historical County Boundaries*, The Newberry Library, last accessed May 15, 2020, , https://publications.newberry.org/ahcbp/index.html.

1772 proved to be a busy year for Daniel Price and Turner Southall, the two churchwardens of Henrico Parish in Virginia. Both were long-serving vestrymen, elite planters, and officers in the Henrico County militia. Even a brief glance at the churchwardens' accounts from 1772 reveal the demanding and time-consuming nature of the role.[1] The churchwardens were responsible for disbursing 36 payments approved by the vestry in the parish levy, including salaries and poor relief payments.[2] In addition to making these appropriations, Turner and Southall managed a further 13,400 pounds of tobacco, which supplemented annual poor relief payments[3] With these discretionary funds, Turner and Southall bought food and clothing for poor parishioners and paid for their medical care as needed during the year.

The churchwardens not only managed the parish's finances but were responsible for maintaining the parish's four churches and all other parochial property. Southall and Price purchased a new bible and prayer book for Boar Swamp Chapel and arranged for the books to be shipped from London on credit. The churchwardens also brought a lawsuit against a former vestryman, Mr. Samuel Duval, who had failed to build a new church on previously contracted terms.[4] The churchwardens then placed an advertisement in the *Virginia Gazette* soliciting any builders interested in the project to submit a bid to them.[5]The work of managing property, bringing lawsuits, and negotiating and writing contracts all fell to the churchwardens. These

[1] It has long been assumed that there are no extant colonial churchwardens' accounts. However, copies of churchwardens' records for several years running appear in the Vestry Books of Bristol Parish and Henrico Parish. These accounts can help illustrate how churchwardens spent money. See R.A. Brock, ed., *The Vestry Book of Henrico Parish, Virginia 1730-'73*, (Richmond, VA: 1874), 151-152; Churchill Gibson Chamberlayne, ed., *The Vestry Book and Register of Bristol Parish, 1720-1789,* (Richmond, VA: 1898), 129-139, 189-201, 203-07, 213-214, 216-17, 226-229, 263.
[2] Brock, ed., *The Vestry Book of Henrico Parish*, 144-145.
[3] Brock, ed., *The Vestry Book of Henrico Parish*, 145.
[4] Brock, ed., *The Vestry Book of Henrico Parish*, 148.
[5] Feb. 18, 1773, *Virginia Gazette*.

wide-ranging duties expressed the numerous ways in which parishes exercised corporate rights under common law.



Figure 3.2. St. John's Church in Richmond, VA, which was built by Henrico Parish in 1772. Photograph by Alyssa Penick.

As argued in the previous chapter, parishes exercised power as an arm of the state and carried out essential civic responsibilities. They regulated the local economy through tobacco inspection, mediated property disputes, and policed morality. The colonial assemblies of Virginia and Maryland had delegated these many duties to vestries and churchwardens in statute.

However, many of the specific responsibilities undertaken by the Henrico churchwardens reflected their standing under common law, rather than power granted by any statutory provisions.

Though it has been largely overlooked by scholars, common law provided another essential legal foundation for the Anglican establishment. As corporate bodies, colonial parishes exercised immense power in the dispersed landscape of the tobacco colonies.[6] Vestrymen and churchwardens came and went, but parishes existed in perpetuity. They had standing at law and could enforce contracts and recover debts in court. They could buy, hold, and sell property securely. Parishes signed contracts and deeds. These powerful corporate entities existed in every Chesapeake community, whether coastal or mountainous, densely settled or thinly populated. Using their legal powers, parishes raised and invested capital. By the late eighteenth-century, parishes held enslaved people, land, buildings, silver, and a host of other valuable types of property. Customary incorporation conferred security on parochial wealth from one generation to the next.

The general resistance of elite colonists to forming towns and other corporate bodies, both private and public, did not prevent them from exercising immense corporate power through their own parishes as vestrymen and churchwardens. As Paul Musselwhite has convincingly argued, Chesapeake plantation owners sought to consolidate power by preventing the rise of

[6] Very few scholars have approached the parish as a public corporation. Gerald Hartdagen considered the parish as a corporation, and his conclusions inform the direction of my inquiry. Phillip A. Bruce's 1910 study remains one of the most informative pieces on the institutional history of Virginia and discusses the corporate nature of parishes. Gerald Hartdagen, "The Anglican Vestry in Colonial Maryland: A Study in Corporate Responsibility," *Historical Magazine of the Protestant Episcopal Church* 40 (1971): 315-335; Bruce, *Institutional History of Virginia in the Seventeenth Century 77.* Sarah Barringer Gordon draws attention to the issue of the incorporation of religious societies following the Revolution in two recent works. Her research proves invaluable to understanding the growth of corporate religious societies in the early republic. I locate some of the same developments in colonial parishes. See Sarah Barringer, Gordon," The African Supplement: Religion, Race, and Corporate Law in Early National America," *William and Mary Quarterly,* 3rd ser., 72 (2015), 385-422; idem, "The First Disestablishment: Limits on Church Power and Property Before the Civil War," *University of Pennsylvania Law Review* 162 (2014): 316-324.

cities and towns that might become rivals to their political, economic, and social power. [7] My research bolsters his claims by recognizing that these same men made savvy use of the incorporated powers of their parishes to further their own standing. They built grand churches that closely resembled their homes.[8] They helped elevate the parish church to one of the few public, social spaces in the rural society of the tobacco colonies. These vestrymen made careful use of their incorporated powers as patrons and administrators. Gentlemen appointed their sons and favorites to fill open seats on the vestry. These grandees were not allergic to all corporations; simply those which might displace them one day.

The colonies enforced religious establishment not only through the preferment of one church but also through the many legal disadvantages dealt all other religious groups in the colonies.[9] While material wealth was an expression of the establishment's incorporated power, the difficulty other religious communities faced in securing property likewise reflected the legal establishment of religion. The Anglican Church relied on incorporation to hold its property, but this legal right was unavailable to nonconformists. Trying to secure any property without the benefit of incorporation was a constant source of anxiety for Catholics, Quakers, Presbyterians, and living in the Chesapeake. The inability to incorporate must be added to the list of legal disadvantages faced by non-Anglican religious communities in the colonial Chesapeake

This chapter argues that customary incorporation underlay religious establishment and explores how parishes secured their wealth under the auspices of common law. The intertwined

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[7] See Paul Musselwhite, *Urban Dreams, Rural Commonwealth: The Rise of Plantation Society in the Chesapeake* (Chicago: University of Chicago Press, 2018).
[8] Dell Upton, *Architecture in the United States*, 110-14, 205-18; Rhys Isaac, *The Transformation of Virginia*, 16-17, 36-39, 351-354.
[9] For a discussion of "establishment" as privileges and disadvantages, see Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion, 44 Wm. & Mary L. Rev.* 2105 (2003), http://scholarship.law.wm.edu/wmlr/vol44/iss5/4; Vincent Phillip Muñoz, *The Original Meaning Of The Establishment Clause And the Impossibility of Its Incorporation,* 8 U. Pa. J. Const. L. 585 (2006).

statutory and common law protections that bolstered the establishment were denied to non-conformists, and this legal framework effectively prevented the growth of propertied dissenting communities in the Chesapeake.

Common-Law Corporations

Scholars have observed that in the colonial Chesapeake, like much of colonial America, legal incorporation was rare.[10] But in every community, rural and urban alike, the parish functioned as a powerful corporate body. Scholars seem to have overlooked this fact because parishes in the Chesapeake lacked charters and did not employ the term trustees. Common-law corporations have been excluded from studies of Anglo-American law. Joseph Stancliffe Davis' landmark history of American corporations briefly mentioned colonial parishes before dismissing them as mere "quasi-corporations" rather than "true" corporations, and scholars ever since have followed Davis' lead in omitting common-law corporations from their discussions.[11] When recent accounts of American corporate history emphasize the very low number of corporations in the colonial and Revolutionary periods, they rely on Davis' tallies and leave out parishes and other common-law corporations.[12] These types of common-law corporations deserve significantly more discussion from scholars.

[10] Pauline Maier, "The Revolutionary Origins of the American Corporation," *William and Mary Quarterly,* 3rd ser., *William and Mary Quarterly,* 3rd ser 50 (1993): 51-84.
[11] Joseph Stancliffe Davis, *Essays in the Earlier History of Corporations* (Cambridge, MA: Harvard University Press, 1917), 6, 79-80.
[12] Adam Winkler, *We the Corporations* (New York: Liveright Publishing, 2018), 4, 408n2. Eric Hilt, "Early American Corporations and the State," in Naomi R. Lamoreaux and William J. Novak, *Corporations and American Democracy* (Cambridge, MA: Harvard University Press, 2017), 40-42, 48, 400n14. John Morley recently published a study of common-law trusts. See John Morley, "The Common Law Corporation: The Power of the Trust in Anglo-American Business History, *Columbia Law Review*, Vol. 116, No. 8 (2016), pp. 2145-2197. My work offers a new perspective by showing how commonplace these customary corporations were in Virginia's legal culture.

Parishes assumed corporate standing under common law and numerous colonial statutes recognized their special legal status. [13] Several types of evidence highlight the corporate status of colonial parishes, including legal treatises, colonial legislation, and the records of lawsuits, contracts, and deeds. The corporateness of parishes was part of Virginian legal culture. There was no question that vestries could hold property, that parishes existed in perpetuity despite the changes in the personnel of the vestry and ministry, or that churchwardens could recover debts in court. The corporate powers of the church were widely exercise and the corporate nature of the parish expressed in the churches, chapels, and glebe in every community. Religious establishment naturalized these powers and expressed the *de facto* consent of the Crown on which customary law rested.

Under English common law, parishes were corporate bodies.[14] In his *Commentaries on the Laws of England,* Blackstone detailed the distinct types of corporations. He began by contrasting corporations aggregate and corporations sole. The former "consist of many persons united together in one society, and kept up by a perpetual succession of members," whereas the latter "consist of one person only and his successors, in some particular station, who are incorporation by law, in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had."[15] Blackstone provided

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[13] Legal historians Maitland and Pollock discussed the ambiguity over whether English parishes operated as corporate property-holders. Pollock and Maitland, *The History of English Law…*, I: 248-249; 499-500. Maitland is dismissive of the parish, declaring, "The 'parish' has done a good deal of harm to English law and English history. Might we not even now give it back to its priest? We may envy the Americans their 'towns.'" Maitland's lack of recognition that the parish system had flourished in the colonies highlights the omission of the parish from American legal history of the American colonies. Frederic William Maitland, *Township and Borough* (Cambridge: 1898), 195.

[14] For other scholarly discussions of the corporate nature of the parish, see Beat Kümin's work on the parish in late medieval England recognized the "peculiar legal status" of parishes wherein churchwardens represented the parish as a corporate body, even though the parish was not formally incorporated. Parishes were "quasi-coroporate bodies" that could sue and be sued and hold property jointly. See Kümin, *The Shaping of Community: The Rise and Reformation of the English Parish, C.1400-1560* (London: Scolar Press, 1996), 2, 19-27,149-152, 257-9. Pollock and Maitland, *The History of English Law…*, I: 248-9; 499-500; Frederic William Maitland, *Township and Borough* (Cambridge: 1898), 195.

[15] Blackstone, *Commentaries on the Laws of England*, (Oxford: 1765), 1:457

examples of both, listing the mayor and commonality of a city, as well as the dean and chapter of a cathedral church, as aggregate corporations, whereas the king, bishops, parsons, and vicars were all corporations sole. To explain the necessity of the corporation sole as a legal tool, Blackstone turned to the familiar example of the parish church.[16] The freehold of the church resided in the minister during his lifetime; however, upon his death, it was not his natural heirs who inherited his right to the church, the glebe, parsonage house, churchyard, and salary but the next parish rector, his lawful successor. The need to distinguish between an individual and the station he held led to necessity of the *corporation sole.* Blackstone's reliance on ecclesiastical examples to demonstrate these abstract ideas confirms that the church provided some of the most commonplace illustrations of corporations in Anglo-American daily life.

After relying on examples from religious life, Blackstone was careful to define the distinctions between ecclesiastical and lay corporations. Ecclesiastical corporations were those whose members were "entirely spiritual persons," including parsons, vicars, deans, and bishops.[17] These included both aggregate and sole ecclesiastical corporations. Lay corporations were composed of non-spiritual members and fell into two groups. First, there were civil corporations which were "erected for a variety of temporal purposes" that included the preservation of rights and property, "good government," "advancement and regulation of manufacturers and commerce," or carrying out "divers special purposes."[18] Blackstone pointed to specific examples of civil corporations, such as the King and the College of Physicians, as well as to more generic examples, such "as churchwardens, for conservation of the goods of the parish."[19] The second type of corporations were eleemosynary, or charitable, "constituted for the

[16] Blackstone, *Commentaries on the Laws of England*, 1:458.
[17] Blackstone, *Commentaries on the Laws of England*, 1:458.
[18] Blackstone, *Commentaries on the Laws of England*, 1:458-459.
[19] Blackstone, *Commentaries on the Laws of England*, 1:459

perpetual distribution of the free alms, or bounty, of the founder of them to such persons as he has directed."[20] Eleemosynary corporations included hospitals, as well as colleges founded for "the promotion of piety and learning."[21] Though the trustees of eleemosynary corporations might include bishops, clerics, or ecclesiastical officials, they were nonetheless, "lay, not ecclesiastical."[22] The divisions between all three types of corporations – ecclesiastical, civil, and eleemosynary – were not necessarily obvious at first glance; multiple corporations closely associated with the established church were lay corporations. Rather, the membership of a particular corporation and its specific purposes were essential in determining the category into which it fell.

It is essential to recognize that under common law corporations could exist without a charter. Blackstone explained that "the king's consent is absolutely necessary to the erection of any corporations, either impliedly or expressly given. The king's implied consent is to be found in corporations which exist by force of the *common law…* being nothing else but custom, arising from the universal agreement of the whole community."[23] Common law corporations derived their legal privileges under the "presumed" consent of the king, and the pretense of religious uniformity conferred customary power to the established church. Common law corporations included the king himself, as well as bishops, parsons, vicars, churchwardens, and some others.[24] Blackstone acknowledged "the members [of these customary corporations] can show no charter of incorporation," but argued that nonetheless "for these institutions, who by common law have ever been held to have been corporations… this incorporation is so inseparably annexed to their

[20] Blackstone, *Commentaries on the Laws of England*, 1:459.
[21] Blackstone, *Commentaries on the Laws of England*, 1:459
[22] Blackstone, *Commentaries on the Laws of England*, 1:459
[23] Blackstone, *Commentaries on the Laws of England*, 1:460.
[24] Blackstone, *Commentaries on the Laws of England*, 1:460.

offices, that we cannot frame a complete legal idea of any of these persons, but we must also have an idea of a corporation."[25] It was impossible for the Anglican parson or churchwardens to exist outside of the legal framework of corporate rights. Practically, the established church could not have fulfilled its civic or spiritual duties without incorporation. The capacity the hold property, to exist perpetually, and to be recognized as a legal person was essential to the work of ecclesiastical persons and institutions. Assumed monarchical consent conferred immense corporate privileges to the bodies of the established church without a charter. The fact that implied regal consent was so powerful that it, in fact, was equivalent to a formal charter underscores the extent to which the established church was part of the English legal system.

Blackstone's *Commentaries*, though an essential compendium of common law, appeared in 1765, after more than a century and a half of Anglican establishment in the colonies. Looking to colonial publications helps clarify how customary English law had been enacted on the ground in the colonies. One of the first publications of Virginia's first printer, William Parks, was a handbook for Virginian Justices of the Peace entitled *The Office and Authority of a Justice of Peace*.[26] The book's author, George Webb, had been born in London before emigrating to Virginia in the early eighteenth century. In Virginia, he served as a vestryman of St. Peter's Parish and as a militia commander and a Justice of the Peace in New Kent County, VA. Webb's work provided an essential summary of English common law and Virginian statutes for the use of local officials, most of whom had no formal legal education.[27]

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[25] Blackstone, *Commentaries on the Laws of England*, 1:460-461.
[26] George Webb, *The Office and Authority of a Justice of the Peace* (Williamsburg: 1736).
[27] For an excellent discussion of Webb and the importance of this legal text, see Warren M. Billings, "A Virginia Original: George Webb's *Office and Authority of a Justice of Peace,"* in "*Esteemed Bookes of Lawe" and the Legal Culture of Early Virginia*, eds. Warren M. Billings and Brent Tarter (Charlottesville: University of Virginia Press, 2017), 199-225.

The colonial handbook provided clear descriptions of the corporate status of various Anglican bodies. Webb noted that churchwardens "by the Common Law, are made a Corporation to take Care of the Goods of the Church....They are a corporation, only as to Moveables, vis to take Goods, but not Lands, for the Use of the Church."[28] The vestry was tasked with the purchase of glebe lands, "for the use of minister of such parish, for the Time being and his successors for ever."[29] Glebe lands were vested in the parish in perpetuity, and the duty to purchase and maintain its "lands and tenements" fell to the vestry.[30] The minister, during his incumbency, was treated as a sole corporation, a *persona ecclesiae*, who had freehold over the glebe during his tenure.[31] Together, the churchwardens, vestry, and minister acted as representatives and custodians of their parishes to purchase and hold various forms of property but they existed as three distinct corporate bodies operating on behalf of the parish. Each exercised different rights under common law and, in practice, their different responsibilities in the parish reflected their distinct legal rights.

Even a brief comparison of the discussion of the different parochial institutions in the colonial *Office and Authority* and the English *Commentaries* highlights a significant difference between colonial and English practice. Webb's Virginian treatise focused on the legal standing and role of vestries, something which Blackstone does not mention at all. This difference in emphasis reflected the way in which colonial Anglicanism had deviated away from English customs over the course of the seventeenth century. Vestries were far more powerful in the colonies than in England. In England, Anglican Bishops (or sometimes local gentry) held the right of advowson, or the right to induct a minister. This legal process made the minister into a

[28] Webb, *The Office and Authority of a Justice of the Peace*, 71.
[29] Webb, *The Office and Authority of a Justice of the Peace,* 76.
[30] Ibid.
[31] *Terrett v. Taylor*, 13 U.S. (9 Cranch) 43 (1815).

sole corporation with freehold rights, a *persona ecclesia*. In Virginia, the right of advowson was exercised, and often withheld, by vestries.[32] Many Virginian parishes avoided inducting their ministers but instead hired them on an annual, contracted basis, a constant gripe amongst the colonial clergy.[33] Vestries retained their corporate standing while denying the minister the traditional corporate standing within the parish. Moreover, for much of the seventeenth and eighteenth centuries, there was a high vacancy rate in parishes because it was difficult to attract enough clergymen to the colony. Indeed, Governor Alexander Spotswood's famous quip referring to the vestry of St. Anne's Parish in Essex County as the "twelve bishops" not only mocked the self-importance of Virginia's grandees, but also reflected that many of the powers traditionally exercised by bishops belonged to the lay vestries in the colony.[34]

Another important difference was the relative standing of churchwardens to the vestry. In England, parishes held separate elections to elect churchwardens annually. The common law division between the corporate powers of the churchwardens and the vestry reflected the fact that English vestries and the churchwardens were in fact separate institutions. However, in Virginia, the vestry simply appointed two of its members to act as churchwardens each year and the time-consuming job often rotated among all of the vestrymen. Even in Maryland, where churchwardens were elected separately, they still gathered with the vestry to make decisions for the parish, and most of Maryland's churchwardens were former and future vestrymen. In the colonies, the formal distinction between churchwardens and vestrymen was often a legal fiction;

[32] John Nelson, *A Blessed Company: Parishes, Parsons, and Parishioners in Anglican Virginia*, *1690- 1776* (Chapel Hill: The University of North Carolina Press, 2001), 127-133.
[33] Nelson, *A Blessed Company,* 127-128, 388n42.
[34] Governor Alexander Spotswood to the Vestry of St. Anne (Essex County, Va.), September 3, 1718, cited in Meade, 2:397.

together, these men interchangeably acted as representatives and custodians of their parishes to purchase goods and real estate.

Corporate Rights in Colonial Legislation

The colonial assemblies of Maryland and Virginia each recognized the common-law incorporation of parishes. The laws establishing the church in Maryland, known as the Church Acts, discussed the corporate rights of the Church explicitly. However, the tortured, decade-long process of establishment created some ambiguity about the legal terms of the Church's incorporation. The Maryland colonial assembly tried unsuccessfully to establish the Church of England three times between 1692 and 1700 before finally succeeding in 1702.[35] In its first three attempts, the colonial assembly passed an act establishing the Anglican Church, but the Crown overturned all three statutes[36] Maryland's counties, though, enforced the laws for several years at a time before news of their repeals reached Annapolis.[37] Together, the overturned laws created a viable parish system that operated without serious interruption on the ground throughout the years of legislative squabbling, and Maryland's laws respected the corporate rights of parishes.

The first of the Church Acts, the 1692 "Act for the Service of Almighty God and the Establishment of the Protestant Religion," marked the colony's initial commitment to a Protestant establishment. The law came in the wake of a Protestant-led revolt against Catholic rule in the colony and the recognition of William and Mary's sovereignty. The 1692 Establishment Act

[35] See Kenneth L. Carroll, "Quaker Opposition to the Establishment of a State Church in Maryland," *Maryland Historical Maryland Historical Magazine* 65, no. 2 (Summer 1970): 149-170.
[36] For a chronological discussion of these acts, see Carroll, "Quaker Opposition to the Establishment of a State Church in Maryland"; Spencer Ervin, The Established Church of Colonial Maryland," *Historical Magazine of the Protestant Episcopal Church* 24 (1955): 232-292.
[37] See, for example, an order from the Assembly sent to all of the county courts in January of 1694/5 to collect the annual levy for the support of the minister and the construction of churches. Somerset Judicial Records 1692-96*, Archives of Maryland Online*, 535:92. Moreover, many vestry meeting minutes continue unabated after their records begun, most in 1692 or 1693. See, for example, Dallam, ed., St. James' Parish, 99-154.

imposed an annual poll tax for supporting Anglican ministers, reiterated laws against sabbath-breaking and other moral offenses, and created a new system of parishes. The act stipulated that every vestry should act "in the nature and amply as a body Politick or corporate" in managing their funds and property.[38] The act went into effect immediately in Maryland, even before the newly arrived governor signed it into law in 1694. However, the Crown formally repealed the Act the following year, three years after parishes had begun operating in the colony. The Council blamed its veto on a purportedly ambiguous clause in the law's opening proviso, which guaranteed "the Great Charter of England be kept and observed in all points." This weak excuse did little to conceal that intense lobbying by Quakers and Catholics in London had actually killed the law.[39]

Upon receiving word of the repeal, the Maryland Assembly passed a second law in 1696 that removed the objectionable reference to the Magna Carta. The 1696 act reiterated the corporate status of vestries, specifying that "the severall Vestry-men of the Severall Parishes within this Province be hereby Constituted and appointed in the nature of a body Corporate" in their capacity to support the minister using the levy, to build and repair church property, to receive "any Lands Tenements Hereditaments money Tobbacco Goods Cattle or Chattells...whatsoever of what nature and made Capable and Enabled by that name to sue and be sued att Law in any Action Reall, personall or mixt."[40] Parishes were exempted from paying fees to the court in any lawsuit: "the Severall Courts when Desired shall Assigne them Gratis nor shall they pay any Cost of Suite to the Defendant and by the same name to the uses aforesaid they are further Enabled to purchase any Lands or Tenements...as also any Goods or Chattells

[38] *Archives of Maryland Online,* 13:430.
[39] Carroll, "Quaker Opposition…," 149-171.
[40] *Archives of Maryland Online*, 19:427.

and dispose of the same to the uses and profitts [aforesaid] as fully and Amply to all intents and purposes as any Body Corporate might or could do."[41] The same statute also declared that churchwardens "of each respective parish are by this Act Impowered to sue" on behalf of the parish for the non-payment of fees owed to the parish. Under this act, then, both the vestry and the churchwardens were incorporated to act on behalf of the parish in specific capacities: to buy, sell, and hold property, and to sue and be sued. The vestry was the corporate body responsible for most of the legal needs of the parish, but the churchwardens were also incorporated in order to take necessary legal action. However, the Crown repealed this version of the Church Act too, citing the provision requiring all churches and chapels in the province to use the *Book of Common Prayer*. The Council yet again had interceded on behalf of non-Anglicans in the colony.

On the heels of the repeal of the 1696 law, the assembly tried a third time to pass an Establishment Act in 1700. This third act "confirmed" that the vestries were "bodys corporate...hereby made capable of sueing and being sued" and that the annual levy was due to "the Vestry of each respective Parrish by this Act Constituted and incorporated a body Pollitick."[42] The third rendition of the law did not detail the many types of property rights exercised by the incorporated vestries but simply "confirmed" the rights granted to parishes under the earlier acts of legislation. Though these laws had been repealed, they were still referenced, which suggests that the corporate rights of vestries and churchwardens were already well established. However, the 1700 iteration of the Establishment Act retained the provision

[41] Exemption from license of mortmain gave the parish in Maryland more freedom to purchase land than its English counterparts had. Paul Brand, "Mortmain," in *The Oxford International Encyclopedia of Legal History,* ed. Stanley N. Katz, (Oxford: Oxford University Press, 2009), https://www-oxfordreference-com.proxy.lib.umich.edu/view/10.1093/acref/9780195134056.001.0001/acref-9780195134056-e-557.

[42] *Archives of Maryland Online,* 24:93.

obligating all churches and chapels to follow *the Book of Common Prayer*. Unsurprisingly, it, too, was repealed.

Ultimately, the Maryland Assembly passed a revised statute in 1702 that complied with the Crown's demands. The final law did not provide any more detail about the property rights of parishes, as the prior three acts had; the only mention of parochial property rights came in an instruction for parishes to continue collecting the levy and spending parochial funds "as they have beene."[43] The statute implicitly acknowledged and upheld that the real and moveable property of parishes remained intact and unaffected by the repeal of the former establishment acts, and this provision underscored the continued corporate existence of Maryland's parishes.[44] In another oblique reference to the corporate standing of parishes, the law mentioned "the body of the Parish."[45] The brevity of these two references, and their reliance on the continuity of a system already established, suggests that the prior three laws' specific discussions of the parochial system had created a durable sense of the corporate status of parishes in the colony.

Despite the decades-long struggle between the assembly and the Crown, on the ground there is evidence that collection of the levy continued without interruption after the passage of the first Church Act in some parishes. The Vestry Book of St. James' (Old Herring Creeke) Parish in Anne Arundel shows that the county sheriff acting on behalf of the parish vestry successfully collected an annual levy every year between 1692 and 1703.[46] The distance between formal law as passed and law as it operated in practice reveals that the religious establishment held a significant amount of local power when county courts and parish vestries worked in

[43] *Archives of Maryland Online,* 24:265.
[44] *Archives of Maryland Online,* 24:270.
[45] *Archives of Maryland Online,* 24:272.
[46] Dallam, ed., *St. James' Parish,* 140-142.

concert. The intertwining of church and state, still legally ambiguous in statute, had taken hold on the ground in the 1690s, at least in this corner of the colony.

Virginia's colonial legislature, on the other hand, never passed anything resembling a formal act of incorporation for the established Anglican Church or its parishes. Indeed, there was no systematic program of legislation that established the Anglican Church in Virginia; rather, the legislature passed a piecemeal series of laws over a 150-year period that reflected a mix of longstanding English customs and colonial realities. The lack of specificity in colonial legislation about the corporate status of the church suggested the strength of common law tradition and made express acts of incorporation unnecessary.

The fact that the establishment of Anglicanism in the colony predated the creation of the colony's legislative body in 1619 suggests one explanation for the lack of comprehensive legislation: the statutes passed by the legislature in the mid-seventeenth century affirmed, rather than established, the many customary English practices that had already taken root in the colony. The Virginia Company's 1606 charter affirmed orthodox Anglicanism before the group had even reached North America. From its initial founding under the Virginia Company in 1607 to its handover to the Crown in the 1620s, the colony supported the Church of England and required adherence to the Established Church. Despite the near collapse of the colony on multiple occasions in its first decades, Virginia's parish system grew organically as colonists gathered for worship, organized congregations, and pooled resources to support the church. When the Virginia Assembly formally recognized a system of parishes in law, they gave statutory form to institutions that already existed on the ground.[47]

[47] See Hening, 1:399-400. Earlier statutes had already affirmed the boundaries of individual parishes, which were organized locally. See Hening, 1:223, 229; 249-251, 278, 298, 317.

Virginia's laws affirmed the incorporation of parochial bodies under common law. The power of parishes to tax all inhabitants through an annual levy was granted by statute in 1631/2 and reaffirmed by additional laws in 1655/6 and again in 1696.[48] The 1655/6 act empowered churchwardens to "dispose of" funds raised in the levy and required them "to give securitie" to the vestry for the parish levy. A year later, a new law required parishes to construct churches and arranged for churchwardens to purchase "gleabes and stock" for ministers.[49] By instructing churchwardens to manage and transfer cash and moveables and to buy real estate, the assembly recognized their customary rights as a corporate entity. Moreover, by requiring the vestry and churchwardens to sign a contract each year to ensure the proper collection of the levy, the law recognized two distinct corporate bodies that acted on behalf of each parish. Legislation passed at the end of the seventeenth century gave parishes "the liberty to make lawes for themselves."[50] The right of passing by-laws was a unique privilege typically extended to corporations.

Another important statutory recognition of the corporate status of parishes came in the form of acts empowering specific vestries to sell glebe lands. The seventeenth-century statutes requiring parishes to buy glebes had not specified which body held title to the glebe lands. The vagueness of these laws proved problematic for Virginian vestries trying to sell their glebe-lands decades later. [51] In response, the assembly began issuing separate acts empowering any vestry that petitioned to sell their glebes. The assembly acquiesced to more than a hundred petitions from parishes over the colonial period to sell glebe lands.[52] By passing specific acts authorizing

[48] Hening, 1:399-400; 3:151.
[49] Hening, 1:478-9.
[50] Hening, 2:171.
[51] For example, in 1753 the vestry of Upper Parish in Nansemond County hired an attorney to help them secure title to lands acquired in the seventeenth century. See Hall, ed., *Vestry Book of Upper Parish* (Richmond, VA: 1949), 88. Washington Parish in Westmoreland County had to sue to protect their land from other claimants. *Legan Lessee of R'd Bernard v. Washington Parish*, 2 Va. Colonial Dec. B272 (1738), 4.
[52] For one example, see the 1757, "An Act to impower the Vestry of the Parish of Saint George, in the County of Spotsylvania, to sell their Glebe," Hening, 7:143.

vestries to sell their glebe lands, the assembly sought to clarify that the vestry of every parish held title to glebe lands for the use of the minister during his lifetime. In this respect, these specific acts simply reiterated the longstanding principles of common law.

The involvement of the assembly in the transfer of parochial property underscored that parishes were public corporations. Towns like Williamsburg and Winchester, which had been formally incorporated by acts of assembly, received similar governmental oversight when they sought to expand their boundaries or sell lands.[53] They were creatures of the legislature and needed legislative permission before selling real estate. In another analogous example, a chartered corporation that produced and sold wine also had to receive the assembly's approval before selling its land.[54] Virginia's public corporations, whether manufacturers, towns, or parishes, could buy or dispose of real estate only with the assembly's approval.[55]

Moreover, the legislature also intervened in parochial affairs when complaints reached them that vestrymen were incompetent, unqualified, or otherwise failing to perform their duties. The assembly received dozens of petitions over the eighteenth century from parishioners who accused their vestrymen of holding office unlawfully, or of being idle, illiterate, dissolute, oppressive, or perhaps most damning of all, religious dissenters. In response to these reports, the assembly had the power to dissolve vestries and call for new elections. However, the terms of these acts highlight that the process of "dissolving a vestry" did not destroy the corporation itself or interfere with its legal rights. For example, in 1772 the legislature "dissolved" the vestries of St. John's Parish in King William County and St. Martin Parish in Hanover and Louisa Counties.[56] The act called for new elections in the coming months; however, it noted,

[53] Hening, 7: 234.
[54] Hening, 8: 365; Hening, 9: 239.
[55] For some examples, see Hening, 7:314-5; 9:240.
[56] Hening, 8:607-609.

"notwithstanding any thing in this act contained, any suit or suits brought by or against the vestry or churchwardens of either of the said parishes, and now depending, may be prosecuted in the same manner as if this act had not been made."[57] Dissolving the membership of the vestry did not actually abolish the vestry as a corporation, nor did it alter the churchwardens as a corporate body.[58] The legislature superintended the personnel of parishes across the colony and exercised the right to "dissolve" incompetent vestries. Dissolving the membership of the vestry did not actually destroy the vestry or churchwardens as corporate bodies, nor did it affect their legal powers or property.

Legislation and common law worked hand in hand to bolster the established church. The Reverend William Meldrum won a sizeable judgement against the vestry of Frederick Parish after a long-fought lawsuit over backpay.[59] Apparently, the vestry had lowered the incumbent's salary, and the minister sought redress through the courts. Some of the vestrymen had covered the costs of prosecution out of pocket, and after losing their case, they sought legislative assurance that they personally were not accountable for repaying the minister. Presumably, their non-liability should have been clear-cut without any legislation under common law. The minister had won a judgement against the vestry as a corporation, not the vestrymen as a group of individuals. However, perhaps in an effort to quiet any possible complaints from parishioners about the increased parish levy, the vestry petitioned and received an act empowering them to raise funds to repay the costs of the judgement and the court costs through the levy. Growing hostility towards the established church in the western region of Virginia, where Frederick Parish

[57] Hening, 8:608.
[58] Similarly, in 1744 when the legislature "dissolved" the vestry of Truro Parish in Fairfax County and called for the election of twelve new vestrymen, the bill specified that the vestry would retain all of its funds in the meantime and once new vestrymen were elected. The vestry's corporate status was not affected by the dismissal of its current vestrymen, Hening, 5: 274-275.
[59] Hening, 8: 415-416.

lay, might further explain why the vestry sought legislative affirmation of their corporate standing. This act underscored the extent to which the corporate standing of the parish under common law could benefit from statutory action.

Studying common law doctrine and colonial statutes provides valuable insight into the legal status of the established church and its parishes in the Chesapeake. However, it is just as important to explore how things worked on the ground. Parishes acquired property, signed contracts and deeds, and brought lawsuits in court. The exercise of these powers provides an important practical illustration of the abstract rights laid out in Blackstone, Webb, and colonial legislation. County court records and parish vestry books, along with contracts, deeds, and material sources expand our understanding of the legal establishment of religion. These various forms of evidence illustrate that parishes exercised corporate rights without question in the colonial Chesapeake.

Parish Property

Perhaps the parish's most visible exercise of corporate power was its acquisition of valuable property. Parochial resources represented the wealth of a community accrued over several generations. By the late eighteenth century, parishes often owned multiple brick churches and chapels, books, communion silver, glebes, poorhouses, and enslaved people. Much of this property was purchased using the annual levy, although bequests left by wealthy parishioners often endowed parishes with additional valuable property.

Parochial wealth was secured under common law, but property transactions in the Chesapeake often deviated from the forms laid out in legal treatises. The distinct powers of churchwardens and vestries were not always observed in property transactions. Colonial deed

books list vestries, churchwardens, or the parish as whole as purchasing and selling glebe lands and church buildings.[60] In Princess Anne County, there are deeds for real estate giving title alternatively to "Lynnhaven Parish," "the vestry of Lynnhaven Parish," and "the churchwardens of Lynnhaven Parish." This irregularity likely reflected the lacking legal education of many county clerks; while clearly intending to vest property in some parochial body, these transactions were inconsistent and reflected a situation far messier on the ground than in formal law. Parochial property transactions in Maryland reflected similar uncertainties. The Rector, Vestry, and Churchwardens of St. Anne's Parish all signed a contract together in 1747 to lease lands in Annapolis for sixty years, thereby hedging their bets about who had the proper legal authority to hold title.[61]

The rich material culture of Chesapeake Anglicanism has been studied by numerous scholars, and the wealth and refinement of these spaces has been understood as an expression of faith as well as gentry power. [62] As discussed in Chapter 2, these building programs could double or triple the levy over several years and reflected a significant outlay of resources. Grand and impressive, church buildings were visible from a great distance and articulated the establishment's power in the built environment. By the late eighteenth century, colonists had begun to replace older frame churches with fine brick. Churches often featured large windows and painted interiors, which created light-infused, bright spaces. Anglicans used ornate details to elevate their sanctuaries – gilded altars, velvet cushions, intricately carved pulpits, and marble

[60] See the "Vestry of Lynnhaven Parish" listed as the purchaser in Princess Anne County, Deed Book 8, 532, LVA; Princess Anne County Deed Book 9, 103, LVA; Princess Anne County, Deed Book 14, 42, LVA. See the "Parish of Lynnhaven," listed in Princess Anne County, Deed Book 9, 103, LVA. See the "Churchwardens of Lynnhaven Parish" listed in Princess Anne County, Deed Book 9, 91, LVA; Princess Anne County, Deed Book 9, 343, LVA.
[61] The contract is cited in a later legislative session. See, *Archives of Maryland Online*, 64:193.
[62] The work of Dell Upton on Virginia's Anglican churches remains one of the best studies of Anglican faith and colonial Virginia society. See Upton, *Holy Things and Profane: Anglican Parish Churches in Colonial Virginia* (New Haven: Yale University Press, 1997). Also see Rhys Isaac, *The Transformation of Virginia, 1740-1790* (Chapel Hill: University of North Carolina Press, 1982).

fonts. Upper balconies often seated enslaved people or other socially inferior members of the congregation while local grandees owned certain pews by subscription. The ordering of this space reinforced social hierarchies by imbuing racial, financial, and class distinctions with divine sanction. The elegance of Anglican churches was meant to demarcate sacred space from the secular world. Most colonists lived in small, semi-permanent wooden homes far from public spaces and one another.[63] The material language of Anglican churches would have made for an arresting departure from the ordinary lives of most colonists.

Lynnhaven Parish in present-day Virginia Beach serves as a typical example of the extent of parochial wealth. At the start of the American Revolution, Lynnhaven boasted a large brick church on a two-acre churchyard. The parish also had two chapels of ease with their own churchyards, Pungo Chapel and the Eastern Shore Chapel, in more remote corners of the parish. The parish held two additional pieces of real estate, a two-hundred-acre glebe complete with a furnished house, outbuildings, and a garden, as well as a poorhouse on a fifty-acre farm. In addition to these buildings and land, Lynnhaven owned three sets of liturgical silver and a valuable library.[64] Finally, the parish owned four enslaved men and women after 1761.

The wealth of a parish like Lynnhaven was derived from and in turn reinforced its privileges legal status and position of public authority. These sacred spaces expressed the church's power to tax and to impose fines. Its privileges were secured under common-law incorporation. Its visible wealth reflected its authority in the community over generations. In short, the property of a church expressed the fundamental power of a religious establishment. But the church's wealth, too, was framed as an investment in the community. By collecting fines,

[63] See Cary Carson et al., "Impermanent Architecture in the Southern American Colonies," Winterthur Portfolio, XVI (1981), 135-196.
[64] Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish*, 119.

building spaces for public worship, procuring communion elements and prayer books, providing for the minister, and collecting funds for the poor, the material property of parishes reflected their mandate to provide for the welfare of the community. The property of a parish church was a fundamental expression of the purpose of religious establishment.

By law, every parish had to buy and maintain a glebe, a farm of at least 200 acres, where the minister lived.[65] The average Virginian glebe size by the mid-eighteenth century was 380 acres, and some stretched over 1000 acres.[66] Glebes were often centrally located near the church and courthouse, had access to water, and included houses, kitchens, smoke houses, gardens, slave quarters, and other features of a Chesapeake planation. While the assembly had required parishes to purchase glebes earlier in the seventeenth century, some vestries had refused while others put off hiring a minister altogether, instead preferring to "save so much of the parish Levy in their own pocketts."[67] Even where parishes did hire a minister and pay his required salary, Virginia's vestries often refused legal induction to their clerics and instead employed their minister on an annual basis. Refusing induction allowed parishes to dismiss the minister at the end of the year if they pleased and became a widespread grievance among the clergy.

Rev. James Blair came to Virginia in 1685 and became the Bishop of London's representative in colony known as the Commissary in the following decade.[68] In 1699, Blair

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[65] The legislature passed laws requiring parishes to buy glebes and authorizing the use a parish levy to do so in the mid-seventeenth century. They continued to improve funding for the glebe system to encourage ministers to emigrate to the colony and in 1727 began requiring that all glebes be of at least 200 acres. Hening: 1:399-400; 2: 29-30; 2:45; 3:151; 4:206; 6:89-90.

[66] Nelson, *A Blessed Company,* 51.

[67] James Blair, "A Proposition for supplying the Country of Virginia with a sufficient number of much better Clergymen than have usually come into it; And for the right settling of government of them," quoted in Perry, ed. *Historical Collections Relating to the American Colonial Church,* Vol. 1: Virginia, (Hartford, CT: Church Press Co., 1870), 334

[68] For more on Commissary Blair, see *A Blessed Company,* 108; 110-11; Thad W. Tate, and the Dictionary of Virginia Biography, "James Blair (ca. 1655–1743)," Encyclopedia Virginia, Virginia Humanities, updated 2016, https://www.encyclopediavirginia.org/Blair_James_ca_1655-1743.

wrote to the bishop with a scathing account of the anemic state of the church in Virginia. To combat the anti-clericalism of the people, Blair focused on recruiting especially "worthy men" for the ministry and inducing them to settle in the colony.[69] He proposed a system in which glebes would "be stocked with four or five Negroes under an overseer and with a stock of cattle of seven or eight milch cows or calves for the use of the minister, and for keeping these houses in due repair and keeping the Negroes in their full number between the ages of 15 and 45 and the cattle as to number & age."[70] Blair further explained that the glebe property could never be sold to pay off the minister's personal debts but instead "these parish negroes and cattle shall never be subject to attachments…but shall be annexed to the freehold."[71] He ended his plan declaring, "let the lawyers contrive good binding clauses and such proper encouragements and penalties that the Law may execute itself."[72] Glebes were envisioned as a way to provide for the minister in the plantation economy. Ministers were to be planters, too. However, the community was also the intended beneficiary under this scheme. Not only would they gain the instruction of worthier clergymen, their assets were legally secured from ministerial mismanagement. In this plan, the glebe was a perpetual endowment for the spiritual welfare of the community by offering a durable source of financial support for the clergy and parish.

Blair planned for clergymen to join the genteel ranks of white Virginians through slaveholding. Blair himself had married into a prominent Virginia family after his arrival in the colony, and he envisioned future parish rectors living as planters in the colony.[73] After fifteen years in Virginia, Blair came to view enslaved people as "stock" who were to be dealt with in the

[69] Blair, "A Proposition," quoted in Perry, *Historical Collections,* 1:338.
[70] Blair, "A Proposition," quoted in Perry, *Historical Collections,* 1:338.
[71] Blair, "A Proposition," quoted in Perry, *Historical Collections,* 1: 339.
[72] Blair, "A Proposition," quoted in Perry, *Historical Collections,* 1: 344.
[73] Nelson, A Blessed Company, 139.

same way as cattle. The stipulation that overseers should "keep" the enslaved people in their "full number" only to the age of 45 reflected a particularly callous element of his plan. Enslaved men and women were expendable after they had become too old to labor. There was no pretense of paternalism or Christianizing impulse, just a frank statement about the value of enslaved people as laborers. Twenty-five years later, no parishes had purchased enslaved people to work on their glebes. [74]

Parish records elide their enslaved communities to an astonishing degree. In many Virginian vestry books, only one or two references are made to the enslaved people who belonged to the parish in hundreds of pages; some make no mention at all.[75] One possible explanation for this marked absence is that slaveholding was recorded in churchwardens' accounts, nearly all which are lost. Maryland's vestry books also offer little evidence of slavery, though contemporary sources mention that at least some parishes owned enslaved people.[76] These silences remind us to remain circumspect when estimating the total number of enslaved people who belonged to parishes and how many parishes were slaveholders.

Extant records reveal that over the course of the eighteenth century, roughly half of Virginia's parishes came to own enslaved people, though not for the precise reasons Blair had proposed.[77] Parishes most often began slaveholding through bequests or purchased them when

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[74] The report of John Bagge of St. Anne's Parish in Essex County records the presence of enslaved labor on the glebe by 1724. However, these enslaved people likely belonged to Bagge personally. See Bagg to the Bishop of London, 1724 quoted in Perry, *Historical Collections,* 1:317; Lorena Walsh, *Motives of Honor*, *Pleasure*, *and Profit: plantation management in the colonial Chesapeake*, *1607-1763.* (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 2010), 283-87.

[75] For example, newspaper records demonstrate that Christ Church owned at least two enslaved men, Jemmy and Jeffy, who would have been born around 1780. *Norfolk Gazette and Publick Ledger* (Norfolk, Virginia), January 19, 1807; *Norfolk Gazette and Publick Ledger* (Norfolk, Va) August 5, 1807. Neither they nor their parents appear anywhere in the vestry book, which runs only until 1767. This absence either suggests that parish did not purchase enslaved people until after 1767, or they were left out of the records. See C.G. Chamberlayne, *The Vestry Book of Christ Church Parish, Middlesex County, Virginia, 1663-1767* (Richmond, VA: Old Dominion Press, 1927).

[76] Vindex [Patrick Allison], "Candid Animadversions on a Petition," (Baltimore: 1793), 2nd edition, 14.

[77] My findings accord with Jennifer Oast's conclusions that there is evidence that half of parishes owned enslaved

opening poorhouses.[78] Wealthy benefactors left money to parishes, which vestries used to purchase enslaved people, or bequeathed sometimes directly gifted enslaved individuals to parishes. Numerous parishes owned enslaved people as part of charitable endowments for "the poor of the parish" or to support a specific charitable institution like a free school.[79] Second, in an effort to lower the cost of poor relief, parishes increasingly moved away from out-of-door assistance and began constructing poorhouses after 1750, as discussed in the last chapter. Though vestries had resisted Blair's plan to purchase enslaved people to work on glebes, they proved far more willing to invest in enslaved people in the hopes of lessening the burden of providing for the poor. What went unsaid, of course, was that the poor who benefited from charitable bequests and poor relief were overwhelmingly white. Parishes treated bonded black labor as an endowment for the financial welfare of white parishioners, rather than a benefit for their ministers.

The example of Lynnhaven Parish exemplifies both routes to slaveholding. Using the proceeds from a bequest from former vestrymen Anthony Walke in 1757, Lynnhaven Parish decided to purchase "young slaves for the support of the said parish" in 1761.[80] It was no

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people. See Oast, *Institutional* Slaveholding, 20. There is no evidence in extant of the fifteen following parishes owning enslaved persons: Albemarle (Surry/Sussex Counties), Augusta (Augusta), Blisland (New Kent/James City Counties), Bristol (Prince George County), Fredericksville (Albemarle), Henrico (Henrico), St. George (Accomack), St. George's (Spotsylvania), St. Patrick's (Prince Edward), St. Peter's (New Kent), Stratton Major (King and Queen), Upper Parish (Nansemond), Ware (Gloucester), and Wicomico (Northumberland County). Records demonstrate the following parishes' owned enslaved persons: Antrim (Halifax), Bruton (James City/York), Christ Church (Middlesex County), Cumberland (Lunenberg), Elizabeth River (Elizabeth River), Hungars (Northampton), Kingston (Mathews), Lower Parish (Nansemond), Lynnhaven (Princess Anne), Petsworth (Gloucester), St. Bride's (Norfolk), Portsmouth (Norfolk), Abingdon (Gloucester), and. St Paul's (Hanover).

[78] Charitable bequests to parishes are also discussed at length in Chapters 5 and 6.

[79]Technically, some endowments were supposed to be managed by vestries, but parish records suggest that these funds were co-mingled with other parish income. For example, the records of Elizabeth River Parish show that the income produced by the enslaved people who were given as a charitable bequest was not tracked separately from the annual budget. See Alice Granbery Walter, ed., *Vestry Book of Elizabeth River Parish, 1749-1761,* (New York: Alice Granbery Walter, 1969), 3, 6, 20. Christ Church Parish in Middlesex County collected funds from an endowment for a free school without operating it. *Parish Education in Colonial Virginia*, 43-44.

[80] George Carrington Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish, Princess Anne County, Virginia, 1723-1786,* (Newport News, VA: 1949), 83-84.

coincidence that in the same year the parish opened its poorhouse on a 50-acre farm. Lynnhaven and other parishes regularly used enslaved labor at their poorhouses. Six years later, the vestry ordered the churchwardens "to sell the Negro wench Rachal belonging to the Parish & that the Money Ariseing thereby be applyed towards buying another Negro." Rachal may have been one of the women purchased in 1761, but her fate, along with any other individuals belonging to Lynnhaven is missing in the records. In the 1770s, the longtime minister Robert Dickson left four more enslaved people, Harry, Lewis, Gefford, and Lydia, to the parish. The parish debated selling these men and women but instead determined that "their labour and service at this time will be more Adventitious than the interest of the money ariseing from the sale thereof."[81] Lynnhaven Parish treated enslaved persons as valuable property that served as capital and their labor as a source of revenue.

Whether parishes acquired enslaved people from bequests or purchased them to work at poorhouses, enslaved people labored to support the white poor. Relief recipients were overwhelmingly white, and the labor and bodies of black men and women served their good. Parochial welfare was built on and reinforced racial hierarchy.

Parishes expected enslaved laborers to bring in revenue in the short-term, but they also anticipated benefitting from hereditary enslavement for generations to come. Historian Jennifer Oast has insightfully called attention to the language used to describe enslaved people signaled that communities understood these men and women as long-term assets whose value would appreciate over time. Legislation, wills, and vestry books referred to enslaved persons as "stock" and made arrangements for their future "increase." Many parishes stipulated that they hoped to purchase, "young female slaves," "wenches," and "breeding negroes," which underscored their

[81]Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish,* 141.

desire for these women to bear children.[82] These terms closely resembled the language commonly used to describe livestock in similar bequests – "breeding mares" and "the increase of cattle" -- to parishes. The chilling similarity in the phrasing of these bequests reveals the way in which enslaved people were dehumanized by being commodified. Enslaved men and women were not only labor and property in the short term but regarded as investments who promised future value as their descendants would remain in bondage.

Parishes that did not own enslaved people still frequently benefitted from enslaved labor. The law required churchwardens to bind out any mixed-raced child born to a white mother until she or he reached the age of thirty. The churchwardens of Bristol Parish bound two "Mulotto children, Named Philip and Betty son and Daughter to Ann Evans," they apprenticed both youngsters to the rector, the Rev. Robert Ferguson.[83] Doing so provided the minister with unpaid labor for the glebe lands for decades. Parishes also hired enslaved people on a short-term or annual basis to provide labor at their poorhouses.[84] When Petsworth Parish in Gloucester County hired an enslaved woman from her master, John Wiatt, to work at the poor house for 1767, the vestry specified that she would wear "cottin" clothing, whereas the children to whom she tended wore "blue or green plains."[85]

The glebe system made rectors into planters, and most Anglican ministers owned enslaved people.[86] Parishes often built slave quarters on their glebes, and the men and women

[82] Oast, *Institutional Slaveholding,*16-18
[83] Chamberlayne, ed., *The Vestry Book and Register of Bristol Parish,* 134.
[84] For example, St. Paul's Parish in Hanover occasionally hired slave labor for specific tasks or construction projects, as well as on annual basis to work at the Poor House. Upper Parish in Nansemond County paid "John Streeter for the hier of his Negrow woman at the poors house" in 1758. See C.G. Chamberlayne , ed., The Vestry Book of St. Paul's Parish, Hanover County, Virginia, 1706-1786 (Richmond: The Library Board, 1940), 181, 445, 450, 451, 501, 517, 531, 539; Hall, ed., *The Vestry book of Upper Parish, Nansemond County*, 127.
[85] C.G. Chamberlayne, ed., *The Vestry Book of Petsworth Parish, Gloucester County, Virginia, 1677-1793* (Richmond: 1933), 332
[86] Nelson, 262, 407n56, 441n8.

who belonged to ministers labored on the parish land. Carol Van Voorst estimates that 60-80% of Maryland's Anglican ministers owned enslaved people between 1710-1776 and that by the 1760s, parish ministers typically held a dozen men and women in bondage.[87] Individual ministers also hired enslaved men and women on an annual basis to work on glebes. For example, the accounts of Rev. Charles Clay of St. Anne's Parish in Albemarle County, Virginia show that he hired an enslaved woman named Sukey from her owner, Rebecca Tucker, on an annual basis to work on the glebe.[88] And, the account book of William West, rector of Westminster Parish in Anne Arundel County, Maryland, records his ownership of at least six enslaved people: Nan, Priscilla, Jenny, Austin, Bob, and Tom.[89] These enslaved men and women cultivated corn, wheat, potatoes, and pork and produced cider on the glebe. Rev. West then sold or bartered these goods his neighbors to raise additional income.

Parishes were acquisitive landholders and slaveholders, like many of their white parishioners. The colonial parish had access to several forms of capital – taxes collected in pounds of tobacco, glebes held in acres of land, and the bodies and labor of the enslaved – because of its privileged position as a public and corporate entity. The annual levy gave the parish liquid capital that was scarce in the colonies and allowed it to weather the boom and bust economic cycles that affected great planters.[90] The levy enabled parishes to convert tax revenue into long-term investments in land and goods and to extend credit. In the colonial Chesapeake, where there were few corporations and individuals went to great lengths to preserve familial wealth from generation to generation, it was not only the amount of property parishes held but

[87] Carol Lee Van Voorst, "The Anglican Clergy in Maryland, 1692-1776," (Ph.D. diss., Princeton University, 1978). 265.
[88] Rev. Charles Clay, Account book, 1773-1818, Clay family papers, 1769-1951, VHS.
[89] Rev. William West, Account Book, 1765-1774 V.F., 10, 13, 15, EDMA.
[90] Charles Wetherell, "'Boom and Bust' in the Colonial Chesapeake Economy," *The Journal of Interdisciplinary History* 15 (1984), 185-210.

the relative security of their investments that expressed the special status and corporate power of the established church.[91]

Exercising Corporate Power

The power of the parish to hold property was closely related to two other essential powers of corporations – the ability to sue and be sued; and the right to contract. These capacities were intertwined and mutually reinforcing. Contracts protected the property of the parish and ensured the security of these investments over time. Parishes had recourse to the courts to enforce contracts, to prove title, to recoup debts, and to enforce judgements.

Parishes wrote contracts for every type of work they hired someone to undertake – building walls, digging wells, clearing land, or repairing the glebe house.[92] Whether employing builders, day laborers, physicians, or painters, parishes used contracts to secure the terms of a labor agreement and securely transfer property. Their ability to contract protected a valuable investment over multiple years. The variety of contracts which vestries and churchwardens signed underscores their property-holding. All parishes had a mandate by law to buy land and to build churches, chapels, and glebe houses, as well as to maintain and improve their property.

The vestry or churchwardens could enforce the terms of a contract over several years, even as the specific individuals serving as wardens or vestrymen fluctuated. The Vestry of St. Paul's Parish in Prince George's County, MD signed a contract on October 27, 1742 with Daniel Page to build a new church for the parish. The "vestry" is listed as a corporate body, while the

[91] Entailing land was one common method Virginians used to preserve property across the generations. See Claire Priest, "The End of Entail: Information, Institutions, and Slavery in The American Revolutionary Period," *Law and History Review* 33 (2015), 277-319; Holly Brewer, "Entailing Aristocracy in Colonial Virginia: Ancient Feudal Restraints and Revolutionary Reform," *William and Mary Quarterly,* 3rd ser., 54 (1997), 307-346.
[92] C.G. Chamberlayne, ed., *The Vestry Book of Petsworth Parish, Gloucester County, Virginia, 1677-1793* (Richmond: 1933), 208

contract identifies two witnesses, Elizabeth Bell and William Bell, and the builder by his name.[93] By the time the new St. Paul's parish church was finished several years later, different individuals were serving as vestrymen and churchwardens. The original contract remained in full effect because it existed between the vestry as a perpetual corporation and the three workmen the vestry had employed.

Contracts were particularly important for expensive construction projects like building a new church. Signing an agreement allowed the builder to receive a monetary advance, often necessary to purchase materials, while also allowing the parish to set down exact terms before work got underway. The St. Paul's vestry outlined its requirements for the new church in a contract that stretched over four pages and was broken down into twenty articles. The new edifice was to stand 50 feet long, 27 feet wide and 17 feet tall (in addition to a three-foot deep foundation). The vestry specified the types of materials to be used throughout the project: walls of well-burnt bricks, windows of glass and lead, carpentry of poplar or white oak timber, and roof shingles made from cypress. These fastidious articles often included a significant amount of detail – requiring "handsome" 10-foot tall doors that were "at least an inch" thick, for example, or specifying that the wooden trim and doors were to be "painted of a Dove colour twice laid on a coat of primer" and "to be set with good Linseed oyl."[94] In addition to setting out requirements of scale, size, and materials, the vestry required all of the labor to "be done in a strong and good Workman like manner."[95] The contract laid out a payment schedule that broke the total sum of 1,000 pounds of current money which Daniel Page would receive into three transfers - 250 pounds current money in March of 1743, 250 pounds current money in March of 1744, and the

[93] Vestry Minutes, St. Paul's Parish, Prince George's County, Md., SCM 255, 135-138, MSA.
[94] Vestry Minutes, St. Paul's Parish, Prince George's County, Md., SCM 255, 136-137, MSA
[95] Vestry Minutes, St. Paul's Parish, Prince George's County, Md., SCM 255, 137, MSA

remaining 500 pounds current money "when the work is completely finish'd, if so much be in hand, or otherwise to stay for the same till it is Collected."[96] As public bodies, vestries could raise funds through taxes, which made them particularly secure clients in the cash-scarce economy. Perhaps it was their relatively reliable status that explains how vestries could get men like Daniel Page to agree to conditions like the final clause of this contract, which prevented the accruing of interest on the amount the parish owed the builder if they did not have all of the necessary cash to pay him at once. As public corporations, parishes were uniquely positioned to drive a hard bargain.

Signing a contract could be particularly useful in the boom and bust economy of the Chesapeake in which the price of tobacco fluctuated wildly. When Bristol Parish "agree'd" with Richard James to build a Chapel at Namisseen Creek, the churchwardens agreed "to pay unto the sd James 135 pounds current money to be paid at two paymts in tobo at the price current as 3 standing dealers doth allow, ye sd chapple to be finish at or upon Christ come twelve month."[97] The contract not only settled on a fixed sum but also specified the method of determining the value of that price in tobacco. Moreover, it gave the parish an enforceable timeline for the completion of a job.

Beyond deals to secure employment and property, Virginian churchwardens regularly entered into two other types of contractual agreements: bastardy bonds and terms of indenture. As discussed in Chapter 2, a bastardy bond secured the parish against the cost of supporting children born out of wedlock. When an unmarried woman fell pregnant or gave birth, she could name the father of her bastard child voluntarily before any Justice of the Peace or before the court after being presented. A bastardy bond compelled financial support for the care of a bastard

[96] Vestry Minutes, St. Paul's Parish, Prince George's County, Md., SCM 255, 138, MSA.
[97] Chamberlayne, ed., *The Vestry Book and Register of Bristol Parish*, 25.

child from the reputed father who was obligated to "to keep the parish clear of all charges relating to [the] Bastard child."[98] These contracts established paternity and attempted to indemnify the parish of any responsibility to provide for the child in the future by reaching a childcare agreement. The churchwardens were signatories of these bonds because they would ultimately have to sue fathers who failed to provide for their children. Such was the case in 1751 when the churchwardens of Saint Peter's Parish in New Kent County brought a "suit against John Hoy of Albemarle County, upon the acc't of two bastard children born of the body of Mary Dunstance, which bastards...at present are and have been for some years past, very chargable to this parish."[99] While the individual men serving as churchwardens and vestrymen changed from year to year, the courts recognized the corporate standing of the churchwardens as an independent legal body that existed in perpetuity.

If a child's parents died or proved unable to support their offspring, the churchwardens were required by law to "bind out" these children or to indenture them until they reached adulthood (age 18 for girls and 21 for boys.) In Augusta Parish, the churchwardens Vestry Book records an indenture contract Nov. 29, 1749, made between the Churchwardens of the Parish who "by virtue their Churchwardenship & charge of orphans and by virtue of an order of the court of the sd. County and the widow Jane Cook."[100] Cook agreed to train the young boy in the "trade of a cooper… [and to] teach him or cause him to be taught to read write and cast up true accounts in vulgar arithmetick and provide for him."[101] The language of the contract reflected the legal responsibility churchwardens held over orphans in their parishes.

[98]Vestry Book, Augusta Parish, Augusta County, Va., 117, LVA.
[99]*The Vestry Book of Saint Peter's Parish, 1682-1758 New Kent County*, 217.
[100]Vestry Book, Augusta Parish, Augusta County, Va., 53, LVA.
[101] Ibid.

Additionally, when a white mother gave birth to a mixed-race child, she not only faced a hefty fine, but the law required the churchwardens to bind out the child until she or he reached the age of 30.[102] As discussed earlier in the chapter, the Bristol Parish churchwardens used their authority over mixed race children to provide their minister with the unpaid labor of Phillip and Betty Evans on the glebe.[103] The bundle of associated legal powers of churchwardens worked to the advantage of its officers. To be sure, the churchwardens acted in their capacity as executors of statutory law when punishing bastardy and enforcing the slave code. However, these bonds were enforceable financial agreements made between the churchwardens as a corporate entity and individuals.

Parishes extended loans to parishioners, and the repayment of these financial agreements was enforced by contract. As discussed in the previous chapter, St. James Parish in Anne Arundel County, Maryland regularly lent money with 8% annual interest to parishioners. Saint Peter's Parish in New Kent County, Virginia apparently also served as a creditor. The vestry book recorded a note in 1751 that the vestry "ordered that all persons indebted to the Parish do account with the Church Wardens and Pay to their Hands the Several Sums due from them, and in failure of Payment the church wardens are required to bring suit for the recovery of the same."[104] Parishes could extend credit safely because they were possessed of a legal remedy to recover any unpaid debts in court.

Contracts were only powerful tools if they could be enforced by the courts, and the parish's ability to sue and be sued in court went hand in hand with its ability to contract. County courts treated parishes as corporations without question, and numerous parochial lawsuits appear

[102] This statute was first passed in 1691 and updated again in 1733 and 1752. Hening, 3:86-87.
[103] Chamberlayne, ed., *The Vestry Book and Register of Bristol Parish,* 134.
[104] *The Vestry Book of Saint Peter's Parish, 1682-1758 New Kent County,* 216.

in vestry books and county court records.[105] The responsibility to represent the parish in lawsuits fell to the churchwardens as the custodians of the parish's moveable property under common law.[106] The churchwardens were responsible for managing the parish's finances and thus acted to recover damages or recoup debts. It is essential to distinguish the churchwardens' responsibility of representing the parish in lawsuits from their power to present parishioners to the court for moral crimes such as drunkenness, Sabbath-breaking, fornication, and bastardy.[107] When charging parishioners with crimes, churchwardens appeared in court as representatives of the Crown and served as an arm of the state. In these instances, their prosecutorial powers to bring charges were equivalent to those of grand juries.[108] When they sued for breach of contract, churchwardens used their corporate standing to recover debts due to the parish.

It is worth mentioning for the sake of clarification that when disputes arose between vestries and their ministers, or between two parishes, the case was not heard by the county court but by the colony's General Court.[109] Only the General Court held jurisdiction over ecclesiastical law and therefore had original jurisdiction over these types of cases.[110] However, in cases where vestries or churchwardens sued for the collection of unpaid debts or for breach of contract, they acted as lay, civil corporations and therefore jurisdiction lay with county courts. Drawing out the

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[105] For example, see the records of five parish lawsuits in the New Kent County Court listed in *The Vestry Book of Saint Peter's Parish, 1682-1758 New Kent County,* 86, 103, 176, 216-17. Or, see examples of four lawsuits brought by Bristol Parish in the Prince George County Court Minute Book, 1737-1740, Mircofilm Reel 9, (Original County Court Records on microfilm are kept at the Library of Virginia, Richmond, Virginia) [Hereafter cited by reel number, LVA], 94-103; 279-280; 305; 516.

[106] However, as exemplified in cases such as *Godwin et al v. Lunan (*1771*)* and *Legan's Lessee v. Washington Parish* (1738), sometimes the vestry or the parish were named as litigants, rather than the churchwardens. In Maryland, too, there are examples of the vestry being named as a party to a case.[106] For the most part though, churchwardens assumed responsibility for representing their parishes in court.

[107] The authority of churchwardens to make presentments for moral crimes is discussed at length in Chapter 2. See also Monica Najar, *Evangelizing the South,* 89-102; Nelson, *A Blessed Company,* 239-280.

[108] Scholars who have discussed the legal powers of churchwardens have largely focused on their role in presenting parishioners for moral crimes.

[109] For example, the General Court heard *Godwin v. Lunan* (1771), which was discussed in the Introduction.

[110] For statutes confirming the General Court's jurisdiction over ecclesiastical law, see Hening, 3:288-9; 5:469; 6:327.

difference between those cases heard by the General Court and those heard by the county courts is a useful way to see how the colonial courts recognized and affirmed the civil, lay standing of vestries and churchwardens under common law.

When necessary, churchwardens pursued lawsuits for breach of contract. [111] These included unpaid debts or the failure to perform the specific terms of a contract. In 1772, the churchwardens of Henrico Parish were ordered by the vestry to sue a former vestryman, Samuel DuVal, who had failed to build a new church per an agreement he had made with the parish the year before.[112] The churchwardens withdrew their lawsuit and awarded the contract to another builder after Du Val relented and forfeited his advance. In addition to lawsuits over incomplete construction projects, parishes also sued for unpaid bills arising from the extensive system of parochial poor relief. Every year, parishes made dozens of appropriations to provide food, clothing, allowances, and medical care to poor parishioners in their communities. Virginian parishes were responsible for providing poor relief and medical care to their parishioners, but they were also required to cover these costs for "strangers," or non-residents, if they fell ill or became injured while in the parish. For example, Upper Parish provided expensive medical care to a sick "saylor" named Joell Brown in 1745. The vestry paid for the sick man to see a doctor using parish funds and put him up while he recuperated; meanwhile, the churchwardens sued to recover the cost from his ship captain, John Meredith, who was legally responsible for his sailors' care.[113] The churchwardens won their suit and recovered the costs of Brown's care.

At times, churchwardens turned to the courts to collect the public money due to them from county officials. The churchwardens were legally entitled to collect all fines for moral

[111] *The Vestry Book of Saint Peter's Parish, 1682-1758 New Kent County,* 86, 103, 176, 216-17;
[112] R.A. Brock, ed., *The Vestry Book of Henrico Parish, Virginia 1730-'73*, (Richmond, VA: 1874), 148.
[113] Hall, ed., *The Vestry book of Upper Parish, Nansemond County,* 45.

crimes but relied on officers of the county court to collect this money from convicted individuals. In 1761, the churchwardens of Bristol Parish recovered 12 pounds, 12 shillings and eight pence after winning "a Judgm't of P. Geo. Court ag't Mr. Jam. Murray as Sherriff for fines Rec'd by Peter Peterson his under Sherriff Due the Parish including Cost of suit & att. fee." The Bristol churchwardens were forced in this instance to sue the county's sheriff to recover the money owed to the parish. Sometimes, the threat of a lawsuit was enough to pressure these officers to settle up. In 1758, the churchwardens of Petsworth Parish, "appl[ied] to Major Tomkies and Mr. Francis Stubbs for the money in there [sic] hands belonging to the poor of this parish," and reminded the two men that "if they refuse[d payment," they would "bring sute for the same."[114] Tomkies and Stubbs, both former churchwardens, apparently had held onto the parish funds after leaving parochial office. Facing the prospect of legal action, both men turned over the money in their hands, and the parish did not pursue the matter any further.

Colonists in the Chesapeake would have immediately recognized their parish as a corporation. Parishioners were familiar with the material wealth of the church, made plain in the elegantly decorated and imposing worship spaces, as well as the presence of glebe plantations and enslaved men and women belonging to parishes in their communities. Many parishioners would have been party to one type of parish contract or another. Employment agreements, bastardy bonds, and indentures were all familiar expressions of the legal power of the parish to act as a corporation. Unlucky parishioners might have faced the threat of a lawsuit from their parish churchwardens. Colonists, even in remote backwoods communities, would have experienced corporations and recognized their range of legal powers.

[114] C.G. Chamberlayne, ed., *The Vestry Book of Petsworth Parish, Gloucester County, Virginia, 1677-1793* (Richmond: 1933), 303.

“Likely to be ruined intirely”: Religious Non-conformists and Property

Under the program of religious establishment, parishioners experienced parochial corporateness as a daily reality in which they together comprised one entity under the authority of a single group of men. In return, everyone (at least, purportedly) received moral and spiritual benefits, and few a received more material returns through poor relief, salaries, or loans. The program of religious establishment made parishes powerful legal institutions and expressions of collective wealth and power familiar to colonists. All members of the community --male and female, elite and poor, free and enslaved, and even religious dissenter -- theoretically comprised one parish. Their individual taxes amounted to the collective wealth of the parish. When the vestry built fine churches, distributed charitable relief, regulated the production and export of tobacco, or performed a multitude of other civic tasks, they acted on behalf of the community. The parish derived its civic power from the imagined universality of its spiritual membership and its legal power to compel communal resources. The institution of the parish constituted individuals into one spiritual community, a body politic and religious.

Yet, just as a corporation was an artificial person – a person in the eyes of the law only – the mandate of religious universality and spiritual unity was likewise a legal fallacy. Race circumscribed parochial belonging as the bodies of enslaved Virginians were taxed by the parish while these men and women were largely excluded from any sort of spiritual inclusion. The spiritual body politic involuntarily included all residents, no matter their religious persuasion. Legally, all non-conformists in both colonies were parishioners. In Maryland, the religious wars of the seventeenth century and the powerful communities of Catholics and Quakers made clear the fallacy of religious cohesion. In Virginia, it was not until the mid-eighteenth century that a growing number of evangelical dissenters pointedly opposed the establishment and undermined

the illusion of religious unanimity. The Great Awakening brought significant numbers of dissenters to Virginia for the first time.

Nonconforming Protestants faced difficulty holding property securely because they lacked the powerful tool of incorporation. While parish vestries could buy, hold, and sell property securely as corporations, nonconformist congregations had no legal mechanism to protect their property. Unable to incorporate under the establishmentarian laws, dissenting Protestant and Catholic communities had to rely on creative solutions to manage and protect property. The difficulty faced by unincorporated churches in holding and transferring property reveals how common law and statutory law worked hand in hand to bolster religious establishment and hinder non-conforming religious groups. By denying incorporation to non-Anglican churches, colonial legislatures effectively barred non-conformists from utilizing common law as a tool to protect their investments.

The property of non-Anglicans had long been a source of significant tension in Maryland. The Jesuit community had gained a significant amount of property in the first decade of Maryland's settlement through the headright system, as well as through charitable donations. But these acquisitions sparked heated conflict. Jesuits ran afoul not only of their Protestant neighbors but directly confronted the Proprietor over their landholdings, particularly those acquired directly from Native Americans. To Protestant English colonists, the presence of Jesuit Manors in the colony was an affront to the entire framework of Protestant establishment.

Mortmain statutes were introduced into the colony by Lord Baltimore in 1641 in response to rising tensions over the Jesuits' growing landed wealth. In England, statutes of mortmain had long been used by the Crown as a tool to limit the ability of particular religious bodies to hold property. First passed in 1279, these medieval English laws prohibited ecclesiastical corporations

from holding property without express permission from the King. The phrase mortmain literally means "dead hand," and the aim of these statutes was to prevent too much property from falling into the hands of corporations, whose rights never extinguished, and therefore remained eternally untaxable. The Crown offered licenses that exempted certain groups from the prohibition. Mortmain laws became a particularly useful tool for Protestant reformers during the English Reformation. The Crown relied on these laws to strip incorporated Catholic institutions of their property. According to Henrician statutes, all Catholic institutions supported "superstitious uses," and therefore the Crown had the right to expropriate their property and revoke their licenses. Thus, after the mid-sixteenth century, mortmain statutes became synonymous with the politics of expropriation levelled against English Catholics.[115]

The original Maryland charter did not include any mention of mortmain laws, but disputes arouse as Jesuits began amassing property and asserting their right to hold it as a corporation.[116] However, in 1641, Cecil Calvert, the second Lord Baltimore, amended the charter to explicitly introduce mortmain statutes. This decision exposed the growing rift between Maryland's Catholic proprietor and the Jesuit order whom he had chosen to minister in his colony. Calvert's action was prompted by rising tensions both in Maryland and in the metropole. In Maryland, Jesuits had been stoking the anger of both their Catholic and Protestant fellow colonists. Catholic colonists resented the energy that Jesuits missionaries put towards ministering to local Native Americans, and their bitterness increased after several Jesuit missionaries received a large tract of land as a gift from the chief of the Patuxent tribe in gratitude. At the same time, Protestant settlers voiced outrage at the liberties of the Jesuits missions in the colony

[115] A. H. Oosterhoff, "The Law of Mortmain: An Historical and Comparative Review," *The University of Toronto Law Journal,* Vol. 27, No. 3 (1977), 257-334.
[116] Gerald P. Fogarty, "Property and Religious Liberty in Colonial Maryland Catholic Thought," *The Catholic Historical Review* 72 (1986): 577-9.

to hold property, conduct worship publicly, and flagrantly break the laws of England that prohibited public forms of "popery." Just as Calvert was fielding angry complaints from Catholic and Protestants colonists, he was also facing an increasingly hostile climate in London as tensions between Puritans and the Crown spilled over into what would become the English Civil War. Facing mounting pressure on all sides, Calvert capitulated and inserted a mortmain clause into the Maryland Charter. As a result, the significant landholdings that Maryland's Jesuit missionaries accrued in the seventeenth century, even before the establishment, were thereafter held in private hands by individual Jesuit priests, rather than by any corporation. [117]

Despite the colony's mortmain statutes, Maryland's Jesuit clergymen still managed to acquire a significant amount of property by the mid-eighteenth century. An official audit of their property conducted on July 23, 1765 listed seven different estates belonging to the order, which totaled 12,677 acres.[118] Five of the plantations exceeded 1,000 acres. The largest, at Port Tobacco, was 4,400 acres. There were also two smaller farms, Deer Creek, which was 127 acres, and Tuckahoe, which was 200 acres. The Jesuits owned nearly 200 enslaved persons who lived and worked on these plantations. The total income produced by the enslaved population, along with income generated by renting land to tenants, was an estimated £696 annually. As landlords and slaveholders, Maryland's Jesuits actively participated in the plantation economy of the Chesapeake.

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[117] For more on mortmain statutes in Maryland, see Patrick J. Dignan, *History of the Legal Incorporation of Catholic Church Property in the United States*, 1784-1932 (New York, P.J. Kenedy & Sons, 1935), 35-40. Another important set of sources about Jesuit activity in Maryland is a multi-volume, multi-part work by Thomas Hughes, S.J. This work includes both a historical narrative and a collection of original sources. To prevent any possible confusion about the correct volume number, I include the full title of the volume cited, rather than using the shortened version in subsequent. Thomas Hughes, *History of the Society of Jesus in North America*, *Colonial and Federal, Text:* Volume 1, (Cleveland: 1908), 241-243; 503-4.

[118] "Official Report from the Superior, Father G. Hunter, to the Provincial, Father Dennett," July 23, 1765, cited in Thomas Hughes, *History of the Society of Jesus in North America*, *Colonial and Federal, Documents: Volume 1, Part 1,* 335-337.

Without the benefit of incorporation, however, this property did not technically belong to the Catholic Church, the Jesuit Order, nor any institution at all. Instead, all Jesuit property belonged to individuals who acted as trustees. Father Peter Atwood, S.J. wrote instructions for his fellow Jesuits priests in 1726/7 about how best to secure their property under the legal constraints of the colony. He noted that their property "descends by conveyance or will; for all other right of succession or inheritance in common we are deprived of by the Statute of Mortmain."[119] Atwood continued, "Hence it is very adviseable that each possessor have always a will by him, whereby he bequeathes all his estate, both real and personal, to N. N. and his heirs for ever ; and, in case of his [viz. N. N.] dying first, to [another] N. N. and his heirs for ever ; and so name two or three of ours, least possibly our land become escheat." To protect the Order from this "dangerous" legal and political climate, Atwood advised his fellow priests to practice constant vigilance in their legal transactions. All priests were told to make multiple copies of their wills and deposit them at several locations across the colony to ensure the records would not be damaged or destroyed. The Jesuits took every possible precaution to ensure their transactions were irrefutably lawful. Their wariness contrasts sharply with the nonchalant, even sloppy, nature of Anglican parish property records. Parishes could be complacent in their property transactions – interchangeably listing the rector, the vestrymen, the churchwardens, or the parish as a whole on the title – because their power rested comfortably on common-law custom and legislative partiality. Non-conformists were forced to rely on the less secure instruments of personal deeds and wills, which could be more easily contested or invalidated by a hostile county court.

[119] Peter Atwood, S.J., "The title of our Lands deduced from the first taker-up to the present…" in Hughes, *History of the Society of Jesus in North America Colonial and Federal, Documents,* Vol. 1, Part 1, 211.

This system ran the risk of someone swindling the Jesuit Order out of its rightful property. Relying on individuals inculcated an aura of suspicion that "those persons, who enjoy the legal title to the lands" would one day "appropriat[e] the whole income of them to themselves, their friends and relations" and cheat the Order out of their property.[120] An ordinance sent to all of the clergymen in 1759 again urged them to "carefully make their wills" to "better to preserve from danger our lands and settlements."[121] However, the circular letter also required every Jesuit landholder to sign a bond to "two or three of ours" for the sum of £40,000 if he made a will "in favour of any other person."[122] Jesuits sought to ensure that priests did not abuse their legal claims over the estates by imposing a severe financial penalty on anyone who tried to improperly sell or gift lands held on behalf of the Order in their names.

One dramatic example of the Jesuits' legal vulnerability can be found in a desperate letter sent by Father Matthias Manners, S.J., the Superior at Bohemia Manor, to the Rev. John Lewis, S.J, the Provincial Superior. Reverend Manners opened his letter with the dramatic declaration, "we are likely to be ruined intirely at Bohemia."[123] According to Manners, two different neighbors had brought lawsuits seeking to invalidate the Jesuits' title to the estate. The first, a man named Mr. Daniel Heath, argued that over half of the Bohemia estate rightfully belonged to him, "because it was only a gift to us, and not purchased," while the other, Mr. Sidney George, claimed that his father improperly donated to the estate when he "had only a lease of that land, and consequently no right to dispose of it."[124] Based on technicalities related to the original

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[120] John Carroll, "The Plan of Clergy Organization," in *The John Carroll Papers*, ed., Thomas O'Brien Hanley (Notre Dame: University of Notre Dame Press, 1976), 3 vols., 1:61.
[121] "Ordinance of the Jesuit Provincial," in Hughes, *History of the Society of Jesus in North America*, *Documents,* Vol. 1, Part I, 267.
[122] "Ordinance of the Jesuit Provincial," Hughes, *History of the Society of Jesus in North America*, *Documents*, Vol. 1, Part 1, 267-8.
[123] Matthias Manners, S.J., to John Lewis, S.J., 14 December 1773, Box 30, folder 7, 1 Archives of the Maryland Province of the Society of Jesus, Georgetown University Library, Washington, DC [Hereafter MPA].
[124] Matthias Manners, S.J., to John Lewis, S.J., 14 December 1773, 1, MPA.

conveyances, both lawsuits jeopardized the legal title to the Bohemia. Manners concluded dolefully that if either case proved successful, "we shall have little or nothing at all left to ourselves to live upon."[125]

Too impatient to wait for the court to rule, one of the litigants, Heath, had already begun to dismantle some of the buildings on the estate and haul the materials back to his own plantation. Manners went to confront the man for his trespass, and a vicious "skirmish" broke out. Things turned violent after Heath drew his rifle and threatened to shoot the priest.[126] As the "battle" continued, Heath then turned against the enslaved persons who had accompanied Manners and began beating a pregnant woman named Rachel with his loaded gun and "swearing by God that he would shoot the d[a]m[ne]d bitch."[127] The plantation overseer and another enslaved man were able to subdue Heath but not before "poor Rachel" had received grave injuries. Manners wrote that he was uncertain if she would ever recover from the attack. When the priest met with Heath a few days later, the neighbor expressed no contrition. He declared that even if he lost his case, he would encourage the local community "to cut firewood upon [the Jesuits' land]…under pretence that they don't know where our line is."[128] No matter what happened in court, Heath resolved to undermine the legality of the Jesuit estate in the eyes of the local "neighbourhood."[129]

While Heath's brutal attack certainly escalated beyond the normal level of antagonism, Manners' letter suggested that the estate regularly faced challenges to its property rights over the years. Both Heath and George expressed bitterness that they had lost out on what they viewed as

[125] Matthias Manners, S.J., to John Lewis, S.J., 14 December 1773, 1, MPA.
[126] Matthias Manners, S.J., to John Lewis, S.J., 14 December 1773, 1, MPA.
[127] Matthias Manners, S.J., to John Lewis, S.J., 14 December 1773, 2, MPA..
[128] Matthias Manners, S.J., to John Lewis, S.J., 14 December 1773, 2, MPA.
[129] Matthias Manners, S.J., to John Lewis, S.J., 14 December 1773, 2, MPA.

their rightful inheritance when their ancestors had chosen to donate or sell (at an extremely reduced price) land to the Catholic Church. These transactions lacked the security of incorporation, and Manners himself expressed confusion about how to defend the estate in court. He demurred to his superior, writing "I have done nothing else, nor do I intend to do anything before I hear from you; for I don't know whether [to appear in court] in my own, or in your name."[130] Manners, a recent émigré from Germany, worried that "being a foreigner….I am afear'd that this circumstance might be prejudicial to the cause because I can hold no land."[131] He worried that if the suit proceeded, their title would be deemed invalid by a county court hostile to Catholics and foreigners, and the Order would lose the entire plantation. He pleaded for Lewis to come in person and help resolve the situation himself.

The precarious situation of the Bohemia estate reflected just how vulnerable the Jesuits' assets were in the colonial era. A single decision by a local court could invalidate a deed and jeopardize an estate. The possibility of a priest dying intestate portended a similar threat. The entire missionary project in Maryland depended on the income from these manors, and this foundation was fundamentally vulnerable without incorporation.

Though mortmain statutes had been targeted at Maryland's Catholics, they applied equally to Protestant dissenters. The precarious legal standing of Third Haven Monthly Meeting of Friends, a Quaker congregation in Talbot County, Maryland, illustrates the broader legal dilemma faced by dissenting groups in Maryland in the eighteenth century. The Talbot Friends acquired several tracts of land and built four separate meetinghouses in the course of the

[130] Matthias Manners, S.J., to John Lewis, S.J., 14 December 1773, 3, MPA.
[131] Matthias Manners, S.J., to John Lewis, S.J., 14 December 1773, 3, MPA.

seventeenth and eighteenth centuries.[132] The congregation completed its meetinghouse in 1684, which remains the oldest surviving Quaker meetinghouse in the US. The congregation received three more acres of land in 1701 and built the Bay Side Meeting House.[133] Then, in 1705, they were deeded two more three-acre plots, where they built the Tuckahoe Meeting House.[134] Finally, in 1745, they bought another half-acre of land nearby Tuckahoe.[135] The 1705 deed buying the site of the Monthly Meeting House stated that the transaction was undertaken by the "direction and appointment of the members or persons belonging to Monthly Meeting of the people called Quakers called by the name of their monthly meeting in Talbot County" and referred to their "unity and religious fellowship."[136] However, the property itself was vested in private individuals. Legally, none of the properties belonged to the congregation as a whole or legal entity; instead, the 12 men and their heirs named in the four deeds signed over 40 years held title.

[132] For a summary of the property belonging to the Third Haven Meeting of Friends in 1815, see "An Act to ratify and protect the Title of the Third Haven Monthly Meeting of Friends," *Archives of Maryland Online,* 192:1771-1772.
[133] Deed (August 16, 1701), Talbot County (Land Records) Liber RF 9, 71-72.
[134] Deed (August 22, 1705), Talbot County (Land Records) Liber RF 9, 340-343.
[135] Deed (March 25, 1745), Talbot County (Land Records) Liber JL 16, 267-269, MSA.
[136] Deed (August 22, 1705), Talbot County (Land Records) Liber RF 9, 342.



Figure 3.3. Third Haven Meetinghouse in Easton, MD. This is the oldest surviving Quaker Meetinghouse in the US. George Fox and William Penn both worshipped with the Talbot County Friends in the 1670s. However, the congregation's rights to their property remained precarious under establishmentarian law.

Similarly, in 1723, Charles Ballard, a member of Manokin Presbyterian Church in Somerset County, Maryland, gave 300 acres of land "for the Support Maintenance and Continuance of a meeting house for the worship and Service of Almighty God according to the Presbyterian persuasion and for no other use whatever."[137] He conveyed the lands to the "present Pastor and Elders of above said congregation and their successors."[138] While Ballard's intention was for the land to be used only on behalf of the congregation, the unincorporated church did not

[137] Deed (September 2, 1723), Somerset County Court (Land Records) GH, 71-72, MSA.
[138] Deed (September 2, 1723), Somerset County Court (Land Records) GH, 72, MSA.

exist as a legal entity capable of holding property. Though he referred to the elders as a group, the deed technically vested the property in the nine elders and their Reverend Alexander Stewart as individuals. The deed referred to "successors," rather than "heirs," which suggested an attempt to bolster the congregation's legal claim over the property. However, without incorporation, the title remained vulnerable, and legal uncertainty cast a long shadow over these transactions.

While Maryland had longstanding non-Anglican communities, the non-conformist denominations in Virginia did not become populous or powerful until the 1750s.[139] Itinerant evangelical ministers travelled through the colony as the Great Awakening moved south, and Virginians began to leave the Anglican Church in greater numbers to join dissenting faiths. The rapidly changing religious make-up of Virginia posed new challenges to the legal establishment of Anglicanism. Despite the host of other legal penalties enacted against dissenters, Virginia never explicitly passed any version of a mortmain statute in the colonial era. Given the colony's small dissenting population for much of the eighteenth century, it may have never occurred to the Virginia Assembly to pass such a measure, or they may not have considered it necessary.

Despite the absence of a prohibitive statute, there were no incorporated dissenting churches in the Old Dominion. Instead, Virginia's dissenters relied on the same techniques that Maryland's Jesuits had been using for more than 100 years to hold property. Evangelical congregations vested all of their property in individual trustees. In Augusta County, the Presbyterian Congregation of Tinkling Spring vested property in a number of individuals named as "trustees" on its deed.[140] In Princess Anne County, the Baptist Meeting House of Princess

[139] For more of the rise of evangelicals in Virginia, see Rhys Isaac, *The Transformation of Virginia, 1740-1790* (Chapel Hill: University of North Carolina Press, 1982); Monica Najar, *Evangelizing the South: A Social History of Church and State in Early America* (New York: Oxford University Press, 2008); Jewel L. Spangler, *Virginians Reborn: Anglican Monopoly, Evangelical Dissent, and the Rise of the Baptists in the Late Eighteenth Century* (Charlottesville: University of Virginia Press, 2008).
[140] Augusta County, Deed Book 19, No. 1, 443-444, LVA.

Anne also placed lands in the hands of nearly a dozen trustees.[141] These transactions mimicked many of the ways that an incorporated church might have held property. The deeds mentioned the specific congregation and referred to individuals as if they were representatives of a perpetual, corporate body. But, despite attempting to emphasize that these lands belonged to the church as an institution, these transactions technically vested the title to property in specific individuals who lacked any form of a recognized, incorporated standing.

Issues over legal title would surface in the years to come. For example, in 1761, the Fincastle Presbyterian Church in Botetourt County came into possession of 80 acres of land known as the Meetinghouse Land. However, the congregation was unable to sell the property later because the church was not a corporate body and lacked any clear claim to the acreage.[142] Instead, it was the individuals named on the deed, and later their heirs, who actually held title. While the members of the congregation agreed that selling the land would prove a great "advantage," they were unable to proceed with the sale under the terms of their colonial deeds. Augusta Presbyterian Church also faced problems with the proving title to its property. A congregation worshipping in Virginia's Shenandoah Valley, they were "long since… possess'd of two small tracts of land upon which their house of worship is erected and their grave yard inclosed." However, "the legal Title of which Lands are still vested in particular Individuals" because the colonial church had not "a body corporate or known in law." They complained that "a conveyance to" a board of trustees "would only be a conveyance to individuals and subject to the same Inconveniences as heretofore." Without incorporation, there was no way to secure the congregation's property.[143]

[141] Princess Anne County, Deed Book 9, 509, LVA.
[142] Fincastle Presbyterian Congregation: Petition, Botetourt County, December 19,1805, LPDC, LVA.
[143] Members of the Augusta Presbyterian Church: Petition, Augusta County, December 10, 1805, LPDC, LVA.

The Virginia Assembly received its first ever petition for incorporation from a dissenting church in 1774 from the Peaks of Otter Presbyterian Church in Bedford County. Their petitions stated that, "many well disposed Persons of their community had made Contributions to which others are willing to add, for supporting their Clergy in a method more convenient than the ordinary one by subscriptions."[144] However, "the pious intentions of such benefactors cannot be effectually carried into execution, the elders of the Church not being incorporated, so as to be capable of taking care and holding lands and Slaves for the use of the minister." The petition suggests that the congregation had traditionally relied on a voluntary subscription system to support its minister but had decided it would be more "convenient" to replicate a glebe system in which the minister was supported from the labor of enslaved persons who worked on corporate property. They hoped that the "said Elders may be enabled to take and hold Lands and Slaves to such use, under proper Regulations." This appeal suggested no theological discomfort with the state's involvement in incorporation, nor did it suggest that the process improperly muddied the waters between secular and sacred authorities. Unfortunately for the congregation, the legislature was dissolved before it had responded either affirmatively or negatively to the church's request.

That the Virginia legislature received its first petition for incorporation from a dissenting group at the tail end of the colonial era underscored just how effective the colony's disestablishmentarian laws had been at dissuading dissenters from settling in the colony or from seeking legal rights. The timing is particularly striking when compared to other Anglican colonies. The New York and South Carolina legislatures had both received and rejected numerous petitions for incorporation from dissenting congregations throughout the eighteenth

[144] *Journals of the House of Burgesses of Virginia 1773-1776* (Richmond: 1905), 103.

century.[145] In Maryland, the legislature had settled the matter in the mid-seventeenth century by passing mortmain statutes. Virginia's growing community of dissenters was just beginning to encounter difficulties holding property without the security of legal incorporation.

Conclusion

On the eve of the Revolution, the legal landscape of religious establishment was inextricably linked to incorporation. Common law was an essential pillar of Anglican establishment. Parishes in Maryland and Virginia had benefited tremendously from the privileges and protection of customary incorporation. Vestries could buy and sell property, execute contracts and deeds, and secure their investments for future generations. Churchwardens could bring lawsuits to defend their assets and enforce their agreements. Non-conformists in the Chesapeake were excluded from these provisions. In Maryland, the Jesuits held extensive and valuable property, but their assets were legally vulnerable. In Virginia, dissenting faiths had begun to expand rapidly and had just begun chafing at their inability to incorporate in the colony.

The religious establishment's legal power was reflected in its corporate privileges and property. This legacy cast a long shadow over the relationship between church and state in the early republic, as we will see in the next two chapters. The urgency of debates over incorporation after the Revolution, which will be explored in Chapter 4, and the fights over church property, which will be explored in Chapters 5, would reflect just how powerful of a tool incorporation had been for the colonial established church.

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[145] Dignan provides examples of requests for incorporation from Presbyterian, Congregational, Huguenot, and Lutheran congregations all being rejected. The only non-Anglican denomination able to incorporate in New York was the Dutch Reformed Church. See Patrick J. Dignan, *History of the Legal Incorporation of Catholic Church Property in the United States, 1784-1932* (New York, P. J. Kenedy & sons, 1935), 27-30. Susanna Linsley's dissertation helpfully discusses how incorporation was an important privilege of the Anglican establishment in her dissertation about New York and Charleston. See Linsley, "The American Reformation: The Politics of Religious Liberty, Charleston and New York 1770-1830," (Ph.D. diss., the University of Michigan, 2012), 37-50.

INTERLUDE

Overthrowing Priestcraft and Monarchy

For Americans writing in the decades after independence, the downfall of the established church seemed like an essential and inevitable outcome of the Revolution. Writing a history of Virginia's Baptists in 1810, Baptist minister Robert Semple recollected that as "republican principles had gained much ground… the leading men on that side, viewed the established clergy, and the established religion, as inseparable appendages of Monarchy."[1] In Semple's narrative, patriots targeted established religion because it was fundamentally monarchical. A revolution against the King was a war against the established church of which he was the head. A patriotic song written in Washington County, Maryland for a July 4th celebration in 1804 recalled "In sev'nty-six, those men declared, Our Independence dear, Kingcraft and Priestcraft too they dared, Not knew, nor felt a fear."[2] The song closed with a celebration of the accomplishment of "the objects so much prized, Just Rights and Equal Laws."[3] During Jefferson's second term as president, Marylanders and Virginians alike celebrated his stand against "monarchy and priestcraft, commanders in the armies of error," again invoking the two as inextricably linked.[4] Revolting against the King had meant overthrowing the head of the Anglican Church. To cast off monarchy was to reject the foundation of the established church.

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[1] Robert Baylor Semple, *A History of the Rise and Progress of the Baptists in Virginia* (Richmond: 1810), 26-27.
[2] July 4, 1804, *Maryland Herald and Hagers Town Weekly Advertiser.*
[3] Ibid.
[4] December 3, 1805, *The Enquirer* (Richmond); January 8, 1806, A*merican and Commercial Daily Advertiser*, (Baltimore).

But it was not just the colonies' former established church, the Church of England, that had fallen victim to the Revolution. The broader legal framework of any "religious establishment" that knit together spiritual and civil authority in public institutions also came under attack. A Virginian writing in the midst of the Revolution declared, "America is now threatened with every kind of slavery: Is doomed both to civil and religious bondage at once."[1] Writing in the 1790s, a group of Virginians declared, "an established religion is the bane of social government; and calculated for the policy of monarchal despotisms only; The impositions of kingcraft and priestcraft, have cherr'ished and supported each other."[2] Independence had freed Virginians from "the burthens of sinecures and benefices, but also from biggotry and superstition." They declared that "the control, and tyranny of the British government" had supported a "policy… to enslave the mind of Man in ignorance and superstition." After independence, "the said establishment ceased to exist…being sinfull, tyranical, and incompatable with the natural rights of Man" and "the true principles of republicanism." From this perspective, any system of established religion that imposed doctrine from on high and circumscribed individual liberties was incompatible with the natural rights framework on which the new republic had been built.

Marylanders employed similar rhetoric. A writer identified only as "A Methodist" contrasted the new "civil and religious liberty" in Maryland to its colonial past and criticized the system still in place in "those countries" where "the church of Christ has been defiled by, and made subservient to, the dominion of the civil magistracy. Imperfect human law has impiously

[1] Anonymous, **"**The freeman's remonstrance against an ecclesiastical establishment: being some remarks on a late pamphlet, entitled The necessity of an established church in any state," (Williamsburg: Va. John Dixon and William Hunter, 1777), 1.
[2] Parishioners of King William Parish: Petition, Powhatan County, November 24, 1795, Legislative Petitions Digital Collection, Library of Virginia, available online at available online at http://www.virginiamemory.com/collections/petitions [Hereafter LPDC, LVA].

taken the guidance of spiritual concerns."[3] Maryland's Constitution had guaranteed that "every man has the liberty 'to worship God in such way as he thinks most acceptable to him'" and therefore guarded against any "wicked design… to impose *an established Church on Maryland."*[4] An established church did not only hamper the rights of individuals but ultimately hurt the cause of Christianity. Even without consciously calling attention to it, these writers all offered ideological arguments against any religious establishment, not just opposition to the Church of England.

While Virginians and Marylanders agreed in hindsight that the Revolution had toppled religious establishment and secured equal rights, such a prospect was not foreordained at the outset of independence, nor even clear by the conclusion of the war. Popular foment against the church had intensified on the eve of the Revolution in both colonies. The Great Awakening had posed a fundamental challenge to the power of the establishment as evangelicalism spread across the Chesapeake, and the number of dissenters increased rapidly in both colonies. Tensions over funding the church had boiled over in full-blown legal challenges to the Two-Penny Act in Virginia (1758) and the Tobacco Tax in Maryland (1773).[5] The fluctuation in tobacco prices had sparked these political crises, and they exposed growing frustration with the parish levying system from outside and within the Anglican fold. There were heated debates about the proposal to create an American Episcopate.[6] Dissenters and Anglicans alike agreed that the establishment was in need of serious intervention.

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[3] August 22, 1809, *Republican Star* (Easton, Maryland).
[4] Ibid.
[5] For more on the Tobacco Inspection Act, see Carol Van Voorst, "The Anglican Clergy in Maryland, 1692-1776," (Ph.D. diss., Princeton University, 1978), 87-97. For more on the Two-Penny Act, see Jon Kukla, "New Light on the Parsons' Cause in Colonial Virginia," *Anglican and Episcopal History*, 86, No. 4 (December 2017), 367-395.
[6] For two thorough discussions of the episcopate controversy, see Frederick V. Mills, *Bishops by Ballot: An Eighteenth-century Ecclesiastical Revolution* (New York: Oxford University Press, 1978); Carl Bridenbaugh, *Mitre and Sceptre: Transatlantic Faiths, Ideas, Personalities, and Politics* (New York: Oxford University Press, 1962).

Both states would remove the Anglican Church from its privileged legal position during and after the Revolution, a process which one observer would later remember as the "great revolution in church and state."[7] However, Maryland and Virginia enacted different policies in pursuit of religious freedom. Their divergent paths only make sense in light of the extensive property and specific powers enshrined by law discussed in Part I. While Marylanders in the 1780s heralded their new "equal Rights & privileges" which made all Christians equal in the state "by the Constitution," Virginia's dissenters remained convinced that the state was not living up to its promise of religious freedom. They called for a ban on religious incorporation and the seizure of all parish property. Virginia's protracted conflict over property, rights, and state power ultimately cemented a more radical definition of "establishment" in law.

Part II of this dissertation explores the post-revolutionary dismantling of the Anglican establishment. Chapter 4 follows the issue of incorporation in both states. Longstanding differences between the colonies' parish systems and their distinct religious demographics explain why Maryland eagerly embraced incorporation while Virginia rejected it. Indeed, the hostility of Virginia's disestablishment did not end with incorporation. Chapter 5 considers the political fight over the parish property, which ultimately led Virginia to confiscate all glebes across the state in 1802, as well as the state and federal courts' reactions to Virginia's policies. Chapter 6 explores what happened to that seized property, which included tens of thousands of acres, scores of enslaved people, as well as churches, chapels, furnishings, and liturgical objects. Chapter 7 looks at how communities repurposed parish resources in the early nineteenth century.

[7] Inhabitants on the South Side of the Nansemond River: Petition, Nansemond County, December 21, 1802, LPDC, LVA.

PART II

"A great revolution in church as well as in state": The Early National Chesapeake

CHAPTER 4

All Roads Lead to Disestablishment?

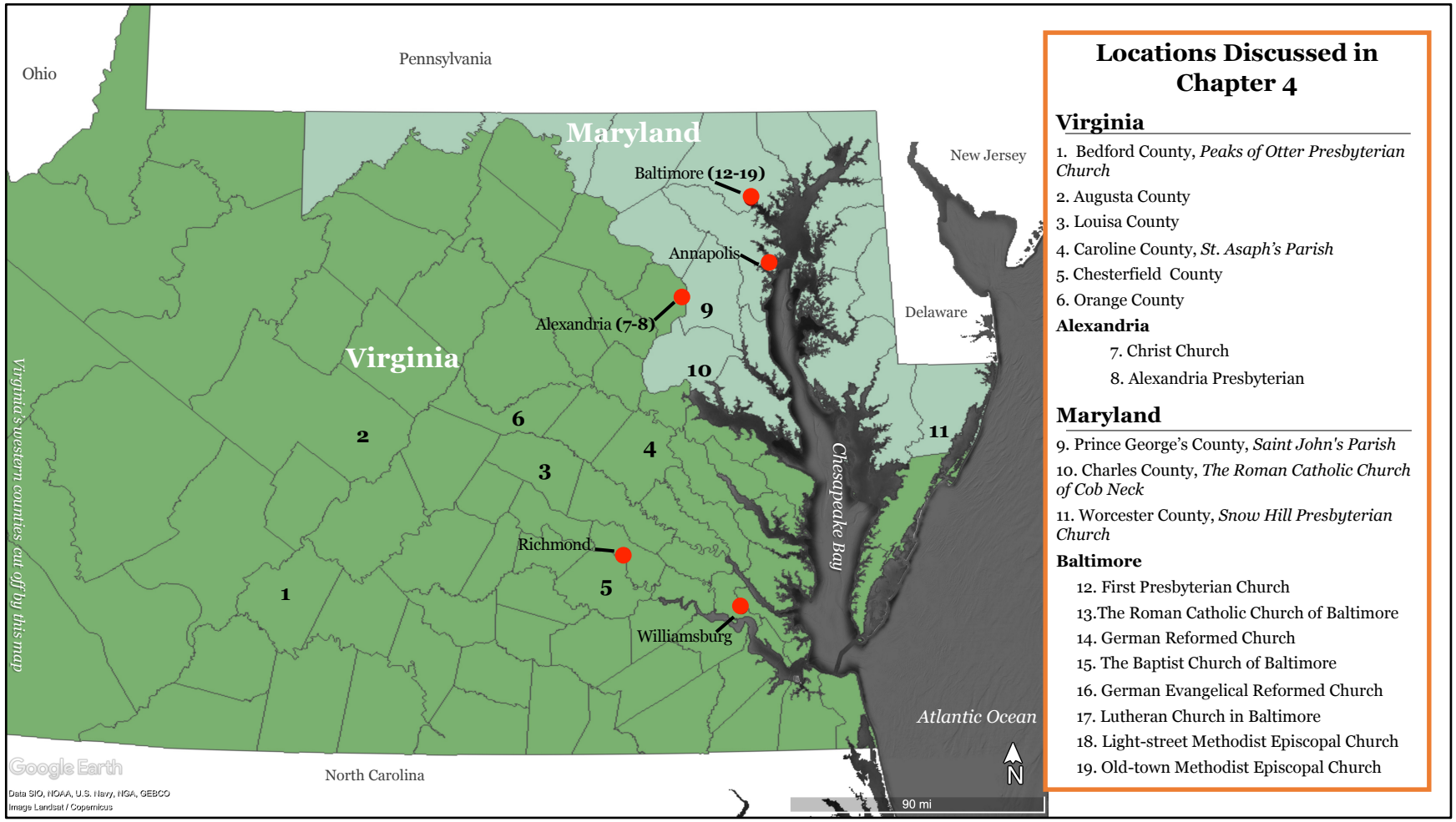


Figure 4.1. Map of locations discussed in Chapter 4. Map created by Alyssa Penick using data from the *Atlas of Historical County Boundaries*, The Newberry Library, last accessed May 15, 2020, https://publications.newberry.org/ahcbp/index.html.

There had been a time, when [the Dissenters] would have been satisfied, to have paid their tithes, if they had liberty of conscience; but now… nothing less than a total overthrow of all ecclesiastical distinctions, would satisfy their sanguine hopes. Having started the decaying edifice, every dissenter put to his shoulder, to push it into irretrievable ruin

The people, having once shaken off their fetters, would not again permit themselves to be bound.

--Robert Baylor Semple, 1810[1]

Pulling down the Church

During the American Revolution, dissenting Protestants and Catholics joined liberal political thinkers across the Chesapeake to call for the established church to be "broken," "overthrown," "pulled down," "abolished," and "justly exploded."[2] These descriptions of material destruction communicated the urgency of their demands to reform the relationship between church and state. The physicality of this language – breaking, tearing pulling down, pushing – recalled the iconoclasm of past religious struggles and allegorically tied disestablishment to the Henrician Reformation and the English Civil Wars.[3]

Many reformers also turned to enslavement as a metaphor for religious establishment. They called on the legislature to "relieve us from our long night of ecclesiastical bondage" and declared "having long groaned under the Burden of an ecclesiastical Establishment, [we] beg… every other yoke may be broken, and that 'the oppressed may go free.'"[4] Looking back on the struggle only a few years later, John Carroll, a member of one of Maryland's most prominent

[1] Robert Baylor Semple, *A History of the Rise and Progress of the Baptists in Virginia* (Richmond: 1810), 26-27.
[2] H.J. Eckenrode was the state librarian of Virginian and reproduced many of the legislative petitions about disestablishment in his published volume on the topic. Eckenrode, *Separation of Church and State in Virginia* (Richmond: 1910), 46,47, 77, 123.
[3] I draw broadly on the work of Eamon Duffy, *The Stripping of the Altars: Traditional Religion in England, c. 1400– c. 1580* (New Haven, Conn.: Yale University Press, 1992). For other discussions of material violence in early America and during the Revolution see, Brendan McConville, *The King's Three Faces: The Rise and Fall of Royal America, 1688–1776* (Chapel Hill: University of North Carolina Press, 2006); Susan Juster, *Sacred Violence in Early America* (Philadelphia: The University of Pennsylvania Press, 2015).
[4] Inhabitants: Petition, Prince Edward County, October 10, 1776, LPDC, LVA.

families who would become the first Catholic Archbishop in new United States, celebrated having fought "with might and main" against "the lash of an established church."[5] Virginian Baptist minister Robert Semple described his fellow dissenters as having "shaken off their fetters," never to be "bound again." White Americans used the language of bondage throughout the Revolution to characterize their struggle against the Crown.[6] Slavery was a potent metaphor in the Chesapeake because of the utter familiarity of the institution.[7] The continuity of this symbolic language after the war to frame a new set of demands about religious freedom underscored that dismantling the established church extended their revolutionary fight for liberty to the realm of religion. Of course, these calls to end the metaphorical enslavement of white non-conformists in the Chesapeake did not insist on individual liberties for black Americans.

The widespread reliance on allegory to articulate demands for dismantling the established church reveals another important fact – Americans during and after the Revolution lacked a term or concept to articulate their goal. The revolutionary generation had to rely on metaphor because they had no single word for what they hoped to achieve. Reformers in both Maryland and Virginia also expressed their desire to affirmatively "establish religious freedom." They spoke of their ambitions in the familiar language of "establishment" but sought to invert its meaning by using state power to protect religious freedom, rather than to enforce orthodoxy.

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[5] Inhabitants: Petition, Prince Edward County, October 10, 1776, LPDC, LVA; John Carroll to Charles Plowden, 27 February 1785, in *The John Carroll Papers*, ed., Hanley, 1:168.

[6] Bernard Bailyn, Ideological Origins of the American Revolution (Cambridge, MA: Harvard University Press, 1992), 231-32; Edmund Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: Norton, 1975), 376; Peter A. Dorsey, "To 'Corroborate Our Own Claims': Public Positioning and the Slavery Metaphor in Revolutionary America," *American Quarterly*, 55 (2003), 353-386; David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770-1823* (Ithaca, N.Y.: Cornell Univ. Press, 1975), 39-40, 263, 560-564.

[7] Okoye argued that it was not only a familiar institution but horrifying prospect and the worst "nightmare" of white Americans. F. Nwabueze Okoye, "Chattel Slavery as the Nightmare of the American Revolutionaries," *William and Mary Quarterly*, 3rd ser., 37 (1980): 12.s

Despite a vocal commitment to dismantling the Anglican Church and their use of nearly identical language to express their demands, Marylanders and Virginians diverged sharply in the specific policies they enacted in pursuit of religious freedom.[8] I offer a revised approach to disestablishment by focusing on why and how the two states came to hold divergent understandings of what constituted an "establishment" of religion. In Maryland, Catholics and non-Anglican Protestants were worried that the promises of religious freedom would remain tenuous and revocable until they had secured their property through incorporation. They pursued and eventually won a general act of incorporation for all churches in the state. Meanwhile, Virginia's evangelical communities, particularly its Baptists, angrily protested the state's 1784 Act of Incorporation, which chartered the Protestant Episcopal Church and secured parishes' claims to all colonial property. The movement to repeal this law spawned a broader ideological objection to any form of religious incorporation among Virginians. The security and protection of property rights under incorporation appeared either dangerous or attractive depending on whether or not a denomination held valuable property.

Only by studying the two states' debates over incorporation side by side can we see how Maryland and Virginia came to cement fundamentally inconsistent definitions of "religious establishment" into law. These debates shaped not only events in the two states but also carried important implications for the meaning of "establishment" in the First Amendment of the Bills of Rights.

[8] Sarah Barringer Gordon, "The First Disestablishment: Limits on Church Power and Property Before the Civil War," *University of Pennsylvania Law Review* 162 (2014): 316-324; The African Supplement: Religion, Race, and Corporate Law in Early National America," *William and Mary Quarterly,* 3rd ser., 72 (2015): 385-422.

Defining Disestablishment

Historians automatically reach for the phrase "disestablishment" to describe the dismantling of the Anglican church after the Revolution.[9] But this term was not used by contemporaries, who relied on metaphors to express their demands or instead spoke of "establishing religious freedom." The first recorded instance of the phrase dates to the early nineteenth century, but it did not enter popular usage until after the 1860s.[10] The term disestablishment does not appear in any of the legislative acts passed by Virginia or Maryland in the period from 1776-1810. Newspapers printed in Maryland and Virginia in the 1780s did not employ the term disestablishment to describe the rapid repeal of colonial statutes that had granted exclusive power to the church or the passage of new laws extending greater rights to non-Anglican citizens. Despite often being credited as the architects of Virginia's disestablishment, neither James Madison nor Thomas Jefferson ever used any form of the word "disestablish" in their correspondence or notes.[11] Perhaps the closest Jefferson came was writing about his hope that, "the establishment of the Church of England by law in this Commonwealth [would] be discontinued," while Madison described the movement as having sought to "pull down" the religious establishment.[12] Maryland's champions for religious freedom, including

[9] This term is still valuable for scholars. I continue to use "disestablishment" in my analysis but do so with the recognition that it was not a phrase employed by revolutionary Americans.
[10] The phrase gained popularity during the 1860s in the midst of the debates over the Church of Scotland in the U.K. *Oxford English Dictionary Online,* c.v. "disestablishment," accessed Sept. 2019.
[11] The editors of Jefferson's and Madison's papers both used the word "disestablishment" throughout their editions. However, the sources themselves never include this term. For example, the editors entitled a document "Rough Draft of Jefferson's Resolutions for Disestablishing the Church of England and for Repealing Laws Interfering with Freedom of Worship," though the word disestablish appears nowhere in the document. It is essential to recognized that contemporaries lacked the term "disestablishment" to characterize the legal rupture of attempting to remove the Anglican Church from a position of exclusive state privileges. "I. Rough Draft of Jefferson's Resolutions for Disestablishing the Church of England and for Repealing Laws Interfering with Freedom of Worship, [before 19 November 1776]," *Founders Online,* National Archives, accessed September 29, 2019, https://founders.archives.gov/documents/Jefferson/01-01-02-0222-0002.
[12] "I. Rough Draft of Jefferson's Resolutions for Disestablishing the Church of England… [before 19 November 1776]," *Founders Online;* "From James Madison to James Monroe, 12 April 1785," *Founders Online,* National Archives, accessed September 29, 2019, https://founders.archives.gov/documents/Madison/01-08-02-0141.

Catholic John Carroll and Presbyterian Patrick Allison, also relied on metaphor to describe their goals.

Disestablishment was not a clearly defined concept in 1776, and reformers did not possess a roadmap for the process. Instead, non-conformists and their political allies moved to redress longstanding grievances law by law. In both Chesapeake states, specific colonial statutes were overturned – parochial taxation; restrictions on non-Anglicans' political and legal rights; prohibitions against certain religious practices; laws regulating marriage and empowering vestries. New proposals for a general tax or some form of non-sectarian Christian establishment were considered and rejected. Through their piecemeal efforts, reformers came to revise and refine their understanding of the proper relationship between church and state. The processual nature of disestablishment helps explain the myriad shortcomings and inconsistencies of revolutionary disestablishment, as highlighted by recent scholarship.[13]

Contemporaries may not have spoken of "disestablishment" but they did call for the "establishment of religious freedom." John Carroll wrote in 1785 that "as soon as the laws of England were abrogated, freedom of religion was established" in his home state.[14] Jefferson drafted a "Bill for Establishing Religious Freedom," in the 1770s and Madison would secure its passage in 1786. By borrowing the terminology of an "establishment," Carroll, Madison, Jefferson, and other advocates underscored their aspiration to build a new framework of laws that would bolster freedom for all religious groups. Reformers employed the traditional phrase but inverted its aim; they would pass laws to ensure religious freedom rather than to privilege the state-sponsored church. The stated goal of establishing religious freedom called the use of state

[13] For two recent studies that highlighted the shortcomings of post-Revolutionary disestablishment, see David Sehat, *The Myth of American Religious Freedom (*New York: Oxford University Press, 2011)*;* Steven Green, *The Second Disestablishment* (New York: Oxford University Press, 2010).
[14] John Carroll to Cardinal Antonelli, 13 March 1786, in *The John Carroll Papers*, ed., Hanley, 1:208.

power to enforce religious freedom, which did not necessarily mean that government and religion would be separate.

An extensive body of excellent scholarship has detailed the progress and significance of disestablishmentarian legislation in Virginia, but scholars have largely overlooked disestablishment in Maryland.[15] This tendency is part of a wider pattern in general narratives of the American Revolution to discuss the Virginian example of disestablishment in detail alongside a laundry list of dates when other states secured disestablishment.[16] Though influential in historical and legal scholarship, this narrative of disestablishment is problematic for several reasons. First, any attempt to provide a single date for a state's disestablishment misrepresents a meandering process as a single event. Just as there was no single act that established the Anglican Church in either colony, there was no single act that disestablished religion in either state. Second, accounts of disestablishment often employ different markers to pinpoint when disestablishment was secured but do not always use the same criteria from state to state.[17] By certain definitions of disestablishment used in the literature about Virginia, Maryland has never

[15] Thomas Curry provides one of the best comparative accounts of the two states' disestablishments. Curry, *The First Freedoms* (New York: Oxford University Press, 1987), 134-158. More recently, the comp

[16] For example, Frederick V. Mills, "Disestablishment," *Encyclopedia of Religion in the South*, ed. by Samuel S. Hill and Charles H. Lippy, 2nd ed., 260-261. For some examples in Supreme Court jurisprudence, see *Everson v. Board of Education*, 330 U.S. 1 (1947), 11-14. The case lays out Virginia's history in detail and then only points to differences in other states in a footnote.

[17] For example, Frederick V. Mills dates disestablishment in Maryland to 1776 and in Virginia to 1786. In choosing these dates, Mills is presumably pointing to the passage of the Maryland Declaration, which ended the compulsory system of parochial taxation that supported the established church, in 1776. In Virginia, though, he chooses 1786, the year in which the legislature rejected the General Assessment plan, repealed the incorporation of the Protestant Episcopal Church, and passed the Statute for Establishing Religious Freedom. Virginia had revoked parishes' ability to levy taxes for ministerial salaries in 1776 on a temporary basis and then enacted the provision on a permanent basis in 1779. And, while Maryland rejected a general assessment plan in 1785, it was not until 1809 that the legislature formally amended its state constitution to prevent the state from levying religious taxes. Thus, Mills could have chosen numerous dates for disestablishment in both of the states, depending on the specific definition of disestablishment:1776, 1785, or 1809 in Maryland; 1776, 1779, or 1786 in Virginia. It is essential for scholars not to pre-suppose the meaning of disestablishment but to specify specifically how they are defining the term in their narratives and for the field more generally to move toward consensus about which markers denote disestablishment. Mills, "Disestablishment," *Encyclopedia of Religion* in the South, 260-261.

fully disestablished its Anglican Church.[18] Finally, stating that Maryland disestablished the Anglican Church in 1785 and Virginia disestablished the Anglican Church in 1786 gives the impression that the states enacted the same policies, simply a few years apart. Looking at events on the ground reveals contradictory laws and the absence of any coherent or agreed upon definition of disestablishment between the states.

Declaring Fundamental Rights

Perhaps it is not surprising that Virginia and Maryland developed incompatible definitions of religious establishment given how differently they framed their initial goals for reforming the relationship between religion and government at the outset of the Revolution. In 1776, both Maryland and Virginia declared independence from the English Crown. The legislatures of both newly independent colonies passed Constitutions and Declarations of Rights that served as important platforms to initiate religious disestablishment. These early documents reveal that the two states envisaged different ends.

George Mason was the principal author of Virginia's 1776 Declaration of Rights, which began by stating that "all men are by nature equally free and independent and have certain inherent rights," which included life, liberty, property, and the pursuit of happiness.[19] The text

[18] Sidney Ahlstrom argued that only a basic form of disestablishment had been achieved in 1786 in in Virginia; he argued a complete disestablishment of the Anglican Church was not realized until 1799 when the legislature finally stripped parishes" of their customary public or landed support," by beginning the process of confiscating church glebes. For Ahlstrom, the legislature's law claiming the power to confiscate parish property constituted true disestablishment of religion. By Ahlstrom's definition, Maryland has never fully disestablished the Anglican Church because the state preserved all of the church's property. Sidney Ahlstrom, *A Religious History of the American People,* Second Edition (New Haven: Yale University Press, 2004), 369. Thomas Curry emphasizes that Maryland's disestablishment only went so far as to make Christian groups equal and that the state retained religious tests until the twentieth century. See, Curry, *First Freedoms*, 158.

[19] Virginia Declaration of Rights of 1776, Section 1. For more on Mason's role in drafting the Declaration of rights and his role in debates over religious liberty in Virginia, see Daniel L. Dreisbach, "George Mason's Pursuit of Religious Liberty in Revolutionary Virginia," *The Virginia Magazine of History and Biography*, Vol. 108, No. 1 (2000), pp. 2+5-44.

reaffirmed numerous procedural rights and political rights of Englishmen, drawing on centuries of constitutional evolution from the Magna Carta to the English Bill of Rights. However, he also defended the state's revolutionary struggle by making popular sovereignty the highest law of government, namely "that all power is vested in, and consequently derived from, the people."[20] Upon the failure of a government to heed the will of the people, they held their "indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal."[21]

The document ended with a radical break from Virginia's colonial past in Article 16, which declared, "that religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise Christian forbearance, love, and charity toward each other."[22] While this framework of free exercise characterized certain civic virtues as "Christian," its sweeping language endorsed a robust version of free exercise that protected all religions. Virginia's embrace of a fundamental right to free exercise rejected the colonial model of establishment, which had so recently prosecuted religious dissent and mandated adherence to the established church as a qualification for full participation in government. Moreover, Mason explicitly stated that force and violence were futile to command religious convictions, and, by extension, the state should have no power to employ either force or violence to compel religious belief or practice. Thus, the Virginia Declaration of Rights undercut the ideological framework of establishment.

[20]Virginia Declaration of Rights of 1776, Section 2.
[21]Virginia Declaration of Rights of 1776, Section 3.
[22]Virginia Declaration of Rights of 1776, Section 16.

Maryland's Declaration of Rights lacked both the eloquence and the transcendence of Mason's text but included more specifics about the immediate task of dismantling the established Anglican Church. Maryland ratified its Constitution, which included its Declaration of Rights, in the fall of 1776. The document offered a qualified protection of free exercise but also began the project of disestablishment in earnest by stripping the Anglican Church of numerous longstanding privileges and powers. Maryland's Declaration of Rights included forty-two articles, four of which explicitly concerned the relationship between religion and government. Article 33 declared:

> That, as it is the duty of every man to worship God in such manner as he thinks most acceptable to him; all persons, professing the Christian religion, are equally entitled to protection in their religious liberty; wherefore no person ought by any law to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice; unless, under colour of religion, any man shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others, in their natural, civil, or religious rights; nor ought any person to be compelled to frequent or maintain, or contribute, unless on contract, to maintain any particular place of worship, or any particular ministry; yet the Legislature may, in their discretion, lay a general and equal tax for the support of the Christian religion.[23]

Maryland's constitutional framework lacked the sweeping ideological commitment of Virginia's draft to separating religious belonging from political rights. Article 33 carved out some space for the state to censure immorality and to police religious practices deemed as "disturb[ing] the good order." The bulky and qualified language of this provision stands in immediate contrast to the far-reaching scope of Virginia's Declaration. The Maryland text invoked God, rather than the more universal "Creator" of Mason's version.[24]

Moreover, the document laid out a version of religious freedom that extended only to Christians. In Articles 35 and 36, the state ended the system of religious tests that had barred

[23] Maryland Declaration of Rights, and the Constitution and Form of Government of 1776, Art. 33.
[24] Virginia Declaration of Rights, Section 16.

Catholics from voting and officeholding; however, the state still required "a declaration of a belief in the Christian religion" for "admission to any office of trust or profit."[25] Together, Articles 33, 35, and 36 set out a highly qualified version of free exercise that still required adherence to Christianity for full civic rights and religious freedom. These provisions may have satisfied the longstanding grievances of Catholic and Quaker communities by placing all denominations of Christianity on par with Anglicanism but also explicitly excluded the growing Jewish community in Baltimore from all of its protections.[26]

Unlike Virginia's broad and ideologically framed Declaration, Maryland's Articles 33 and 34 included a number of specific provisions that began to dismantle the exclusive status of the Anglican Church. The Anglican Church would no longer have any special relationship with the government, but parishes were able to retain all of their real and personal property. Baking this provision into the new Constitution made it much harder for Marylanders to seek the confiscation of parish property in later decades. The legislature maintained the power to impose a "general tax" that would support the Christian denomination of the individual's choosing. The state government also invoked the right to regulate the property transactions of all denominations, much in the way it had always overseen the property of Anglican churches. The legislature required that any "gift, sale, or devise of lands, to any minister, public teacher, or preacher of the gospel, as such, or to any religious sect," exceeding two acres required legislative permission.[27] From the outset, Maryland's legislature took on an active role to superintend religious denominations.

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[25] Maryland Declaration of Rights, Art. 35 and Art. 36.
[26] See Edward Eitches, "Maryland's "Jew Bill," *American Jewish Historical Quarterly* 60 (1971): 260-1.
[27] Maryland, Declaration of Right, Art. 34. It was common for states to restrict the amount of property held by religious societies. See Gordon, "The First Disestablishment: Limits on Church Power and Property Before the Civil War," 312; 323.

Maryland's Declaration went further than Virginia's had in laying out a specific plan to reform the relationship between the Anglican Church and the legislature, but it did not fundamentally separate religion from government. Virginia's sweeping statements noticeably used the broadest possible terms to protect "religion," rather than specifically referring to Christians, and the state implemented policies in terms that actively protected the rights of non-Christians. Maryland, on the other hand, restricted the political rights of non-Christians, specifically barring Jewish citizens from holding office or becoming barred in the state by requiring all public officials to swear an oath to "his belief in the Christian Religion."[28]

Different understandings of what constituted religious establishment underlay these plans. In Virginia, there was a commitment not only to dislodging the Anglican Church from its exclusive status but also to guaranteeing distance between government and religion. In Maryland, these reforms focused on levelling the playing field for all Christian denominations in the state and undertook active steps to strip the former establishment of its legal privileges.

Dismantling the Establishment

In the wake of these revolutionary Declarations, both states passed a series of laws to disestablish the Anglican Church, although the movement proceeded in fits and starts. Maryland had suspended the collection of parish levies in its Declaration of Rights. Virginia revoked

[28] Maryland's Constitution states, "That every person, appointed to any office of profit or trust, shall, before he enters on the execution thereof, take the following oath; to wit :-" I, A. B., do swear, that I do not hold myself bound in allegiance to the King of Great Britain, and that I will be faithful, and bear true allegiance to the State of Maryland; " and shall also subscribe a declaration of his belief in the Christian religion." Maryland Constitution of 1776, Art. 55.

parishes' ability to levy taxes for ministerial salaries in 1776 on a temporary basis and then enacted the provision on a permanent basis in 1779.[29] During the course of the war, both states extended a number of legal privileges to non-Anglicans. In the mid-1780s, both Maryland and Virginia would debate imposing a general assessment plan, which would have provided non-denominational support to "teachers of the Christian religion" by allowing taxpayers to select which church or school they wanted to fund. Ultimately, both Maryland and Virginia rejected the proposed plans for a general assessment in support of religion after heated public debates.

The Chesapeake states parted ways over the questions of incorporation and church property beginning in the 1780s. These issues were inextricably linked for those who had lived under the established church. The legal power of the Anglican establishment had been expressed and reinforced through its control of property. Raising the annual levy and collecting fines allowed parishes to extract resources from the community and accrue wealth. Incorporation facilitated the secure transfer and management of Anglican parish property, whereas religious non-conformists struggled to hold their assets without the benefit of incorporation. This legacy cast a long shadow over debates about religious incorporation during disestablishment.

Prohibiting religious incorporation became as important to Virginia's evangelicals as securing incorporation did to Maryland's Catholics. The prospect of incorporation looked far less appealing to denominations like the Baptists without much property than it did to Catholics, who were eager to finally secure their significant assets. The wealth of Maryland's colonial Catholics and the relative poverty of Virginia's Baptists, as well as the material theology of both groups, shaped their legal campaigns during disestablishment.

[29] Hening, 9:165-6; Hening 10:288-9.

This divergence serves as an important reminder that the two states' processes of disestablishment were distinct from one another. The post-revolutionary debates over disestablishment were inward-looking and insulated. Virginians did not look to Maryland, nor did Marylanders look to Virginia. [30] The siloed nature of these developments may seem surprising given their many parallels, but it was the natural by-product the engrained localism of Anglican religious culture in which colonists experienced religious establishment through their local parishes under their colony's laws. Episcopalians in the two states rarely coordinated. Moreover, their separateness stemmed from the distinct non-conforming populations in either state. Virginia's Baptists were the most outspoken advocates for disestablishment and pursued more radical policies that went beyond the demands of either other evangelicals or liberal allies. There were fewer Baptists in Maryland, however, to carry out the same proposals.[31] Maryland's Catholics, wealthy but anxious of losing ground so recently won, took a more cautious approach.

Maryland's Embrace of Incorporation

Maryland's Catholic community celebrated the disestablishmentarian bent of the Declaration of Rights, which signaled a serious blow to the legal regime of the Anglican establishment. John Carroll, born to one of Maryland's leading Catholic families, was outspoken supporter of the American Revolution.[32] A Jesuit priest, Carroll would go on to become the first

[30] William G. Mcloughlin, "The Role of Religion in the Revolution: Liberty of Conscience and Cultural Cohesion in the New Nation," in *Essays on the American Revolution*, ed. by Stephen G. Kurtz and James H. Hutson (New York: Norton, 1973), 222-3.
[31] Albert Warwick Werline, *Problems of church and state in Maryland during the seventeenth and eighteenth centuries* (South Lancaster, Mass., College Press, 1948),182.
[32] Though Carroll wrote extensively about religious in the republic, he has been left out of numerous accounts of religious freedom at the founding. See Frank Lambert, *The Founding Fathers and the Place of Religion in America* (Princeton, New Jersey: Princeton University Press, 2003); Philip Hamburger, Separation of Church and State (Cambridge: Harvard University Press, 2002). For two excellent discussions of John Carroll, see Catherine O'Donnell, "John Carroll and the Origins of an American Catholic Church, 1783-1815," *The William and Mary Quarterly,* Third Series, 68 (2011): 101- 126; Nicholas Pellegrino, "Reviving a Spirit of Controversy: Roman

Catholic Bishop and Archbishop in the United States. In the 1780s, he wrote in glowing terms about the new freedom for Catholics under Maryland's Declaration of Rights. In one letter still brimming with Revolutionary fervor, Carroll declared, "now that the English yoke has been thrown off, and new laws have been passed in all the States, Catholics are able to live in completely safety and can practice their religion."[33] While lauding the expansion of liberty across the US broadly, Carroll emphasized the specific provisions of the Maryland Constitution. He explained in another letter to a Catholic missionary in Philadelphia, "our Religion has acquired equal Rights & privilege with that of other Christians" in the state.[34] Writing to a Catholic priest in England, he expounded that "in our new Constitution, it is fixed as a matter of natural justice, that every person has a right to worship Alm. God in that religious mode or form which his conscience dictates, as most agreeable to the divine will: that no person shall be compelled to support any minister, or form of worship, which he does not approve."[35] Carroll hoped that the "deep hatred and suspicion" towards Catholics was "lessning and thus our affairs can be made secure."[36]

Though Carroll believed that the Maryland Declaration marked the dawn of religious equality for Catholics in the state, he remained wary that these newfound gains could yet be lost. While Catholics had come to "enjoy the same rights as other citizens," he wondered just "how long we shall continue to have these benefits" as "many of our people, especially in Maryland, fear that there is a desire among non-Catholics to exclude us altogether from holding office."[37]

Catholics and the Pursuit of Religious Freedom in Early America," Ph.D. Dissertation, University of Nevada, Las Vegas 2015, 349-310.

[33] John Carroll to Cardinal Antonelli, February 27, 1785, in *The John Carroll Papers*, ed., Thomas O'Brien Hanley (Notre Dame: University of Notre Dame Press, 1976), 3 vols., 1:170.

[34] John Carroll to Ferdinand Farmer, December 1784, in *The John Carroll Papers*, ed., Hanley, 1: 156.

[35] John Carroll to Charles Plowden, February 27, 1785, in *The John Carroll Papers*, ed., Hanley, vol., 168.

[36] John Carroll to Cardinal Antonelli, February 27, 1785, in *The John Carroll Papers*, ed., Hanley, 1: 172.

[37] John Carroll to Cardinal Antonelli, February 27, 1785, in *The John Carroll Papers*, ed., Hanley, 1: 170-171.

Carroll viewed the proposal for a general assessment in 1785 as a devious and poorly-disguised attempt to reinstate the established church. He described the "warm controversy" in a letter to his life-long friend and confidant, Rev. Charles Plowden, S.J.[38] If the law had been "truly formed upon the principle of the Constitution, we R.C. should have no very great objection to it: but from certain clauses in it, and other circumstances, we, as well as the Presbyterians, Methodists, Quakers, and Anabaptists are induced to believe, that it is calculated to create a predominant and irresistible influence in favour of the Protestant Episcopal Church."[39] Carroll reflected, "We have all smarted heretofore under the lash of an established church and shall therefore [be] on our guard against every approach towards it."[40] The plan for general assessment and the uncertainty over whether legal penalties would be reinstated against Catholics led Carroll to remain guarded about whether disestablishment would deliver all that it had promised.

[38] John Carroll to Charles Plowden, February 27, 1785, in *The John Carroll Papers*, ed., Hanley, 1: 168.
[39] John Carroll to Charles Plowden, February 27, 1785, in *The John Carroll Papers*, ed., Hanley, 1: 168.
[40] John Carroll to Charles Plowden, February 27, 1785, in *The John Carroll Papers*, ed., Hanley, 1: 168.

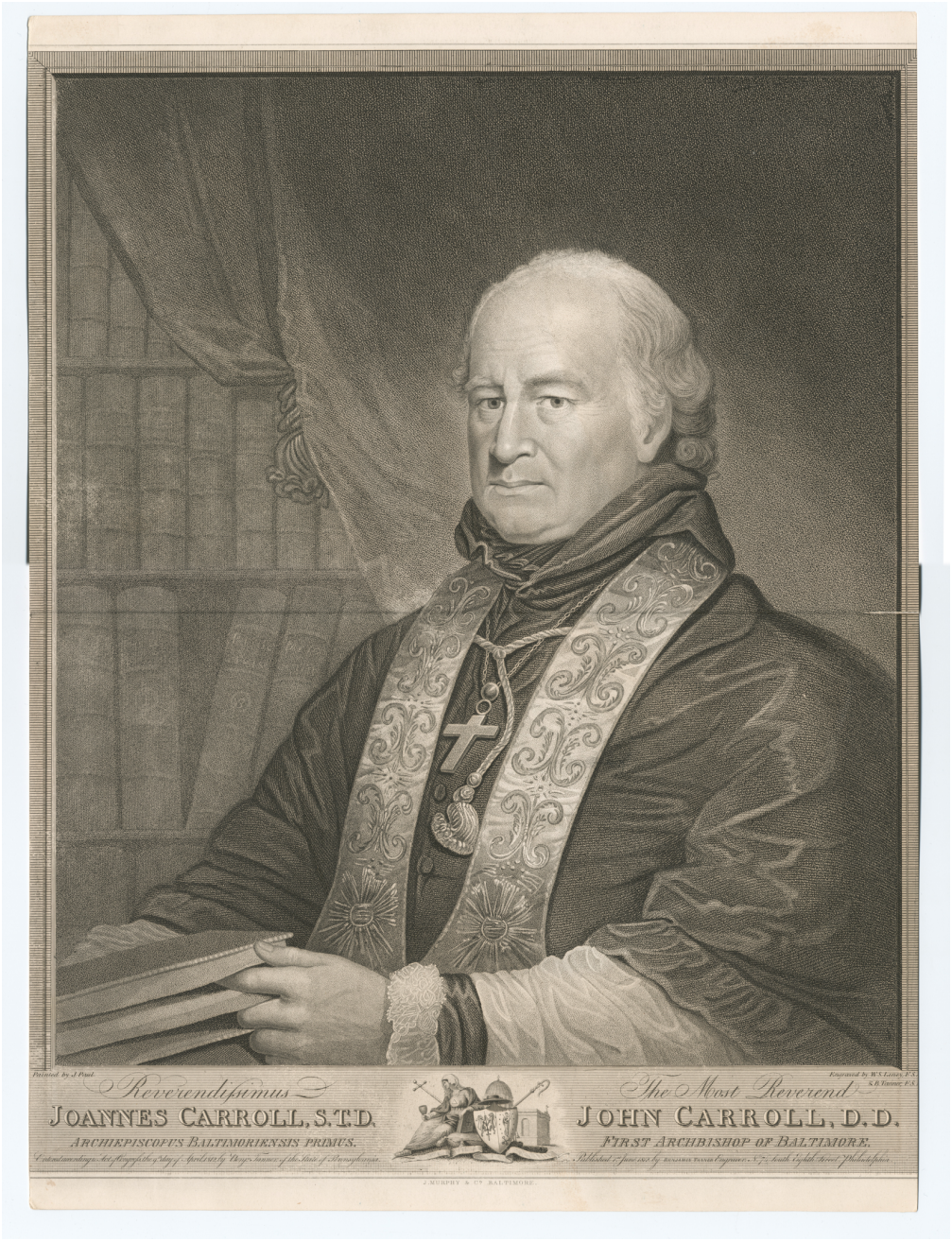


Figure 4.2. Portrait of Archbishop John Carroll from 1812.Drawn by Jeremiah Paul (d. 1820) and engraved by William Satchwell Leney (1769-1831). **Source:** "The Most Reverend John Carroll, D.D., first archbishop of Baltimore," The Miriam and Ira D. Wallach Division of Art, Prints and Photographs: Print Collection, The New York Public Library, New York Public Library Digital Collections, accessed February 22, 2020, http://digitalcollections.nypl.org/items/510d47db-9277-a3d9-e040-e00a18064a99.

Concerned that "contriving" Anglicans would be able to pass laws disadvantaging Catholics in the near future, Carroll focused on securing the Catholic Church's property through incorporation.[41] Trying to clarify the confusing legal situation to a Vatican official, Carroll explained, "strictly speaking, there are no ecclesiastical foundations here. The possessions by which the priests are supported are held in the name of private individuals, and by will they are transferred to their heirs."[42] He observed that "this procedure was dictated by the dire necessity while the Catholic religion was restricted by laws."[43] Carroll wrote that, "as soon as the laws of England were abrogated and freedom of religion was established, we sought in every way to obtain a law permitting Catholic priests to form a corporate body and hold property in common…we hoped to bring it about that property acquired from individuals would pass into the perpetual legal right and use of those whose labor in the vineyard of the Lord, and thus be assured to religious use."[44] Recalling concerns of earlier Jesuits in the colony, Carroll "wished also to meet an ever present danger when an individual could transfer these properties to relatives or anyone else by legal instrument or will."[45] Incorporation provided the only way to firmly secure the church's property and ensure its future in Maryland.

Two other issues animated Carroll's fixation with securing incorporation. First, the Jesuits as an order had been disbanded in 1773 by the papacy.[46] The suppression of the Jesuits left colonial Catholic clergymen struggling without any formal leadership or organization. Carroll hoped that forming a corporation under new by-laws would restore much-needed order to Maryland's former Jesuits living on manors scattered across the state. Second, the Declaration of

[41] John Carroll to Cardinal Antonelli, February 27, 1785, in *The John Carroll Papers*, ed., Hanley, 1:171.
[42] John Carroll to Cardinal Antonelli, March 1, 1785, in *The John Carroll Papers*, ed., Hanley, 1:181.
[43] John Carroll to Cardinal Antonelli, March 1, 1785, in *The John Carroll Papers*, ed., Hanley, 1:181.
[44] John Carroll to Cardinal Antonelli, March 13, 1786, in *The John Carroll Papers*, ed., Hanley, 1 208.
[45] Ibid.
[46] For more, see Raymond A. Schroth S.J., "Death and Resurrection: The Suppression of the Jesuits in North America," *American Catholic Studies* 128 (2017): 51-66.

Rights had prohibited religious societies from holding more than a few acres of land without legislative permission, a provision that echoed the earlier mortmain prohibitions.[47] The Jesuits wanted to secure an act of incorporation that would protect all of their property and consolidate their individual holdings under a single corporate entity.[48]

As early as 1783, Carroll started taking steps to secure incorporation. He helped to organize a convention of Maryland's Catholic Clergy at Whitemarsh to consider how best to secure "the preservation of the Catholic clergy's estates from alienation, waste and misapplication."[49] Carroll and other clergymen wrote a new Constitution to "establish a form of Government for the Clergy & to lay down rules for the administration & preservation of their property."[50] They hoped the Maryland Assembly would grant them a charter of incorporation under the Whitemarsh agreement. In the following years, Carroll and others "tried hard" to secure an act of incorporation from the legislature.[51] As a member of one of Maryland's wealthiest political families, he lobbied privately for the law, but warned "it must not appear that our Clergy do any corporate act, before they are a legal corporation."[52] Cautious persistence characterized Carroll's steps forward.

While Carroll was quietly taking steps to secure Jesuit property in the 1780s, the Episcopal Church was navigating the new murky waters of its revised relationship with the state. Article 33 of Maryland's 1776 Declaration of Rights had secured parishes' title to their property. In 1779, the Assembly had passed the Vestry Act, which organized the election of vestries and

[47] Maryland Constitution of 1776, Art. 34.
[48] Thomas Murphy's work on Jesuit slaveholding briefly discusses the importance of post-revolutionary incorporation. See Murphy, S.J., *Jesuit Slaveholding in Maryland, 1717-1838* (New York: Routledge, 2001), 49, 71.
[49] John Carroll, "The Plan of Clergy Organization," in *The John Carroll Papers*, ed., Hanley, 1:61.
[50] Ibid.
[51] Peter Guilday, *The Life and Times of John Carroll* (New York: 1922), 325.
[52] John Carroll to Charles Plowden, October 4, 1790, in *The John Carroll Papers*, ed., Hanley, 1: 667.

confirmed the title of parish vestries to their colonial churches.[53] But American Anglicans had reorganized as the Protestant Episcopal Church in 1782, and the clergy remained concerned that Maryland's Constitution and the Vestry Act failed to secure parish property to the newly reconstituted church. The Maryland Episcopal Church feared that if they altered their liturgy or mode of ministerial succession, they further risked their claim to be the successor to "the Church of England," and thus jeopardized their title to parish property. Maryland's Episcopal clergy anticipated the exact legal arguments made by Virginia's Baptists and Presbyterians a few years later. Episcopalians were uncertain about their independence from the legislature and feared the consequences of making any wrong move.

Events in 1782 might have offered the Episcopal Church a ray of hope. That spring, Maryland's Anglican Governor William Paca publicly threw his weight in support of a general assessment. The proposal, which Carroll had condemned as a thinly veiled attempt at re-establishing Anglicanism, would have allowed citizens to decide which Christian denomination their annual levy would support and exempted non-Christians from the tax. Paca declared "the very "Blessings of Government, and the Welfare and Happiness of our Citizens" relied on "the powerful Influence of Religion, when diffused by its respectable Teachers."[54] Paca's position closely resembled that of Patrick Henry in Virginia. Both argued that a general tax in support of all Christian ministers would benefit both religion and government.[55] Unlike Henry, though, Paca was a vestrymen and active promoter of the state's Episcopal Church. Having such high-placed politicos on side certainly helped Maryland's Episcopal Church navigate the politics of

[53] *Archives of Maryland Online*, 203:207-210.
[54] Ibid.
[55] For more on Henry and his advocacy in favor of general assessment, see John Kukla, *Patrick Henry: Champion of Liberty* (New York: Simon & Schuster, 2017), 279-282; Buckley, *Church and State in Revolutionary Virginia*, 78-105.

disestablishment. He was personally invested in securing aid for the Episcopal Church as part of a system of multiple-denominational support in the state. While a statute narrowly adhering to Paca's proposal would been constitutional in Maryland, his plan quickly became mired in a much broader proposal of the Episcopal Clergy.

Buoyed his Paca's remarks, the Episcopal clergy met and drew up a petition to the legislature shortly thereafter. Not only were the clergy eager to express their support for Paca's proposal of a general assessment, they were anxious to safeguard parish property. They sent a petition in May of 1783 seeking permission to alter their "liturgy and Service, in order to adapt the same to the Revolution, and for other Purposes of Uniformity, Concord, and Subordination to the State." They also hoped to agree on a plan for the "succession of able and fit Ministers" which would conform to "ancient Practice…as well as that universal Toleration established by the Constitution" and "fixed under the public Authority of the State." The clergy's May petition sought permission from the legislature to begin making doctrinal changes. Despite their attempt to be as inoffensive as possible, this petition would be met with public outrage later that year. [56]

The legislature accepted the petition quickly enough and by August the clergy had drafted "A Declaration of certain fundamental Rights and Liberties of the Protestant Episcopal Church of Maryland."[57] Their declaration was clearly styled to suit republican sensibilities, though detractors quickly began calling it the Clergy Bill. It invoked the "ecclesiastical and spiritual Independence" of all denominations and pronounced that "all Persons professing the Christian Religion, are equally entitled to Protection in their Religious Liberty, and no Person, by any Law

[56] "The Memorial and Petition of the Subscribers, in behalf of themselves and others the Clergy of the Episcopal Churches," in William Stevens Perry, ed., *Journals of general conventions of the Protestant Episcopal Church, in the United States, 1785-1835,* (Claremont, N.H.: Claremont Manufacturing Company, 1874), 3:20
[57] "A Declaration of certain fundamental Rights and Liberties of the Protestant Episcopal Church of Maryland," in Perry, *Journals of General Conventions,* 3:22.

[or otherwise] ought to be molested in his Person or Estate on Account of his religious Persuasion or Profession, or for his religious Practice."[58] The clergy outlined the new church's governance and voiced a commitment to Episcopal ordination and the administration of the sacraments. By seeking to affirm their doctrine and succession in law, the church undermined their professed "spiritual independence" and fundamentally subordinated their church to the state. The animating concern in this bill was securing their sole claim to parish property. They belabored the point and repeatedly affirmed that the Episcopal Church was constitutionally entitled to the "Churches, Chapels, Glebes, or other Property, formerly belonging to the Church of England in this State, and which by the Constitution and Form of Government is secured to the said Church forever, by whatsoever Name."[59] The clergy closed with a solicitous entreaty that recognized "the change of our situation from a daughter to a sister-church."[60] While the Episcopal Church claimed no longer to be the sole daughter but one of many sisters, it still professed to be a child of the state.

The clergy's May petition had not mentioned incorporation, but the Episcopal clergy's evident fears over losing their property made seeking a charter of incorporation the natural next step. At the same meeting in August of 1782, the clergy drew up an act of incorporation, which empowered the Episcopal Church to act "as a Body Corporate, to hold Goods, Lands and Chattels, by Deed, Gift, Devise" and to manage a charitable fund to support widows and orphans.[61] This proposed charter affirmed that the Episcopal Church was the lawful successor to the Church of England, no matter what "name" had been used in prior legislation. The Episcopal

[58] Ibid.
[59] "A Declaration of certain fundamental Rights and Liberties of the Protestant Episcopal Church of Maryland," in Perry, *Journals of General Conventions,* 3:24.
[60] Ibid.
[61] The notes from the clergy's August meeting are rerecorded in Perry, *Journals of General Conventions,* 3:21.

clergy explicitly framed religious liberty as security over one's "person and estate." This framework of revolutionary rights neatly articulated what so many historians of the republicanism have told us, namely that republican thinking made property a fundamental expression of liberty. Maryland's Episcopalians were not alone in expressing this view, as will be explored in Chapter 5. The material stakes of disestablishment were made plain in these proposals, just as they had been in Carroll's desire for incorporation.

Episcopalians knit together the issues of a general assessment, incorporation, church property, and education by pursuing these many initiatives in tandem. Weeks later, Paca quickly endorsed the clergy's proposals and expressed his commitment as a private citizen and in his public capacity as governor to "advancing the interests of Religion in general" and "placing every Branch of the Christian Church in this State, upon the most equal and respectable Footing." Despite the insistence of Episcopalians and Governor Paca that these proposals were not meant to lend support to the former establishment, these bills were met with hostility.

Patrick Allison, the minister of the First Presbyterian Church of Baltimore, became the most vociferous public opponent of the clergy bill. He published a rebuttal, *Candid Animadversions,* on October 28, 1783 before the Assembly considered the full bills drafted by the clergy. Allison had not seen the Episcopal Clergy's proposed bills yet, so his critique responded to their initial petition for new legislation. The Presbyterian minister offered a scathing critique of its motives and implications. Patrick condemned the petition for creating an "intimate union and peculiar connexion with civil government" and saw it as a scheme to "raise equals to the rank of superiors."[62]

[62]Vindex [Patrick Allison], *Candid Animadversions on a Petition*, (Baltimore: Goddard & Angell, 1793), 2nd edition, 4-5.

Beyond the specifics of the request, Allison focused most of his energy of explaining why the clergy's deference to the legislature posed a dangerous threat to religious liberty. Asking for "leave to consult, to alter their prayers, to fix on a plan for ordaining ministers" invested the state with the "authority…to grant or refuse" those rights which all Christians assuredly had.[63] Worse yet, when the legislature assented to the petition, "that respectable body likewise presumes itself vested with this authority."[64] Patrick declared that Article 33 of the Maryland Constitution had "already decided the matter, in the plainest terms, declaring the petitioners in full possession of all they solicited."[65] Allison claimed that "the interposition of the legislature can never be indifferent; when it is not necessary, it is mischievous."[66] For Allison, the greatest potential danger of the lay in the legislature taking it upon themselves to reaffirm what had already been settled in the Constitution; such a course made the legislature a "usurper" and gave them a way to potentially hijack the document.[67]

Allison challenged a number of the specific proposals made by the Episcopal clergy. He dismissed any general tax for the support of all denominations. Better for religious denominations to be left to themselves, which would offer "a more complete permanent security, than even legal sanctions or constitutional provisions" could provide.[68] Allison declared that he would not venture to consider whether it had been "fair or equitable" for the Constitution to grant the Protestant Episcopal Church all "churches, chapels, glebes, and all other property," which, of course, amounted to tacit scorn for the policy.[69] He remarked with evident surprise that "no clamour is heard" about it in Maryland from other denominations when the property had come

[63] Vindex [Allison], *Candid Animadversions*, 3; 5.
[64] Vindex [Allison], *Candid Animadversions*, 5.
[65] Vindex [Allison], *Candid Animadversions*, 5.
[66] Vindex [Allison], *Candid Animadversions*, 14.
[67] Vindex [Allison], *Candid Animadversions*, 14.
[68]Vindex [Allison], *Candid Animadversions*, 8.
[69] Vindex [Allison], *Candid Animadversions*, 10-11.

"out of their pockets, and was the fruit of their honest industry."[70] Allison did not directly address incorporation because no mention of it had been made in the initial petition sent to the legislature by the Episcopalians. He derided the clergy's entire request as a "pretended… necessity."[71] Allison's protest was widely read and prompted numerous responses in Maryland's newspapers.[72]

Sensing popular opposition, the legislature dispensed with the request to approve church doctrine or yet again affirm the title of the Episcopal Church to parish property. However, the legislature did pass an act incorporating the Society for Widows and Orphans.[73] Perhaps because it was narrowly framed as an act of incorporation for a charitable project, the law escaped significant blowback. This law conferred power on the church to hold real property up to 15,000 Spanish milled dollars in its charitable fund but did not incorporate the denomination. The Episcopal Church remained wary of attempts to seize parish property, but none came. Though Allison's had lambasted the injustice of Episcopal Church retaining all parish property under the 1776 Constitution, there was never any serious attempt or public pressure for the seizure of church property.

The proposed general assessment remained a controversial topic, though. Many Marylanders shared similar skepticism to Carroll's view that the bill was the work of "contriving" Episcopalians. The controversy aroused by the 1783 clergy bill had certainly heightened suspicion of the former established church's desire to maintain close ties to the legislature. A petition printed in the Baltimore Gazette attacked the proposed bill by stating "in the opinion of all men of discernment, the law proposed for the support of the clergy, is intended

[70]Vindex [Allison], *Candid Animadversions*, 12.
[71] Vindex [Allison], *Candid Animadversions*, 10.
[72] Curry, *First Freedoms,* 154-158.
[73] *Archives of Maryland Online*, 203:426.

to give one church a preeminence above others, else why are some societies compelled to pay for the support of the clergy, who do not desire it?"[74] Compelling public support for the clergy would violate the conscience of at least some of the people. This line of argument suggested that a general tax for religion would only be permissible in Maryland when all religious societies and clergy favored it. Requiring unanimity made the provision in Maryland's Declaration of Rights allowing a general assessment into a dead letter. The bill was easily defeated in 1785, and Maryland would amend its Constitution to remove the power to levy a general tax in support of religion in 1810.[75]

Allison would later turn his attention to a more pressing concern – securing general incorporation for all religious denominations. In 1784, a Presbyterian State Senator, James McHenry, introduced "An Act to Incorporate Certain Persons in every Christian church or congregation in this state."[76] The bill was revived again in the Senate in December 1788.[77] It is no coincidence that the Senate, which included members of powerful Catholic and Presbyterian families like the McHenry's and the Carrolls, introduced this legislation. This bill resembled statutes recently adopted by other states.[78] The law's preamble offers clear insight into how the legislature understood the aim of disestablishment. A general act of incorporation made the same legal rights available to all Christian denominations "without partiality, preference, or

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[74] 'Copy of a Petition, now Signing," March 25, 1785, *Baltimore Advertizer*, in Thomas J. Curry, *The First Freedoms*, (New York: Oxford University Press, 1986), 156.
[75] *Archives of Maryland Online,* 380:19.
[76] *Votes and Proceedings of the Senate of the State of Maryland,* (November 1784 Session,) 12, MSA SC M 3185, *Early State Records Online,* MSA.
[77] *Votes and Proceedings of the House of Delegates of the State of Maryland,* (November 1788 Session,) 92-94, MSA SC M 3197, *Early State Records Online,* MSA, http://aomol.msa.maryland.gov/megafile/msa/speccol/sc4800/sc4872/003197/html/m3197-0881.html. The first page of the bill and any records of its discussion is missing from the records of the House of Delegates, but the full text of the act is available in the Journal of the Maryland State Senate. See *Votes and Proceedings of the Senate of the State of Maryland*, 1788, (November Session), 33-37, MSA SC M 3185, *Early State Records Online,* MSA, http://aomol.msa.maryland.gov/megafile/msa/speccol/sc4800/sc4872/003185/html/index.html.
[78] For more on general acts of incorporation, see Sarah Barringer Gordon, "The First Disestablishment," 317-325.

distinction."[79] Maryland's senators envisioned disestablishment as giving all Christian denominations the same legal privileges long held by the Anglican Church. This movement explicitly favored Christians over other religious groups and certainly did not try to sever ties between religion and government.

The 1788 bill also specifically addressed the property of the Catholic Church and provided a means for priests who held land as individuals to transfer it to a joint trust, which would then be held by the Catholic clergy as a corporation. The proposed law gave John Carroll everything he hoped for, and its generous terms likely reflected that his brother Daniel Carroll was President of the state senate that year. But it also offered concessions to the Episcopal Church by reaffirming their title to parish property, something that they had yet to receive after the controversy of the Clergy bill. After receiving the bill, the House of Delegates demurred. They claimed they did not have the time to "give it that attentive consideration which the importance of the subject requires. Complicated and extensive in its nature, it ought to undergo a very deliberate discussion." [80] The Senate did agree for the entire bill to be published "for the consideration of the people."[81] Newspapers published a full-page copy of the bill the following month, but there was little public discussion of the matter. [82] Marylanders as a whole did not engaged in heated debates about the proposal or other issues of religious liberty after the rejection of the Clergy Bill.[83]

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[79] *Votes and Proceedings of the Senate of the State of Maryland*, 1788, (November Session), 33.
[80] *Votes and Proceedings of the Senate of the State of Maryland*, 1788, (November Session), 76, MSA SC M 3185, *Early State Records Online,* MSA, http://aomol.msa.maryland.gov/megafile/msa/speccol/sc4800/sc4872/003185/html/index.html.
[81] *Votes and Proceedings of the Senate of the State of Maryland*, 1788, (November Session), 91, MSA SC M 3185, *Early State Records Online,* MSA, http://aomol.msa.maryland.gov/megafile/msa/speccol/sc4800/sc4872/003185/html/index.html
[82] January 9, 1789, *Maryland Journal* (Baltimore, Md).
[83]Albert Warwick Werline, *Problems of church and state in Maryland during the seventeenth and eighteenth centuries* (South Lancaster, Mass., College Press, 1948), 208n107.

Episcopalians had been strongly opposed to the proposal for general incorporation and wary that the legislation might threaten parish property. The General Convention of the Protestant Episcopal Church in Maryland resolved that two of its most influential members, William Paca and Samuel Chase, should keep a close eye on proceedings for any incursion on the rights of vestries to their property.[84] The bill remained stalled for several years.[85]

In 1792, Allison hoped to revive the prospect of a general act of incorporation and voiced his distress about what he saw as the creeping reestablishment of the Episcopal Church in Maryland. Allison republished his 1783 "Candid Animadversions," in a new edition along with several essays. Allison excoriated the many ways in which Maryland's post-revolutionary laws violated Article 33 and upheld a de facto establishment of the Anglican Church. He pointed to a recent bill to use state funds to complete the construction of an Episcopal Church in Annapolis and the fact that laws regulating marriage still employed the phrases "dissenter" and "parish." What most incensed Allison was the noticeable lack of public outrage among Marylanders. Recent "legislative crimes" committed by their "wicked rulers" had brought "ignominious slavery on a free people; but what shall we say concerning the people themselves, who, for want of attention and resolution, permit their birthright to be torn from them, though they have all-sufficient power to protect and preserve it?... They also act a treacherous part; they concur in the treason, by tame unmanly submission." [86] Allison returned to the revolutionary rhetoric of bondage to argue that religious liberty was under threat, but this time the people were to blame for their complacency.

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[84] Albert Warwick Werline, *Problems of Church and State in Maryland during the Seventeenth and Eighteenth Centuries*, 184.
[85] The House of Delegates voted not to debate the bill in 1791. *Votes and Proceedings of the House of Delegates of the State of Maryland,* (November 1788 Session,) 92-94, MSA SC M 3197, *Early State Records Online,* MSA, 113, https://msa.maryland.gov/megafile/msa/speccol/sc4800/sc4872/003197/html/m3197-1323.html.
[86] Vindex [Allison], *Candid Animadversions*, 18

The minister returned again the question of parish property but did so in service of his arguments about incorporation. The Vestry Act (1779) had confirmed that the title to "glebe lands, churches, and chapels, books, among which negroes and debts are mentioned, shall be vested in the select vestries."[87] To Allison, this policy exhibited "the bigoted zeal of the delegates" in favor of the Episcopal Church. He sarcastically applauded the restraint of Maryland's other denominations in choosing not to protest these provisions.[88] He insisted that the legislature had committed an ever more grievous offense when they "churlishly confined" these laws to only "one particular sect."[89] As he pointed out, "every Christian society must possess some temporal property, and needs assistance towards it preservation."[90] By passing a law only to protect Episcopalian property while stalling on the act for general incorporation, the Assembly expressed that "other denominations… were not worthy of legislative attention" and their property was not imbued with "that particular sanctity, which merited the sanction of a particular, to save them from being seized, plundered, or destroyed."[91] The failure of general incorporation amounted to unconstitutional favoritism for one church. Allison's arguments made the protection of parish property a metric for the continued inequality of religious denominations.

Allison concluded with a specific discussion of the recently rebuffed general incorporation act. He observed that in 1783 Act, the incorporation of the Episcopal Church's fund for Widows and Orphans "was immediately granted...No fears were entertained, no dangers were apprehended."[92] In contrast, "whenever is had been proposed to authorize our Several Christian

[87] Vindex [Allison], *Candid Animadversions*, 24.
[88] Vindex [Allison], *Candid Animadversions*, 24; 22.
[89] Vindex [Allison], *Candid Animadversions*, 24.
[90] Ibid.
[91] Ibid.
[92] Vindex [Allison], *Candid Animadversions*, 28.

Societies… a thousand objections have been marshalled."[93] The solution proposed by Allison was to secure incorporation for all sects.

Maryland's Catholics were also disappointed by the failure of general incorporation. Instead of issuing public jeremiads, a determined Bishop Carroll eventually won a separate Act of Incorporation for the Catholic clergy in Maryland in 1792. Much of the language in the 1792 law, formally entitled "An Act for securing certain estates and property for the support and uses of ministers of the Roman catholic religion," came word for word from the 1788 General Incorporation Act. The law declared that "it is highly reasonable and just to grant ministers of the Roman catholic religion, who are citizens of this state, that legislative aid without which they will be destitute of that protection and security to their property to which they are entitled equally with every other sect of denomination of Christians." [94] As the title of the law made clear, securing property was the key motivation for the act; incorporation was simply the legal tool to do so. This law was a hard-fought victory for Maryland's former Jesuits, who finally secured their property after generations without legal protection. The security of their property was a tangible expression of religious liberty under Maryland's new republican laws.

In the following decade, seventeen other congregations petitioned for and gained acts of incorporation from the General Assembly. Petitions flooded in from Catholic, German Reformed, German Evangelical Reformed Baptist, Presbyterian, Lutheran, and Methodist congregations.[95] Even some Episcopal parish vestries applied. Unlike the 1792 Act, which

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[93] Vindex [Allison], *Candid Animadversions* 28
[94] *Archives of Maryland Online*, 644:49.
[95] The following religious societies and congregations received an act of incorporation between 1793-1800: Vestry of Saint-John's Parish, in Prince George's County (1793), *Archives of Maryland Online*, 645:89; German reformed congregation of Baltimore-town (1795), *Archives of Maryland Online*, 647:12; The Trustees of the Roman Catholic Church in the town of Baltimore (1795), *Archives of Maryland Online*, 647:10; The Committee of the Presbyterian Church in the City of Baltimore (1797), *Archives of Maryland Online*, 652:49; German Evangelical Reformed Church in Baltimore (1797), *Archives of Maryland Online*, 652:44; The Committee of the Baptist Church in the City of Baltimore (1798), *Archives of Maryland Online*, 653:19; The Trustees of the Roman Catholic Church in Cob

incorporated the Catholic clergyman into a statewide body, subsequent petitions for incorporation came from local congregations. The personnel of these corporate bodies varied; some only included laymen while others consisted of a clergyman and a group of lay leaders. By the dawn of the nineteenth century, Maryland's Catholics, Presbyterians, Baptists, Methodists, and other denominations celebrated incorporation as a hard-fought right of disestablishment without debating whether it constituted a form of religious establishment.

Maryland's Episcopal Church, still wary from the fallout of the Clergy Bill, took steps to reaffirm the property claims of parishes in 1798 with the passage of an updated Vestry Act. Many Episcopal clergymen opposed general incorporation, and their hostility provides compelling evidence of Allison's claim that the Episcopal Church still aspired to exclusivity. Rev. Joseph Bend wrote to a fellow clergyman that the proposed "Incorporating act…contains one of the most wicked and mischievous principles, which were ever inserted in a law: I mean the wide door, which it readily opens to persons to withdraw themselves from their congregations, and to create continual schisms. I despair of a representation from the different religious societies agreeing upon a general law."[96] Bend predicted that incorporation would spawn a never-ending series of denominational ruptures and raised objections to cooperation between different sects.

Despite objections from Episcopalians, so "many religious societies" began petitioning the legislature each year for "acts of incorporation" that the state passed an act empowering all Christian churches to incorporate in 1802.[97] The text of the 1802 law was nearly identical to the

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Neck (1799), *Archives of Maryland Online*, 100:32; Presbyterian church of Snow Hill (1800), *Archives of Maryland Online*, 94:7; Lutheran Church in Baltimore (1800) , *Archives of Maryland Online* 94:6; Presbyterian Church in Baltimore (1800), *Archives of Maryland Online*, 94:6; Light-street Methodist Episcopal Church (1800), *Archives of Maryland Online*, 94:31; Old-town Methodist Episcopal Church (1800), *Archives of Maryland Online*, 94:31.

[96] Rev. Joseph G.J. Bend to Rev. James Kemp, December 20, 1802, V.F., EDMA.

[97] *Archives of Maryland Online,* 192:294-8.

1788 bill. The preamble declared that the legislature was "indispensably bound to secure and preserve the same equality of rights, privileges and advantages to all quiet and inoffensive Christian societies in this state" so that "religion may be encouraged and diffused."[98] The law was frontpage news in publications across the state, and several papers reprinted the text of the act in its entirety.[99]

Maryland's Catholics, the state's wealthiest and influential non-conformist group, never argued that the state ought to seize Anglican parish property. Even in his private writings, Carroll did not so much as mention the prospect. Because the Catholic community held valuable, yet vulnerable property of their own, they were unlikely to argue for the confiscation of any church's property by the state, lest the pendulum swing back sometime in the future. Carroll and other former Jesuits were eager to secure corporate rights for themselves, not to weaken the perpetual and irrevocable nature of incorporated property. Rather than advocating for the state to seize parish property, supporters of the Catholic cause threw their considerable weight into demanding incorporation become available to non-Anglicans. Patrick Allison had suggested that the confiscation of colonial parish property would have been just, but this issue was secondary for him. Instead, he focused on achieving general incorporation for all denominations. In Maryland, incorporation was seen as the best solution for securing religious liberty, rather than a threat to that liberty.

The introduction of general incorporation in Maryland represented a multi-denominational effort to make a legal privilege of the former established church widely available to all Christians. Before the Revolution, Anglicans had relied on common-law incorporation to hold

[98] Ibid.
[99] For example, see March 16, 1803, *Maryland Herald and Hager's-Town Weekly Advertiser*; March 11, 1803, *Republican Gazette and General Advertiser*.

parish property, whereas the colony's non-Anglicans were left without a formal way to secure their property. After independence, other denominations initially sought incorporation through individual charters from the state. The torrent of petitions seeking incorporation from Catholics, Presbyterians, Methodists, and Lutherans marked an important step away from the framework of Anglican establishment; these groups were able to form corporations and secure their property as legal persons recognized in law. The legislature cited practical necessity to explain their adoption general incorporation; there were just too many petitions arriving each session for them to handle. The growing popularity of incorporation made it far easier to codify the process under a single statute.

Patrick Allison, though, articulated the ideological importance of instituting a general act of incorporation. He championed a broad incorporation statute that included all denominations. Such an act bypassed the incremental process of extending greater rights to religious societies one at a time and instead fundamentally leveled the playing field for all denominations. General incorporation offered a statutory framework available to any and all denominations, which represented an inversion of the established church's reliance on customary incorporation. The general incorporation of churches in Maryland was not merely the legal framework that superseded colonial customary law but a direct response to the way in which the established church had fundamentally knit together law and religion in pursuit of orthodoxy. As an explicit piece of legislation replaced custom, the state's express authority supplanted the King's implied consent. For Allison, general incorporation was more than a pragmatic victory; the law underscored the achievement of religious equality, not merely religious liberty, for Maryland's Christians. He framed the achievement of general incorporation as a direct refutation of the former Anglican establishment.

Virginia's Rejection of Incorporation

Virginia took a different path. The story of Virginia's disestablishment is well-known but returning to this familiar narrative with a narrow focus on changing views about incorporation illuminates how and why Virginia's project of disestablishment diverged so sharply from events in Maryland. The divergent priorities of non-Anglicans on either side of the Potomac led the two states to define the concept of a religious establishment in fundamentally distinct ways.

In the early 1780s, there was no consensus among Virginia's evangelicals or its more liberal political leaders that religious incorporation violated the promise of religious freedom. On the contrary, the Presbyterian clergy, as well as several independent congregations, were actively pursuing acts of incorporation.[100] However, by the close of the eighteenth century, broad consensus had formed that incorporation constituted a form of religion establishment. The evidence suggests that this view gained traction during the evangelical-led efforts to repeal Virginia's 1784 Act for Incorporating the Protestant Episcopal Church. This protest movement started out demanding the repeal of a specific law but gave rise to a broader agreement among evangelicals that incorporation inextricably linked church and state and therefore constituted an unconstitutional religious establishment. The evangelical petitioners ultimately swayed the General Assembly not only to revoke the Episcopal Church's incorporation but also to prohibit any form of religious incorporation. Few other states followed suit.[101]

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[100] The Presbyterian Church nears Peaks of Otter in Bedford County resubmitted a petition in 1785 seeking incorporation for their congregation. Alexandria Presbyterian also sent a petition in 1785 seeking incorporation. See November 10, 1785, *Journal of the House of Delegates of the Commonwealth of Virginia* [October 1785 session] (Richmond: 1828), 30. Members of the Presbyterian Church: Petition, Alexandria (City), October 30, 1786, LPDC, LVA.

[101] Gordon, "The First Disestablishment: Limits on Church Power and Property Before the Civil War," *University of Pennsylvania Law Review* 162 (2014): 335.

Virginia's conflict over incorporation and property proved conceptually constructive. It was the emergence of this anti-incorporation viewpoint that first led Virginia to diverge profoundly from Maryland in its disestablishmentarian policies. The ideological wrangling over incorporation produced a broader definition of "religious establishment" in Virginia and had lasting implications for the meaning of term at the national level.

In May of 1784, the fight over incorporation was just brewing. Up to this point, Virginia's Episcopal parishes still held property under customary incorporation. The state had affirmed parishes' title in repeated laws but had not granted incorporation to any church.[102] That month, the United Clergy of the Presbyterian Church sent a memorial to the assembly protesting against laws that continued to give "substantial advantages" to the Episcopal Church. [103] Specifically, the Presbyterian clergy pointed to "injurious" laws that vested all parish property in the Episcopal Church, empowered vestries to continue raising levies for poor relief, and gave Episcopal ministers more power to perform marriages than clergymen of other denominations. Finally, the Presbyterians' petition attacked the incorporated status of the Episcopal Church under common law. In their view, "the episcopal church is actually incorporated, and known in law as a body, so that it can receive and possess property for ecclesiastical purposes, without trouble or risk in securing it, while other Christian communities are obliged to trust to the precarious fidelity of trustees chosen for the purpose."[104] The 1784 Presbyterian Memorial did not protest the legitimacy of religious incorporation but attacked its exclusivity. The petition asked the Legislature to "do away with any inequality" and to secure "the broad basis of perfect political equality" for "every religious denomination in the state."

[102] Hening, 9:164-167; 10:111; 11:532-7.
[103] William Henry Foote, *Sketches of Virginia* (Philadelphia: 1850), 333-4; May 26, 1784, *Journal of the House of Delegates of the Commonwealth of Virginia* [May 1784 Session] (Richmond: 1828), 21.
[104] Ibid.

In early 1784, these Presbyterian petitioners occupied a position ideologically similar to Maryland's Catholics. The clergy attacked the Episcopal Church's exclusive access to incorporation as an unjust holdover from the colonial religious establishment. They urged legislative action to make incorporation available to all religious societies. The Baptist General Committee also submitted a petition that month that attacked the marriage and vestry acts but did not mention the corporate status of the Episcopal Church.[105] If the Presbyterian clergy favored general incorporation in 1784, Baptists apparently remained neutral or ambivalent towards it.

A few weeks later, a memorial arrived from the Episcopal Clergy.[106] Their petition requested that the General Assembly take action to repeal a number of outdated laws that "restrain[ed]" the church from self-government, including statutes restricting their liturgy, the induction of their clergy, the election of vestries, their canons, and modes of faith. Much like their brethren in Maryland, Virginia's Episcopalian clergymen were uncertain about which colonial laws regulating the church were still in force and worried that their reorganization under the new "appellation" of the Protestant Episcopal Church would lead to "cavils…disputes and litigations" over parish property. Thus, they asked for an act of incorporation "securing for ever to the Protestant Episcopal Church in Virginia the churches, glebe-lands, donations, and all other property belonging to the said established church."[107] While the Presbyterian clergy based their petition on the perceived strength of the Episcopal Church's incorporation under common law, the Episcopal Church sought a legislative boost to ensure and reaffirm these rights.

As discussed in Chapter 3, the incorporation of the established church in common law rested on the de facto assent of the King, rather than any formal charter. Customary law had

[105] May 26, 1784, *Journal of the Virginia House of Delegates of the Commonwealth of Virginia*, 20.
[106] June 4, 1784 *Journal of the Virginia House of Delegates of the Commonwealth of Virginia*, 36.
[107] For the full text of the memorial, George MacLaren Brydon, *Virginia's Mother Church and the Political Conditions Under Which It Grew,* Vol. 2, (Richmond, VA: Virginia Historical Society, 1952), 592-3.

empowered the many institutions of the colonial Anglican Church - its ministers, vestries and churches – to operate as corporations without any sort of charter. As Blackstone wrote, "the king's implied consent is to be found in corporations which exist by force of the *common law*… being nothing else but custom, arising from the universal agreement of the whole community."[108] Establishment and incorporation existed "inseparably" in common law.[109] The revolutionary overthrow of the King destabilized this legal foundation, as did the formation of a new republican government. There was no legal pretense of universal agreement about religion under the state's Declaration of Rights. In the absence of either the monarchical framework of consent or the continued exclusive establishment of the Church of England, the standing of these customary corporations seemed tenuous. In this context, the Episcopal Clergy were eager to bolster their property claims with a new act of incorporation from the state.

The Committee for Religion in the House of Delegates endorsed some measures from the Presbyterian, Baptist, and Episcopalian petitions. They approved the Episcopal Church's request for an act of incorporation while also proposing a general act of incorporation for all religious societies in the state, per the Presbyterian's petition.[110] The committee agreed with requests to liberalize the laws regulating marriage and empowering vestries in order to remove vestiges of favoritism to the Episcopal Church. Finally, they proposed a general assessment that would raise funds for all Christian Churches in the state. The legislature as a whole debated these proposals in the fall session of 1784. The Act of Incorporation for the Episcopal Church passed, as did the amendments to the marriage and vestry acts; no decision was made about a general act of incorporation, and the general assessment was postponed until the following year.

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[108] Blackstone, *Commentaries,* 1:460.
[109] Blackstone, *Commentaries,* 1:460-461.
[110] November 17, 1784, *Journal of the Virginia House of Delegates of the Commonwealth of Virginia* [October 1784 Session] (Richmond: 1828), 27.

Even after the bill for incorporating the Episcopal Church had been proposed, neither leading evangelicals nor liberal political leaders raised fundamental objections to churches or religious denominations becoming incorporated.[111] John Blair Smith, the Presbyterian minister who had authored the Presbyterian clergy's petition earlier that same year, wrote to Madison during the summer of 1784 to voice his concerns about the bill. Smith clarified that incorporation itself was not the problem. He noted that "an incorporating act…would have been extremely proper" had the legislature not included a number of "unreasonable & highly improper, as well as dangerous" provisions. First, Smith objected to the prospect of "an incorporated body of Clergymen" that would deny "the *people*… a share in the direction of ecclesiastical regulations." Excluding the laity from the corporation smacked of tyranny to Smith. Secondly, he balked at the Episcopal Church's request for permission from the legislature to alter their internal governance and reform their spiritual practices. "Surely," he insisted, "every religious society in the State possesses full power to regulate their internal police; without depending upon the Assembly for leave to do so." Smith, like his fellow Presbyterian minister Patrick Allison, expressed dismay at the prospect of any group of clergymen asking the state "to *Enable*, them to regulate all the spiritual concerns of that Church. In so doing, the clergy "virtually declare[d] their Church a mere political machine, which the State may regulate at pleasure." Smith raised these concerns about the specifics of the act but did not object to the broader prospect of incorporation for religious societies. [112]

[111] Philip Hamburger discusses the favorable view of Baptists toward incorporation in colonial New England and ambivalence in North Carolina. See Philip Hamburger, *Separation of Church and State* (Cambridge: Harvard University Press, 2009), 178-179n60.
[112] John Blair Smith to James Madison, June 21, 1784, *Founders Online,* National Archives, accessed March 4, 2019, https://founders.archives.gov/documents/Madison/01-08-02-0043.

Writing to Thomas Jefferson, who was in Paris serving as the American Minister to France, James Madison echoed Smith and criticized several "exceptionable" provisions in the Incorporation Act.[113] He disliked the Episcopal clergy's "notable project for re-establishing their independence of the laity."[114] Moreover, he resoundingly objected to the terms of the act that set the legislature in a position of "oversight" and implicitly subordinated a religious society to the state.[115] However, Madison acknowledged that "the necessity of some sort of incorporation for the purpose of holding and managing the property of the Church could not well be denied." Moreover, the politically savvy Madison expected that voting against the incorporation act would "have doubled the eagerness and the pretexts for a much greater evil, a general assessment."[116] Despite his reservations, Madison supported the 1784 Act of Incorporation act in order to prevent any sort of general assessment from passing.

Neither Smith nor Madison expressed any concerns about the Episcopal Church retaining its glebes and churches. However, the fate of this property became one of evangelicals' central objections to the 1784 Incorporation Act. Virginia's Presbyterians and Baptists organized a petitioning campaign during 1786 that demanded the legislature repeal the Incorporation Act. An estimated 5,000 Virginians signed petitions asking for repeal.[117] Numerous petitions expressed fury over the Episcopal Church's exclusive right to parish property. For example, a group of inhabitants of Louisa County who had left the Episcopal Church sent a petition stating, "your honourable House has been pleased to make a Law incorporating the Episcopal Society, and vesting her with the Glebes, churches, surplus money and other Things, which we look upon to

[113] James Madison to Thomas Jefferson, January 9, 1785, *Founders Online.*
[114] James Madison to Thomas Jefferson, July 3, 1784, *Founders Online.*
[115] James Madison to Thomas Jefferson, January 9, 1785, *Founders Online.*
[116] James Madison to Thomas Jefferson, January 9, 1785, *Founders Online.*
[117] Eckenrode, *Separation of Church and State in Virginia*, 120. Thomas Buckley helpfully maps the petitions for and against by county and denomination. See Buckley, *Church and State in Revolutionary Virginia,* 168.

be the Property of the Publick; we do therefore most earnestly remonstrate against the sd Act."[118] These same petitioners argued that "if the Property vested in her hands, had been a free will offering of the People, we should forever hold our Peace… but as it was procured by the Law of Injustice and Hands of Oppression, we think it reasonable and just, that said property should be put to publick use." The petition closed with a final entreaty "that all Societies may be left to govern themselves." This brief phrase was the only objection raised in the petition not directly related to the issue of parish property. A petition sent from Chesterfield County argued that glebes, churches and other property belonged to all Virginians, "because it was the fruit of their honest Industry."[119] Now that "the establishment [had been] justly Exploded, it is but reasonable that every Religious Denomination should have their equal part." Petition after petition calling for the repeal of the 1784 Act declared that all parish property belonged to public at large, whose taxes had funded its purchase. Evangelicals put forward a charged vision of disestablishment in which the former establishment was not defused but destroyed.

Why were Virginia's evangelicals so focused on the confiscation of parish property when the issue was never actively pursued by Maryland's non-conformists? There are three compelling possibilities. First, Article 33 of Maryland's Constitution had explicitly reserved "the churches, chapels, globes, and all other property" to the Church of England forever.[120] Mounting a claim to parish property would have necessitated amending the 1776 Constitution in Maryland. In Virginia, parish property had been protected through multiple statutes since the Revolution but was not mentioned in the state's Constitution.[121] Practically speaking, Virginians in favor of

[118] Inhabitants: Petition, Louisa County, October 31, 1786, LPDC, LVA.
[119] Eckenrode, *Separation of Church and State in Virginia*, 123
[120] Maryland Constitution of 1776, Art. 33.
[121] Hening, 9:164-167; 10:111; 11:532-7.

confiscation faced an easier task because they did not have to overcome the hurdle of a constitutional convention.

The second reason lies in the differences between the non-conformist religion groups in either state. Maryland's Catholics had less incentive to call for confiscation. Given the fierce hostility Catholics had faced across the Anglo-American world for centuries, Carroll and his fellow Maryland Catholics were still fearful of losing their newly won civil rights. Their political vulnerability made them less likely to directly attack the former establishment. Moreover, the former Jesuits were far more focused on securing their own valuable estates than on claiming parish glebes. Opening the door to the confiscation of religious property might have jeopardized their own contested manors, which included at least 12,000 acres and more than 200 enslaved people.[122] And, some of Maryland's leading Catholic families had faced and narrowly escaped state confiscation of their assets during the Revolution.[123] Having so recently achieved full civic rights and dodged popular threats to their estates, Catholic leaders espoused a conservative view of property rights and were unlikely to express democratic or levelling calls for the legislature to seize the glebes.[124]

By and large, Virginia's evangelical communities had far more to gain and far less to lose. The total value of dissenters' property in the mid-1780s would certainly have been less than that of Maryland's former Jesuits or Virginia's Episcopal parishes. A handful of Virginia's Presbyterian congregations had begun investing in enslaved people in the decade before the

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[122] "Official Report from the Superior, Father G. Hunter, to the Provincial, Father Dennett," July 23, 1765, cited in Thomas Hughes, *History of the Society of Jesus in North America*, *Colonial and Federal, Documents: Volume 1, Part 1,* 335-337.

[123] For more on how the confiscation of loyalist property affected Catholics, see Ronald Hoffman in collaboration with Sally D. Mason, *Princes of Ireland, Planters of Maryland: A Carroll Saga, 1500-1782* (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 2002) 321-333.

[124] Gerald P. Fogarty, "Property and Religious Liberty in Colonial Maryland Catholic Thought," *The Catholic Historical Review* 72 (1986): 599-600.

Revolution.[125] For example, Peaks of Otter Presbyterian Church, which had sought incorporation in 1774, purchased 100 acres and four people before the Revolution and owned a total of fourteen enslaved people by 1783.[126] Most congregations held far less property, though. Alexandria Presbyterian claimed to own "10-acre lot of ground."[127] The Augusta Presbyterian Church claimed only "two small tracts of land." While clearly there was a range in the value of different congregations' assets, most dissenters were unlikely to have wealthy investments rivaling those of nearby Anglican parishes, which might own four or five churches and chapels, a glebe, enslaved people, fine silver, a parish library, and a poorhouse.[128] Most of Virginia's evangelical churches had only begun growing in the two decades before the Revolution, and many congregations were made up of less wealthy colonists.[129] It is a safe assumption that these congregations still held far less property than their fellow Anglicans did in the 1780s.[130]

Finally, the distinctions between the colonies' levying systems seemed to have made a lasting difference. In Maryland, the parish's annual levy had to be less than ten pounds of tobacco per person. The minister's salary was separately funded by a poll tax of 40 pounds of tobacco paid to the county. If a parish needed to raise additional funds for an expensive construction project or to purchase land, the vestry had to petition the legislature for a special act empowering the county to raise the necessary money in a separate tax.[131] Maryland's counties, not its parishes, administered the steepest taxes, which funded the acquisition of property and the purchase of land. Counties often proved unwilling to impose these high levies, which left

[125] Oast, 88-93.
[126] Oast, 93.
[127] Members of the Presbyterian Church: Petition, Alexandria, October 30, 1786, LPDC, LVA.
[128] Nelson, *A Blessed Company ,*51.
[129] Isaac, *Transformation of Virginia,* 164-166; 173; 384n9.
[130] Members of the Augusta Presbyterian Church: Petition, Augusta, 10 December 1805, LPDC, LVA.
[131] See, for example, Dallam, ed., *St. James' Parish*, 300; "An Act for Building a Church in Saint James's Parish in Anne- Arundel County." *Archives of Maryland Online*, 58:205.

Maryland's parishes struggling to raise enough public money to support their construction projects. Colonial parishes across the colony had resorted to selling pews to raise money, as well as soliciting private donations from parishioners.[132] Moreover, Maryland's parishes did not administer poor relief and other costly welfare programs. Maryland's vestries were elected, and communities could oust vestrymen who imposed levies that were deemed to be too high. It was nearly impossible to ascertain whether the purchase parish property has been publicly or privately financed.

In contrast, Virginia's parishes exercised complete autonomy over the collection of taxes. When a Virginian Parish undertook an expensive construction project or made a significant purchase, it simply passed the costs to taxpayers in the annual levy over several years. Parishioners felt a significant bump in their annual parish levy when the parish purchased land, constructed a new church, or invested in other property. There was no limit on the amount of money that a parish could raise, and the parish levy the highest annual tax Virginians paid.[133]As discussed in Chapter 2, Vestries were not elected, and only drastic scandals could check their authority. Evangelical Virginians remembered being coerced into paying steep annual levies and they more strongly resented the reservation of parish property to the Episcopal Church.

While parish property was a frequently cited justification for repealing the 1784 law, evangelicals also voiced concerns about how the Act of Incorporation had given the legislature a dangerous and unconstitutional role in directly overseeing the governance of the Episcopal Church. In Maryland, there were far fewer objections made to the laws that continued to put the

[132] For example, the parishioners of Shrewsbury Parish in Kent County raised more than 11,400 pounds of tobacco for a new chapel in the late 1740s through private subscriptions after receiving permission to raise only 8,000 pounds of tobacco through a levy from the assembly. *Archives of Maryland Online*, 46:122; Shrewsbury Parish (Kent County, MD), Vestry Book, Maryland State Archives, MSA.

[133] John Nelson shows that parish levies were usually higher than the county or provincial levy, Nelson, *A Blessed Company,* 43-45. Over a century ago, Phillip Bruce came to the same conclusion. Phillip A. Bruce, *Institutional History of Virginia in the Seventeenth Century,* 2 vols. (New York: 1910), 1:77.

legislature in a position of overseeing the Episcopal Church. However, Virginia's evangelicals quickly attacked these provisions. As the Baptist General Association's petition put it, the 1784 Act was a "Bitumen to Cement Church and State together; the foundation for Ecclesiastical Tyranny, and the first step towards an Inquisition" because it put the legislature in a position to regulate the Church.[134] Augusta County's memorial likewise decried that the law, "established[d] an immediate, a dangerous, and unwarrantable connection between the Legislature and that Church" and effectively made the legislature "the Head of that church."[135] Pointing to those provisions in the law that empowered the legislature to oversee and regulate the internal government of the church, the Baptist General Association argued that the Act had revived a form of religious establishment.

These two demands – namely, to redistribute parish property to all denominations and to remove the legislature from a position of regulating the Church - might have been answered with amendments to the existing law or by passing a narrower act of incorporation. Some petitions did simply request that the legislature repeal, "every part of the incorporating act that we complain of."[136] However, in order to build as comprehensive a case as possible for repeal, congregations also put forward biblical and philosophical arguments against incorporation on a fundamental level. Criticism of the specific terms of the 1784 Act gave rise to broader ideological objection to all forms of incorporation for religious societies, a development that did not happen in Maryland where numerous evangelical congregations lobbied for and became incorporated in the 1790s. There is a frenetic energy to these petitions that suggests their authors were hoping to make as many arguments as possible to see what stuck.

[134] Eckenrode, *Separation of Church and State in Virginia*,119.
[135] Eckenrode, *Separation of Church and State in Virginia,* 124.
[136] Eckenrode*, Separation of Church and State in Virginia*, 124-5.

A petition sent from Orange County captured the main objections to incorporation with concision, declaring that incorporation of a church was "unprecedented in the New Testament and unwarrantable by the Bill of Rights, to say no more about it."[137] The Baptist General Committee also offered a scriptural objection to incorporation on the basis that "New Testament Churches, we humbly conceive, are, or should be, established by the Legislature of Heaven, and not earthly power; by the Law of God and not the Law of the State; by the acts of the Apostles, and not by the Acts of an Assembly."[138] These petitioners concluded that "the Incorporating Act then, in the first place appears to cast great contempt upon the divine Author of our Religion, whose Kingdom is not of this world."[139] This framework used scripture to define the legitimate sphere of state action. Whenever a legislature made a church into a corporation, it overstepped its legitimate authority because God alone could authorize and sanction the activity of a church. Evangelicals used a scriptural basis to argue that the 1784 Act had drawn the legislature into the position of regulating the Episcopal Church.[140]

The Baptist General Committee further claimed that the incorporation of religious societies fundamentally violated Article 16 of the Virginia Bill of Rights. They declared that "if Religion or the duty which we owe to our Creator, and the manner of discharging it, can be directed, only by reason and conviction; not by force and violence, we cannot see with what propriety the General Assembly could incorporate the Protestant Episcopal Church."[141] Laws, in their essential nature, amounted to a form of state force. Any attempt to incorporate the Protestant Episcopal Church by law used legislative coercion to establish the powers of a

[137] Eckenrode, *Separation of Church and State in Virginia*, 121.
[138] Eckenrode, *Separation of Church and State in Virginia*, 119.
[139] Eckenrode, *Separation of Church and State in Virginia*, 119.
[140] This argument exemplifies reformers' expectation that the legislature would uphold Christian values in law while nonetheless demanding the legislature refrain from intervening in church governance. See Thomas J. Curry, *The First Freedoms,* 217-8.
[141] Eckenrode, *Separation of Church and State in Virginia*, 119.

religious body and therefore necessarily violated an essential tenet of the Virginia Declaration of Rights.

While evangelicals flooded the legislature with petitions calling to overturn the law, Episcopalians fiercely objected to repeal. They mounted their own counter-petition campaign across the state and their petitions garnered as many as 2,500 signatures.[142] The standing committee of the Episcopal Church in Virginia sent a rejoinder in December of 1786 insisting that incorporation did not constitute a religious establishment, as long as any and every denomination had the right to become incorporated. Moreover, they charged that "the title under which this Church enjoys the said glebes is the very same by which every man in the state enjoys that property which no one contests, and that it is a rite of which they cannot be deprived, but by violence, nor without annihilating public faith, disturbing the principles of all government, and shaking the foundations of this state."[143] Repealing incorporation would violate their right to private property and jeopardized the noble "principles of the Revolution."[144] The Episcopalians argued that their private property rights as citizens protected their claims to parish property.

Both camps invoked their fundamental rights under Virginia's 1776 Constitution and Declaration of Rights when arguing for and against revoking of the 1784 Incorporation Act. They cast the repeal of the Incorporation Act as a crucial litmus test for the legacy of the Revolution and the sanctity of individual rights in the new republic. Even at this early stage, the debates over incorporation circled around an apparent tension between religious freedom and property rights. Settling this issue would lead the legislature to wrestle with how to balance liberty and property.

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[142] Eckenrode, *Separation of Church and State in Virginia,* 125.
[143] Standing Committee of the Convention of the Protestant Episcopal Church: Petition, December 5, 1786, LPDC, LVA.
[144] Inhabitants of St. Asaph's Parish: Petition, Caroline County, December 4, 1786, LPDC, LVA.

Never happy with the Incorporating Act and sympathetic to the popular outcry against it, Madison began considering its repeal. First, though, he turned his attention to finally defeating general assessment with the passage of the celebrated Statute for Religious Freedom.[145] Madison's arguments against the assessment circulated in his *Memorial and Remonstrance* in the Spring of 1785, and this document remains one of the most celebrated statements about religious freedom. Its legislative companion, the Statute for Religious Freedom, which had been drafted by Jefferson in the 1770s, was passed at the next session of the legislature.[146] The law's bracing language captured the best of Jefferson the author; the passage of the law in the mid-1780s underscored Madison's strengths as a political tactician. The law gave statutory shape to Mason's broad statements in the Declaration of Rights and Madison's philosophical challenge to any form of a general assessment in the Memorial and Remonstrance.

The 1786 Statute marked an important departure from the earlier process of disestablishment. Previously, the legislature had overturned specific colonial statutes one by one. The title of 1786 Statute, "An Act for establishing Religious Freedom," announced a new approach. The legislature appropriated the verb "establish," so long understood to convey an exclusive, state-sponsored church, and instead used it construct a legal framework to bolster and ensure religious freedom for all. Whereas the colonial assembly had used statutes to privilege the established church, the republican legislature would now legislate as a tool to bolster religious freedom. The law explicitly prohibited religious taxation and disassociated civil rights from

[145] The *Memorial and Remonstrance* and Statute for Religious Freedom have received significant attention from scholars of law and religion. See Buckley, Establishing *Religious Freedom: Jefferson's Statute in Virginia* (Charlottesville: University of Virginia Press, 2013); Jon Ragosta, *Religious Freedom: Jefferson's Legacy, America's Creed* (Charlottesville: University of Virginia Press, 2013); Curry, *First Freedoms*, 143-147.
[146] Hening, 12: 84-6. See editorial discussion in "Act for Establishing Religious Freedom, [31 October] 1785," *Founders Online,* National Archives, https://founders.archives.gov/documents/Madison/01-08-02-0206.

religious opinions. The 1786 Statute positively "established" a comprehensive and inviolable vision of religious freedom protected under state law.

The following year, Madison returned to the question of repealing the Episcopal Church's charter. Madison recognized that revoking incorporation would present a thorny legal challenge. Among Madison's papers is a hurried page of notes he made sometime in early 1786. Scrawled on the back of an old legislative resolution, the document recorded a discussion about repealing the act of incorporation made by "Mr. R," presumably Edmund Randolph, and "Mr. Marshall," assuredly John Marshall. The rushed nature of the document conjures up an image of Madison hastily reaching for the first blank page he could find and trying to capture his colleagues' remarks. There is tantalizingly little information about the context of this meeting; it is uncertain whether Madison actively sought out the opinions of the first U.S. Attorney General and future Supreme Court Justice, or if he was taking notes on an informal discussion. The innocuous title Madison used, "Notes on Charters of Incorporation," obscured the specific topic under discussion. But the document's timing and content reveal that their discussion focused on repealing the 1784 Act of Incorporation. John Marshall had voted to incorporate the church in 1784.[147] Randolph and Marshall expressed strong objections to repealing the Church's incorporation. The men characterized charters as "irrevocable" and compared rescinding incorporation to the "tyrannical acts" of Great Britain that had sparked the Revolution. Marshall said, "Laws of incorp[oratio]n. [are] distinct from general laws & not like them repealable: being compacts between two parties" and elaborated that a "vested Right of any sort cannot be touched." The rancorous political fight over repealing the Episcopal Church's Act of

[147] Eckenrode, *Separation of Church and State in Virginia,* 101.

Incorporation led Marshall to think through the rights of corporations vis-à-vis new state legislatures and assert their irrevocable nature.[148]

However, Marshall concluded his comments with an instructive, even prophetic, qualification when he invoked the first article of the Virginia Declaration of Rights. Marshall reiterated that no "compact" could deprive individuals of their inalienable rights. Marshall intimated that "if sense of people, Legislature may interpose—sense not yet expressed by majority." More than any other line in the document, this final observation that such a "sense" was "not yet expressed by majority" revealed that he was not commenting on the question in the abstract but specifically considering the ongoing battle over the Church's incorporation. Though Marshall clearly did not support a repeal, his words provided a way forward for opponents of the law.[149] If the people's fundamental rights had been betrayed by a charter, then the legislature could "interpose" on their behalf to justifiably revoke incorporation.[150]

Months after recording Randolph and Marshall's comments, Madison voted to revoke the Episcopal Church's incorporation in October of 1786.[151] The Repeal Act included a specific provision, "saving to all religious societies the property to them respectively belonging.". Evangelicals continued to call for confiscation, and the struggle over parish property would continue until the passage of the Glebe Act in 1802, which authorized counties to seize vacant glebe lands. [152] This law and its consequences will be explored in Chapter 5.[153]

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[148] James Madison, "Notes on Charters of Incorporation, [January?] 1786," *Founders Online,* National Archives, accessed September 29, 2019, https://founders.archives.gov/documents/Madison/01-08-02-0244.
[149] Marshall would also vote against glebe confiscation in 1789. Eckenrode, 137.
[150] James Madison, "Notes on Charters of Incorporation," *Founders Online.*
[151] Hening, 12:266-7. The legislature reaffirmed parishes' title to property in 1788. Hening, 12:705-706.
[152] Buckley, "Evangelicals Triumphant: The Baptists' Assault on the Virginia Glebes, 1786-1801," *William and Mary Quarterly*, 3rd ser., 45 (1988): 33-69; Robert Baylor Semple, *The Rise and Progress of the Baptists in Virginia* (Richmond: 1810).
[153] *Acts VA* (1801-1802), Ch. 5: "An Act concerning the Glebe Lands and Churches within this Commonwealth," 8-9.

Revoking the Episcopal Church's charter was the immediate outcome of the protest movement, but the legacy of these debates continued to resonate. Virginia's evangelicals had not only succeeded in reversing specific state policies but in reshaping the popular and constitutional definition of a religious establishment. Before they raised objections to the passage of the 1784 law, there was no widespread or codified opposition to a religious denomination securing its property thorough incorporation in Virginia. And, as many of the counter-petitions make clear, anger over property as much as ideological objections to incorporation animated popular objections to the 1784 Incorporating Act. However, attacking the specific provisions of the law gave rise to a set of broader ideological arguments against incorporation. The shortcomings of the 1784 Act led evangelicals to develop that any form of state incorporation would inherently draw the state into regulating churches.

After the repeal of the Incorporating Act, no other religious societies became incorporated in Virginia. The legislature eventually enacted this prohibition into statute when it declared in 1799 that any former state laws that had "incorporated religious sects" were "inconsistent with the principles of the constitution, and of religious freedom, and manifestly [tend] to the re-establishment of a national church."[154] In 1851, the state formally amended its Constitution to add this provision, which stood in place until 2002.[155] Evangelicals had persuasively argued that any form of incorporation transgressed the permissible boundary between church and state. In protesting against the chartering of the Episcopal Church, Virginia's evangelicals had articulated

[154] *Acts VA* (1798-1799), Ch. 9, "An act, to repeal certain acts, and to declare the construction of the Bill of Rights, and Constitution concerning religion," 8.
[155] "The General Assembly shall not grant a charter of incorporation to any church or religious denomination but may secure the title to church property to an extent to be limited by law." Virginia, Constitution (1851), Art. 32. The case that finally overturned this law arose when Jerry Falwell sued the state to challenge its prohibition on incorporation. See *Falwell v. Miller*, 203 F. Su 2d 624 (W.D. Va. 2002).

and enacted a broader definition of religious establishment that made religious incorporation impermissible.

Maryland and Virginia took divergent paths over the incorporation of religious societies. In both states, non-conformists set the agenda during disestablishment. Their experiences under the colonial established church shaped their views and priorities after the Revolution. Maryland settled on policies that made longstanding legal privileges available to all Christians. This version of disestablishment did not fundamentally sever ties between religion and government but instead set Christian denominations on equal footing. Catholics, long unable to use incorporation to protect their property, sought equal legal powers from the state government, not to disassociate their church from the state. Virginia's evangelicals drew on their experiences under punitive colonial laws and high taxes. Without a clear incentive to seek corporate privileges from the state, such as the need to secure valuable property, Virginian's non-conformists pushed back against incorporation as an unconstitutional connection between church and state. Material concerns shaped ideological change.

The question of incorporation ultimately led the two states to enact fundamentally different definitions of religious establishment. Marylanders had embraced private and general incorporation acts for the legal equality they bestowed on churches. Virginians, on the other hand, articulated a desire to separate churches as much as possible from the grasp of state oversight. Virginia's evangelicals expanded the parameters of religious establishment as a legal concept in their arguments against incorporation. The movement delegitimized any form of state regulation over churches. The issue of incorporation underscores the gulf between Virginia's disestablishment commitment to the separation of church and state and Maryland's commitment to equality of churches in the state.

As the fight over incorporation in Virginia demonstrated, the definition of a religious establishment changed dramatically in the course of a few short years in response to the specific terms of the 1784 Incorporation Act. The practical boundaries of an "establishment" were refined as states put their principles into practice. The political process of disestablishment fashioned multiple legal definitions of religious establishment. As Americans undertook the process of dismantling the former established churches, they reached new agreements about what a religious establishment was. The working definition was not the same in every state, nor was it stable over time. The goal posts of disestablishment continued to shift during the process. Religious establishment was a moving target as the public developed new ideas about what constituted a state establishment of religion in the decades after the Revolution.

Drafting the First Amendment

In their policies toward incorporation, the Chesapeake states reached radically different outcomes that expressed inconsistent definitions of religious establishment. The new federal government was also grappling with its stance toward religion during the late 1780s. Incorporation was never raised as an issue during the ratification of the Constitution and Bill of Rights, and the significant differences between Maryland and Virginia's definitions of establishment remained buried during the drafting of the First Amendment. However, the discordant definitions of establishment and its implications for religious incorporation would surface in the early nineteenth century.

Several state ratifying conventions had instructed Congress to add language protecting religious freedom when ratifying the Constitution, and there were also objections from some religious denominations that the document did too little to safeguard rights of conscience.[156] In

[156] Virginia, North Carolina, New York and Rhode Island all proposed amendments to the Constitution that Offred specific language about the free exercise of religion. See: Pauline Maier, *Ratification*: *The People Debate the*

response, James Madison had originally prepared an amendment that read, "the civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner or pretext infringed."[157] Heated debates over the proposed language persisted during the summer of 1789. When raising objections to or praising Madison's amendment, congressmen drew on and articulated sharp regional differences about the proper relationship between church and state. The continued establishment of Congregationalism in much of New England, the recent disestablishment of the Anglican Church across the South, and the long history of non-establishment in Rhode Island and Pennsylvania all shaped the views of the Representatives and their constituents. New Englanders feared that such an amendment might force their home states to abandon their religious establishments while others argued that the amendment as written could actually threaten the foundations of all private religious institutions.

Marylander Daniel Carroll, brother of Archbishop John Carroll who had shepherded the general incorporation act through the Maryland Senate in 1788 and, was one of the loudest voices in favor of adopting Madison's amendment to the Constitution. Carroll indicated he "was much in favor of adopting the words" and thought they would be more powerful in "conciliating the minds of the people to the Government than almost any other amendment."[158] He declared that, "the rights of conscience are… of a peculiar delicacy, and will little bear the gentlest touch of governmental hand; and…many sects have concurred that they are not well secured under the

Constitution, 1787-1788 (New York: Simon & Schuster, 2010), 163, 207, 225, 263, 303, 453-4; Michael D. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion* Harvard Law Review, Vol. 103, (1990), 1409-1517. DANIEL L. DREISBACH, "The Constitution's Forgotten Religion Clause: Reflections on the Article VI Religious Test," *Journal of Church and State*, 38 (1996), pp. 261-295; Gary D. Glenn, "Forgotten Purposes of the First Amendment Religion Clauses," *The Review of Politics*, Vol. 49 (Summer, 1987), pp. 340-367;

[157] *Annals of Congress*, First Congress, Second Session, 451.

[158] *Annals of Congress*, Senate, First Congress, Second Session, 758.

present Constitution."[159] Carroll dismissed his colleagues' quibbling over the specific wording of the amendment. In a telling statement, the Catholic congressman said that, "he would not contend with gentlemen about the phraseology, his object was to secure the substance."[160] Carroll claimed to be unconcerned with the specific wording of the amendment. This relaxed view presumed that the meaning of the term "established" was understood well enough not to be misconstrued.

Carroll and Madison, both hailing from the Chesapeake, had personally taken part in the struggle to win religious freedom for non-conformists and to remove the Episcopal Church in their home states. Both men hoped that this amendment would convince wary religious communities that the new Federal Constitution did not threaten the specific settlements between church and state reached in each state. The alliance between the Chesapeake representatives reflected the importance of protecting their hard-worn reforms.

The final language of the First Amendment reflected months of revision in the House of Representatives and the Senate. Congress had whittled down Madison's original language to read "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof," which was finally ratified in 1791. The first two clauses of the ratified amendment words were more ambiguous than the initial wording proposed by Madison. They evinced an agree-to-disagree compromise that neither gave the federal government too much or too little power over the religious settlements only recently solidified in each state.[161] The different definitions of an "establishment" had not been carefully parsed but would be revealed in debates over specific policies like incorporation in the following decades.

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[159] *Annals of Congress*, Senate, First Congress, Second Session, 757-8
[160] Ibid.
[161] For a thoughtful discussion of these implications, see Vincent Phillip Muñoz, "The Original Meaning of the Establishment Clause and the Impossibility of Its Incorporation," 8 U. PA. J. CONST. L. 585 (2006).

Incorporation and the Establishment Clause

Two decades later, in 1811, James Madison had become President of the United States. He issued his first veto to block a federal act of incorporation for Christ Church, an Episcopal congregation in the District of Columbia. [162] This church and its fate would late be decided by the Supreme Court in *Terrett v. Taylor* (1815), which will be explored in Chapter 5. In his veto message, Madison explained that the Act, "exceeds the rightful authority to which governments are limited by the essential distinction between civil and religious functions and violates in particular the article of the Constitution of the United States which declares that 'Congress shall make no law respecting a religious establishment.'"[163] Madison noted that the law included "sundry rules and proceedings relative purely to the organization and polity of the church incorporated, and comprehending even the election and removal of the minister of the same, so that no change could be made therein by the particular society or by the general church."[164] By outlining the by-laws of the incorporated church in the Act and regulating its ministerial succession, Madison maintained that "this particular church, therefore, would so far be a religious establishment by law, a legal force and sanction being given to certain articles in its constitution and administration." Madison's veto offered a narrow definition of establishment not based in the financial relationship between church and state but rooted in the inability of the church to govern itself or modify its administration independently.[165]

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[162] "An act incorporating the Protestant Episcopal Church in the town of Alexandria, in the District of Columbia," January 28, 1811, in *The Debates and Proceedings in the Congress of the United States,* (Washington, DC: Gales and Seaton, 1853), 22:105.
[163] "From James Madison to the House of Representatives, 21 February 1811," *Founders Online,* National Archives, https://founders.archives.gov/documents/Madison/03-03-02-0233.
[164] Ibid.
[165] Ibid.

Madison's words echoed those arguments made by Virginia's evangelicals almost thirty years when protesting the state's 1784 Act of Incorporation of the Episcopal Church. Incorporation, from their perspective, was a fundamental violation of the separation of church and state. Acts of Incorporation were a form of government sanction and codified internal church regulations in state law. According to Virginians, these types of laws inherently set the state in a position of ecclesiastical oversight.[166] Madison's veto articulated the same vision of prohibiting "establishment" at the national level that he and others had pursued for Virginia at the state level.

News of the veto was reprinted in many states over the following weeks.[167] The Green-Mountain Farmer, published in Bennington, Vermont, celebrated the veto, exclaiming, "Happy America! Respect your Rights! Revere your inestimable republican government… and gratefully acknowledge the favor of Heaven, in granting you a Madison… to place a veto… as righteousness demands, unaw'd by man, and unallur'd by bribes."[168] However, Madison's action received immediate and scathing criticism from a Maryland newspaper. In a piece entitled "Democratic Qualms," an anonymous writer pointed out that the terms of this vetoed bill closely resembled the numerous acts passed by Maryland and other states that had incorporated

[166] Michael McConnell argued that Madison's "reasons for vetoing the federal bill, however, were narrow and should not be interpreted as opposing all incorporations of religious bodies." However, there is ample evidence to question McConnell's claim. Contemporary reactions at the time certainly suggested that was how the public understood the veto. Under Madison's reasoning, any act that outlined the by-laws of a church's government would be unconstitutional and would have other states' acts incorporating religious societies. See Michael W. McConnell, "The Supreme Court's Earliest Church-State Cases: Windows on Religious-Cultural-Political Conflict in the Early Republic," 37 Tulsa L. Rev. 7 (2001), 15.

[167] *American Watchman and Delaware Republican*, 2, March 2, 1811 (Wilmington, DE).; "Democratic Qualms," March 4, 1811, *Poulson's American Daily Advertiser*, (Philadelphia, Pennsylvania); "Democratic Qualms," March 16, 1811, *Berkshire Reporter* (Pittsfield, MA); March 13, 1811, *The Scioto Gazette* (Chillicothe, Ohio); March 27, 1811, *Rhode-Island Republican* (Newport, Rhode Island); *Green-Mountain Farmer*, (Bennington, Vermont) April 1, 1811; March 1, 1811, *Farmers' Repository* (Charles Town, Virginia); February 26, 1811, *Federal Republican* (Baltimore, Maryland); March 7, 1811, *The Star* (Raleigh, North Carolina); March 9, 1811, New Hampshire Patriot and State Gazette (Concord, New Hampshire); March 13, 1811, *American Advocate (*Hallowell, Maine).

[168] *Green-Mountain Farmer*, (Bennington, Vermont) April 1, 1811.

denominations and congregations.[169] The author balked at Madison's veto message, which "condemns every state government in the union, for they have all passed similar acts." The newspaper derisively attacked the President's "ridiculous affectation" that he alone understood the Constitution and could "guard" its true meaning. The article specifically blasted Madison's interpretation of religious establishment as expressed in the First Amendment:

> What was the meaning of the Constitution in providing against a religious establishment? Does any man but Mr. Madison imagine it was to prevent the people of the District of Columbia from enjoying legal church regulations and from exercising corporate rights in the congregations? Does the legislature of Maryland believe it is creating a religious establishment, when it is occupied in granting charters to the churches of the different sects of Christians… Where all are equally protected and accommodated, where each sect and congregations has its own establishment… the best security against "a religious establishment," that is to say one pre-eminent establishment which is preferred and set up over the rest, against which alone the constitutional safeguard was created?[170]

This Marylander clearly had not followed events across the Potomac. Articles critical of the veto appeared the following month in Pennsylvania and Massachusetts, which suggested that there was more than regional interest in the matter.[171]

The House of Representatives did not know what to do when it received the President's veto message. There had not been a presidential veto since 1797, and the congressmen expressed confusion about the proper protocol for dealing with a vetoed bill. No one was sure if they had to vote immediately or whether they could refer the bill to a committee for amendment. After listening to Madison's response, the House decided to read the First Amendment aloud and consider its meaning. Timothy Pitkin, a congressman from Connecticut, said, "this question was

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[169] "*Archives of Maryland Online,* 653:13-17; *Archives of Maryland Online*, 644:49.
[170] Ibid.
[171] "Democratic Qualms," *Poulson's American Daily Advertiser*, March 4, 1811 (Philadelphia, Pennsylvania); "Democratic Qualms," (March 16, 1811) *Berkshire Reporter* (Pittsfield, MA); March 2, 1811 *American Watchman and Delaware Republican*, (Wilmington, DE).

new to him. He had no idea that the Constitution precluded Congress from passing laws to incorporate religious societies for the purposes of enabling them to hold property." Indeed, Pitkin stated, "he has always held the constitution to intend to prevent the establishment of a national church, such as the Church of England, a refusal to subscribe to the tendencies of which was to exclude a citizen from office, etc." The Connecticut representative requested additional time for "reflection" upon the issue. However, Benjamin Pickman, Jr. of Massachusetts dismissed the need to discuss the act or underlying question any further. Since the bill was "not an important one," and "a full discussion of the principles it involved would occupy the whole remainder of the session," Pickman suggested the "best course" was to move on. The House voted, and the bill failed. By taking the path of least resistance, the House allowed Madison's rationale to stand unchallenged.[172]

This scene appears at turns amusing, astonishing, and enormously consequential. Confused about how to handle a vetoed bill and uncertain about the meaning of the First Amendment, Congress passed the buck. With that, Madison's definition of religious establishment, forged in the battles of Virginia's fight over incorporation during the 1780s, struck down the federal law. The veto advocated for a Virginian vision of disestablishment at the federal level and exposed a wide gap between regional understandings of establishment in the early nineteenth century.

Representative Pickman may have suggested that the incorporation of this church was insignificant, but this event should still be remembered as a decisive turn in American religious and Constitutional history. Congress capitulated to the President and gave up its chance to interpret the meaning of the Constitution. As historians and scholars focus on the battles between

[172] *Annals of Congress*, 11th Congress, 3rd Session, 983-5; 1104-5.

Marshall and Madison over whether the executive or the judicial branch had the power to interpret the Constitution, the story of Madison's veto also underscores how Congress sat out the game in this instance. The House deferred to the executive branch at this juncture and chose not to challenge the Virginian's view of religious incorporation.

The stakes are high for scholarly analysis of the definition of constitutional concepts like "religious establishment" in the era of the founding. In a moment when the courts are more reliant than ever textual and originalist methods, it is essential for scholars to look at how abstract concepts were translated into practical policies for an accurate sense of what contemporaries meant when using these words. Pitkin's dismissal of one minor law and Daniel Carroll's stated unconcern for the specific wording of the First Amendment remind scholars of the necessity of investigating legal change on the ground alongside interrogating texts to discern meaning. The divergence between the two Chesapeake states reveals that there was no single definition of "establishment," but that it was an evolving, ambiguous, and contested idea in the early American republic. Despite a shared history of Anglican establishment and a vocal commitment to dismantling the Anglican Church, the neighboring states cemented contradictory definitions of religious establishment in their laws.

The Decaying Edifice

Settling the matter of incorporation may have had long-term consequences for the definition of religious establishment, but it did not resolve the vocal demands of Virginia's non-Anglicans for the state to seize parish property. To Patrick Allison's great disappointment, Marylanders never seriously debated the confiscation of parish property. But, for Virginia's

Baptists, religious freedom would remain spurious without the seizure of parish property and disestablishment merely an unfulfilled promise.

When Baptist minister Robert Semple looked back on the project of disestablishment, he described the established church as a "decaying edifice" to which "every dissenter put… his shoulder, to push it into irretrievable ruin." His words were than allegorical. In the 1780s, the physical landscape in Virginia already bore witness to the legal rupture of disestablishment and the shifting religious affiliations of its people.[173] Episcopal parishes still held a significant amount of property, which had been specifically preserved under the repeal of the incorporation act. But, for Baptists, parish churches and glebes gave a material expression to their sense of continued injustice. Virginian Baptists set their sights on wresting this parish property from the Episcopal Church and toppling the edifice of establishment once and for all. The ensuing political, material, and legal struggle over parish property in Virginia will be the topic of the next chapter.

[173] Semple, *Rise and Progress,* 26.

CHAPTER 5

Liberty, Property, and the Glebes

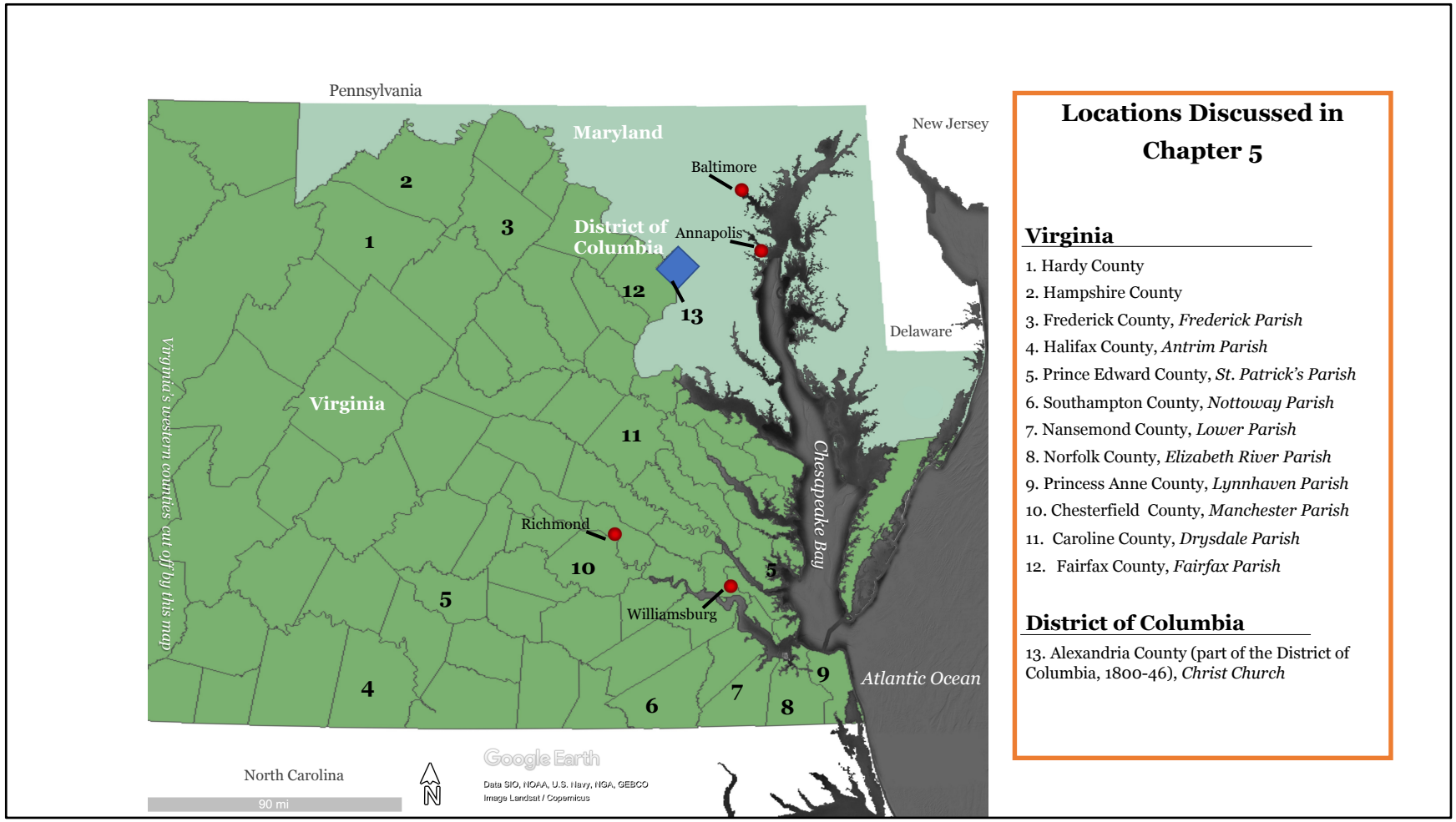


Figure 5.1. Map of locations discussed in Chapter 5. Map created by Alyssa Penick using data from the *Atlas of Historical County Boundaries*, The Newberry Library, last accessed May 15, 2020, , https://publications.newberry.org/ahcbp/index.html.

In February of 1787, James Madison updated Thomas Jefferson, then serving as the Minister to France, about events at home over the previous few months. Madison wrote optimistically about the possibility of a federal convention to amend the Articles of Confederation and also gave an overview of Virginia's recent legislative session. Madison mentioned that "the Act incorporating the protestant Episcopal Church excited the most pointed opposition from the other Sects. They even pushed their attacks agst. the reservation of the Glebes &c. to the Church exclusively. The latter circumstance involved the Legislature in some embarrassment. The result was a repeal of the Act, with a saving of the property."[1] While Madison had actively supported revoking the church's incorporation, he felt uneasy about calls for the Episcopal Church to surrender its glebe property. Perhaps he was unaware that Jefferson had in fact suggested the seizure and sale of the glebes in 1776 in his initial plan for "discontinuing the church."[2] But, more likely what embarrassed Madison was the demand that the legislature sell the glebes from parishes despite multiple acts of the legislature since 1776 confirming parishes' property rights in absolute terms.[3]

Madison's embarrassment over the glebe property might have also been on his mind when he spoke at the Constitutional Convention the following summer against popular calls for the redistribution of property. He warned that while, "no agrarian attempts have yet been made in this Country,…symptoms of a leveling spirit…have sufficiently appeared in certain quarters to give notice of the future danger."[4] Like Shays' Rebellion, the fight over the glebes was framed

[1] "From James Madison to Thomas Jefferson, 15 February 1787," *Founders Online,* National Archives, accessed September 29, 2019, https://founders.archives.gov/documents/Madison/01-09-02-0138.
[2] "I. Rough Draft of Jefferson's Resolutions for Disestablishing the Church of England and for Repealing Laws Interfering with Freedom of Worship, [before 19 November 1776]," *Founders Online,* National Archives.
[3] Hening, 9:164-167; 10:111 11:532-7.
[4] "Federal Convention Speech, June 27, 1787," *Selected Writings of James Madison*, ed. Ralph Ketcham (Indianapolis: Hackett Publishing, Inc., 2006), 60.

on all sides as a contest over republican rights in which property, liberty, and power were all at stake.

Popular protests linked the issues of parish property and church incorporation. The legal privilege of securing property jointly and perpetually was a long-guarded privilege of incorporated bodies, and that legacy shaped disestablishment in both Chesapeake states. Non-Anglican Marylanders recognized the significance of corporate privileges for securing their property and clamored to make incorporation available to all Christians. Presbyterian minister Patrick Allison, who advocated for general incorporation, was a lone voice in Maryland in favor of confiscating parish property. He lamented that the "glebe lands, churches, and chapels, books, [and] negroes," remained in the hands of Maryland's Episcopalian parishes.[5] Despite Allison's griping, there was never any organized attempt in Maryland to seize parish property.

However, Virginia's Presbyterians and Baptists remained furious that the repeal of the Episcopal Church's incorporation had allowed all parishes to retain their property. As discussed in Chapter 4, vocal opposition from these religious denominations had led the state to impose a total ban on churches becoming incorporated, making it one of the only states to do so.[6] Resolved to push for the confiscation of Episcopal Church property, Virginian Baptists, and to a lesser extent Presbyterians, embarked on a fifteen-year petitioning campaign to convince the legislature to seize the glebes.

Alongside these appeals from evangelicals came a bevy of petitions from local communities, civic administrators, and parishes. Some local petitioners advocated for or against a statewide confiscation policy, and their entreaties closely resembled the petitions sent by

[5] Vindex [Patrick Allison], "Candid Animadversions on a Petition," (Baltimore: 1793), 2nd edition, 14.
[6] West Virginia, Rhode Island, and Arkansas also prohibited incorporation. See Sarah Barringer Gordon, "The First Disestablishment: Limits on Church Power and Property Before the Civil War," *University of Pennsylvania Law Review* 162 (2014): 335.

evangelical groups. However, numerous local petitioners sought clarification about the reformed legal relationship between church and state. Their queries expressed confusion about lawsuits, debts, and charitable endowments amidst the awkward transition from parish governance to secular county administration. The high cost of poor relief also animated many of these local appeals. In 1780, the legislature had begun to hand the responsibility of poor relief from parishes to counties with the creation of new county-run Boards of Overseers of the Poor, a change that will be explored in grater detailed in Chapter 6. For communities still reeling from war and overwhelmed by debt, the fight over glebes was a contest for valuable communal resources.

The legislature approved the sale of the glebes in 1802, but this act was immediately challenged by Episcopalians. The issue moved to the courts, where it proved no less divisive. The Virginia Supreme Court and the US Supreme Court both weighed in on Virginia's glebe lands and their decisions probed the legality of the state's two most far-reaching disestablishmentarian policies – revoking and then banning religious incorporation and seizing church property.

Ultimately, denominational petitions, local petitions, legislation, and court decisions concerning the glebes converged around three key unsettled questions. First, there were fundamental disputes over who were the legal successors to the parish. What happened when the institution long understood to represent and be synonymous with the community became a private entity? Were the people at large the rightful heirs of parish property or was the Episcopal Church? Second, there were serious disagreements about the responsibility and role of the state in the process of disestablishment. Those in favor of seizing the glebes argued that the state had acted improperly by securing parish property to the Protestant Episcopal Church during and after the Revolution. Those who opposed the seizure of parish property argued that the state had been

a neutral party and simply respected parishes' existing claims. Finally, and perhaps most importantly, the debate over glebe lands reflected uncertainty over the fundamental definition of a religious establishment. Multiple and evolving ideas about what constituted an establishment of religion emerged and shaped the discordant demands of Virginians.

The legislative debates over Virginia's glebes and subsequent court battles have received significant attention from scholars.[7] My analysis of the fight over glebe lands departs from this work in three respects. First, I prioritize the material property at stake. Glebes, charitable endowments, and parish churches were valuable, communal resources caught in limbo after the repeal of incorporation.[8] The fight over parish property was not just a "test" of ideals or an "illustration" of an ideological debate.[9] The property itself cannot be divorced from debates about rights to hold property. Second, I emphasize the interwoven nature of the debates over glebes and ongoing tensions between liberty and property in republican Virginia. Pro-confiscation petitions foregrounded the importance of material property to securing religious freedom; those against confiscation invoked the same republican rhetoric to defend parishes' vested rights to the glebes. Virginians of all stripes took advantage of the ambivalence of

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[7] For two detailed analyses of Virginia's seizure of the glebes, see Thomas E. Buckley, "Evangelicals Triumphant: The Baptists' Assault on the Virginia Glebes, 1786-1801," *William and Mary Quarterly,* 3rd ser., 45 (1988); H.J. Eckenrode, *Separation of Church and State in Virginia* (Richmond: 1910), 130-155. See other valuable discussions in Carl H. Esbeck, "Disestablishment in Virginia, 1776–1802," 169-171; Richard R. Beeman, *The Old Dominion and the New Nation, 1788-1801* (Lexington, KY: The University of Kentucky Press, 1972), 93-95, 198-199. The debates over the glebes are also mentioned in most accounts of disestablishment in Virginia, though often as dénouement to events in the 1780s. For example, Sidney Ahlstrom, *A Religious History of the American People,* Second Edition (New Haven: Yale University Press, 2004), 369.

[8] Almost all discussions of the glebe lands focus on their relationship to the struggle for religious freedom more broadly. Richard Beeman's account does raise the issue of poor relief but does not look closely at petitions sent by other local administrators. See Beeman, *The Old Dominion and the New Nation,* 93-95.

[9] Buckley observed that the glebes served as a "test" of the newly minted Virginia's Statute for Religious Freedom. McConnell referred to the glebe as "the clearest illustration of a wider theoretical and practical problem: what to do about remnants of the formerly established church after disestablishment?" Thomas E. Buckley, "Evangelicals Triumphant: The Baptists' Assault on the Virginia Glebes, 1786-1801," *William and Mary Quarterly,* 3rd ser., 45 (1988): 68; Michael W. McConnell, "The Supreme Court's Earliest Church-State Cases: Windows on Religious-Cultural-Political Conflict in the Early Republic," 37 *Tulsa L. Rev*. 7 (2001): 10. These analyses are insightful, and I expand on their discussions by focusing on the actual property to understand the significance of confiscation.

republicanism to make their case for or against glebe confiscation. Finally, I argue that the Glebe Act itself was an important step in the definition of "religious establishment" in Virginia. The legislature had already rejected any form of general assessment in the late 1780s as unconstitutional. The terms of the 1802 Glebe Act prohibited communities from using proceeds from the sale of their glebes for any "religious purposes."[10] This concrete restriction imposed another constraint on the flow of funds from state to church and further refined the meaning of "a religious establishment" in Virginia as a complete material separation of church and state.

This chapter begins by exploring the revolutionary context that framed debates over glebe lands. I then analyze petitions sent to the legislature about the glebe lands from religious denominations advocating for a statewide policy of seizing the glebes. Next, I turn to the many local petitions, which ranged from voicing support for confiscation to appealing for legal clarification about the status of parish property. Finally, I consider how the courts, both the Virginian Supreme Court and the US Supreme Court, came to drastically different conclusions about Virginia's confiscation of the glebes and prohibition of religious incorporation. These cases reflected stark disagreements over the meaning of a "religious establishment" and different views of how laws ought to best secure liberty and property in the new republic.

Liberty and Property: A View from Republican Virginia

The rallying cry of "Liberty and Property" animated the revolutionary project. As far back as the Stamp Act Crisis, Americans invoked this phrase to frame their protest against British overreach. When John Dickinson penned the influential *Letters from a Farmer in Pennsylvania*, he declared that the Stamp Act threatened to make "still greater inroads on liberty

[10] *Acts VA* (1801-1802), Ch. 5: "An Act concerning the Glebe Lands and Churches within this Commonwealth," 8-9.

and property."[11] When Virginians attacked the principle of virtual representation, they argued that without their own elected representatives, Parliament was not "bound in duty and interest to preserve our liberty and property."[12] Though rhetorically powerful, the ambiguous phrase said nothing about the actual relationship between liberty and property. This capacious revolutionary framework could produce distinct rights' claims that were compatible with republicanism but incompatible with each other. The implications of American independence at its most radical and its most conservative stemmed from the contradictory possibilities of property in the new republic.

Federalists and Antifederalists confronted this divergence during the ratification debates. Federalist Noah Webster declared that "an equal distribution of landed property is the whole basis of national freedom."[13] He continued, "let the people have property and they will have power … The liberties of America, therefore, and her forms of government, stand on the broadest basis." In this view, private property ensured personal liberties. If Noah Webster heralded the wide distribution of property, Hamilton underscored the necessity of securing private property under the newly proposed Constitution by imposing restraints on "state governments which have undermined the foundations of property and credit."[14] In his final *Federalist* essay (No. 85), Hamilton summed up the arguments of the previous eighty-four essays by stating that the new federal government offered "additional securities to republican government, to liberty and to property."[15] Madison, too, invoked liberty and property, most

[11] Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: Harvard University Press, 2017), Third Edition, 99.
[12] Bailyn, *The Ideological Origins,* 169
[13] Bailyn, *The Ideological Origins,* 372-3.
[14] *Federalist* 85 (August 18, 1788).
[15] *Federalist* 85.

famously in his defense of large republics as the best means of securing liberty and property against factions in *Federalist* No. 10.

Slavery was the most glaring manifestation of the conflict between liberty and property. Madison addressed the tensions in *Federalist* 54, when he declared, "government is instituted no less for protection of the property, than of the persons, of individuals. The one as well as the other, therefore, may be considered as represented by those who are charged with the government…The rights of property are committed into the same hands with the personal rights."[16] Madison sought to assuage white slaveholders' fears that the Revolution's promises of liberty would endanger their property rights. He argued that the Constitution would provide a bulwark against popular threats to all private property and he framed republican government as duty bound to protect private property as much as personal liberty. The unspoken rhetorical move in Madison's attempt to resolve slaveholding under the Constitution was race. Though Madison used universal language, the only way his logic passes muster is an implicit acknowledgement that the personal rights of white and black Americans' differed. Those "persons" whose liberty was protected by the government were white, and the personal rights of those black Americans held as property did not trump the property rights of those white persons. For the purposes of ratification, Madison's argument maneuvered past slavery as threat to the dual guarantees of republican liberty and private property.

The watchwords of property and liberty were just as important to Antifederalists, who painted the Constitution as the death knell of both. The Federal Farmer argued that the new Constitution would cause the "equality of property" to be "destroyed."[17] Patrick Henry

[16] *Federalist* 54 (February 12, 1788).
[17] *Federal Farmer* V (October 13, 1787), quoted in Herbert J. Storing, ed., *The Complete Anti-Federalist (Chic*ago: University of Chicago Press, 1981), 2:251

prophesied that the future national President would "be supported in extravagant magnificence, so that the whole of our property may be taken by this American government, by laying what taxes they please, giving themselves what salaries they please, and suspending our laws at their pleasure."[18] To Antifederalists, restraining power before it destroyed liberty would ultimately protect property. As one writer proclaimed, "you esteem life and property, but [these were] secondary objects; when your liberty comes to be attacked."[19] The Revolution had given the people a republican vocabulary that enshrined liberty and property but also left them sorely divided over its implications.

What did all of this mean for Virginians living in the wake of the Revolution? Certainly, in the rhetoric of revolutionaries themselves, liberty and property were most often addressed as abstract ideals. In much of the mid-twentieth century scholarship on republicanism, perhaps in response to the strident materialism of Beard, property and liberty likewise appear as abstract categories.[20] But, as Edmund Morgan reminded us, "Virginians may have had a special appreciation of the freedom dear to Republicans, because they saw every day what life without it could be like."[21] Morgan points out that the visceral reality of racial slavery made Virginians more receptive to the ideas of republicanism because the institution laid bare the dire stakes of life without liberty. At stake in these fights was tangible, valuable property, and in a slave

[18] Bailyn, *The Ideological Origins,* 335.
[19] Saul Cornell, *The Other Founders: Anti-Federalism and the Dissenting Tradition in America,* (Chicago: University of Chicago Press, 1989), 113.
[20] Many of the leading scholars of republicanism, including Caroline Robbins, Bernard Bailyn and Gordon Wood, called attention to the importance of republican thought to the Revolution, but their work dwelt less on the actual property at stake in these debates. Three particularly useful synthetic pieces on the historiography of republicanism are Robert E. Shalhope, "Toward a Republican Synthesis: The Emergence of an Understanding of Republicanism in American Historiography," *William and Mary Quarterly,* 3rd ser., 29 (1972): 49-80; Robert E. Shalhope, "Republicanism and Early American Historiography," *William and Mary Quarterly,* 3rd ser., 39 (1982): 334-356.
[21] Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: W.W. Norton & Company, 1975), 376.

society, property meant people. Neither property nor liberty was ever an abstraction in the early republic.

The Revolution had unleashed significant disruption to real property across Virginia. The war left destruction in its wake, and white Virginians grumbled about the many enslaved people who escaped during the war.[22] The number of manumissions grew after the war, as did the number of freedom suits brought by enslaved people. Virginia's courts were left to contend with the extent to which non-white Virginians could claim their freedom without infringing or destabilizing private property rights.[23] The seizure of loyalist property across the state led white Virginians to confront the conditions under which a state could justifiably seize private property.[24] Shays' Rebellion, the Whiskey Rebellion, Fries' Rebellion, and other violent confrontations in the 1780s and 1790s all eschewed an absolute view of property rights and demanded more egalitarian policies to relieve debts. Virginians grappled with how to enact laws that protected property and ensured liberty, too. Laws abolishing entail and primogeniture were heralded as a vindication of the common man under republican government.[25] Yet, Virginia maintained its property requirement for suffrage and the percentage of white men eligible to vote declined over the course of the first decades of the nineteenth century.[26]

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[22] Cassandra Pybus, "Jefferson's Faulty Math: The Question of Slave Defections in the American Revolution," *William and Mary Quarterly,* 3rd ser., 62 (2005), 243-264; Sylvia Frey, *Water From the Rock: Black Resistance in a Revolutionary Age* (Princeton, NJ: Princeton University Press, 1991), 63, 76-77, 166-67, 216-219.
[23] Christopher Doyle, "Judge St. George Tucker and the Case of *Tom V. Roberts*. Blunting the Revolution's Radicalism from Virginia's District Courts," *The Virginia Magazine of History and Biography* 106 (1998), 419-442.
[24] F. Thornton Miller, "John Marshall Ver Spencer Roane: A Reevaluation of *Martin v. Hunter's Lessee*," *VMHB 9*6 (297-314).
[25] Holly Brewer, "Entailing Aristocracy in Colonial Virginia: "Ancient Feudal Restraints" and Revolutionary Reform," *The William and Mary Quarterly*, Vol. 54, No. 2 (Apr., 1997), 307-346; Stanley N. Katz, "Republicanism and the Law of Inheritance in the American Revolutionary Era," *Michigan Law Review* 76 (1977): 1-29. Claire Priest has cautioned that these reformed were less radical in practice. See Priest, "The End of Entail: Information, Institutions, and Slavery in the American Revolutionary Period," *Law and History Review* 33 (2015): 277-319;
[26] J. R. Pole, "Representation and Authority in Virginia from the Revolution to Reform," *The Journal of Southern History* 24 (1958), 16-50; Christopher M. Curtis, "Reconsidering Suffrage Reform in the 1829-1830 Virginia Constitutional Convention," *The Journal of Southern History* 74 (Feb., 2008): 89-124.

As a jurist, St. George Tucker encountered many of these issues on the bench, and in the words of one scholar, he sought to "blunt" the more radical social effects of the Revolution in his decisions. The seizure of the glebes, which Tucker would ultimately support, can only be understood within this rich ideological and material context in which liberty was moderated to maintain property, and real, tangible property circumscribed access to republican liberty. This property itself – the lands, houses, furnishings, and enslaved men and women – shaped the arguments on all sides about religious liberty.

Seizing the Glebes: Denominational Demands

Virginia's Presbyterians sent a petition in August 1787 that outlined a comprehensive legal argument for the state to seize parish property. The Baptists took up the mantle from the Presbyterians in 1789, and thereafter sent a petition demanding the sale of the glebes to the legislature every October became something of an annual tradition for the Baptist General Committee. These petitions urged the legislature to adopt a broad policy of confiscating all glebes in the state and making all parish churches available to the public. These arguments were deeply rooted in revolutionary discussions about the relationship between liberty and property. Perhaps the most overlooked feature of these debates was the salience of property to securing liberty, which the petitioners returned to time and again.



Figure 5.2. Glebe House of Southwark Parish in Surry County, Virginia, which was built for Rev. James Cargill shortly after he complained to the Bishop of London in 1724 that the parish did not maintain a glebe house for him. It is one of the ten remaining glebe houses in Virginia today. **Photograph:** Virginia Department of Historic Resources, "Glebe House of Southwark Parish," available online at: https://www.dhr.virginia.gov/historic-registers/090-0012/.

At their 1787 convention, Virginia's Presbyterians approved a resolution to petition for the sale of the glebe lands, and they sent a petition to the legislature in October to that effect. Their memorial thanked the legislature for their "attention" to earlier "grievances" by revoking the incorporation of the Protestant Episcopal Church and passing the Statute for Religion Freedom the previous year. But they insisted that the state had yet to ensure the "constitutional rights" of "all denominations of Christians." The petitioners acknowledged that they were aware that their "political guardians" were about to begin "deliberations" over the new Constitution of the United States, a project "of great magnitude." But they argued that the very same "love of

liberty and political equality" that had inspired Americans to undertake a Revolution "actuated" their demand for Virginia to seize parish glebes and churches immediately.[27]

The petitioners demanded the legislature take two actions. First, they asked that "the glebes be sold, and the money thence arising be divided, amongst the different denominations of Christians in each parish, in proportion to their number of tithes; to be by them applied to the religious uses of their respective communities." Second, they asked that "that the churches with their furniture be so disposed of, that the people at whose expence they were procured, may enjoy the benefit of them in common for religious worship." This second request was perhaps less clear-cut in practice; disposing of a church building, with all of its theological trappings, would pose more difficulty than the sale of glebes. Perhaps the plan here would be to sell the churches back to parishes or to other religious denominations and the proceeds would be divided proportionally. In any event, this proposal asked for the state to sell the property and distribute the proceeds proportionally to religious communities. This request rested on the belief that all parish property belonged to the people at large. But rather than asking for the state to appropriate the funds for public purposes, the Presbyterians asked for the funds to be given to handed over to religious denominations.[28]

Their arguments focused squarely on the unconstitutionality of Episcopalians' ownership of glebe lands. The Presbyterians protested that the Episcopal Church had "not the least shadow of a claim" to glebe lands. As a newly organized, independent American church, the Episcopal Church was legally distinct from the Church of England and had no claim to the property of "that ancient church." They argued that numerous Virginians had left the Episcopal Church, and

[27] Ministers & Lay Representatives of the Presbyterian Church in Convention: Petition, October 31, 1787, LPDC, LVA.
[28] Ibid.

parishes were not composed of the same membership as they been before the war. American Episcopalians had adopted new articles of faith and amended their liturgy. The Episcopal Church had no more claim to parish property than the Methodist, Baptist, or Presbyterian denominations, whose members had likewise dissented from the Church of England. Under this logic, no independent American denomination justifiably claim to be the successor of the Anglican Church. [29]

The Presbyterians then turned their attention to parish property, noting that "so far as there was anything laudable in the institution which extorted this money, it was that convenient places of worship might be provided for the people at large." From this vantage, the saving grace of religious establishment had been that "glebes and churches, were purchased with the common property of all the citizens" for their use. The Presbyterians argued that this "common property" had been "designed for common benefit" but had been wrongfully "bestow[ed] upon this infant church, to the exclusion of a great majority of the community." They suggested that the state had actively "appropriated" the glebes and given them to the Episcopal Church. This line of argument reframed the commonwealth's role as an active and culpable participant in the legal process of disestablishment, rather than a neutral party or mere arbiter. [30]

In order for religion to be "left to its own native beauty and energy," the legislature had to return the glebes to the public. Only then could all denominations receive "common & equal protection" of their rights. The Presbyterians framed glebe confiscation as the only way for the state to finally withdraw from religious life. The state had forcibly appropriated property to an exclusive sect, and the legislature could only begin to "confine themselves" to "temporal things"

[29] Ministers & Lay Representatives of the Presbyterian Church in Convention: Petition, October 31, 1787, LPDC, LVA.
[30] Ibid.

after they had restored this property to all Virginians. The state had to ensure its non-preference for any religious body before there could be any clear division between the temporal and the spiritual. This proposal made the glebe policy necessary for Virginia to achieve disestablishment once and for all and then ensure a future of non-establishment. [31]

The petition invoked two key phrases from the Virginia Declaration of Rights, the prohibition against emoluments in Section 4 and the protection of free and equal exercise of religion under Section 16. Connecting the clauses specifically defined religious establishment as a type of emolument, an unconstitutional grant of property that exclusively and unjustly benefitted only some. Their petition framed the glebes as "emoluments," given to the Episcopal Church without services rendered in return to public. Thus, the state had unconstitutionally bestowed on the Episcopal Church while dealing "discouragements" to all other denominations.[32] Earlier petitions against marriage laws and incorporation had referred to the Church's privileges as emoluments and had specifically used this framework to attack the reservation of parish property to the Episcopal Church.[33] This framework gave the advocates of confiscation a compelling explanation of why reserving the glebe property of parishes violated Virginia's 1776 Constitution. During the fight over the incorporation of the Episcopal Church, establishment had been described as a form of legislative entanglement in spiritual affairs. In the fight over glebe confiscation, the arguments turned to focus on the transfer of property between church and state through the constitutional language of emoluments.

[31] Ministers & Lay Representatives of the Presbyterian Church in Convention: Petition, October 31, 1787, LPDC, LVA.
[32] Ministers & Lay Representatives of the Presbyterian Church in Convention: Petition, October 31, 1787, LPDC, LVA.
[33] Eckenrode, 69, 77, 119.

While the Presbyterians' 1787 petition homed in on a specific constitutional rationale for seizing the glebes, the Baptist Association's 1789 Petition marshalled as wide of a range of possible arguments in favor of the plan. For instance, the Baptists suggested that Virginia would be better served by selling the Glebe lands to pay off its lingering Revolutionary War debts. Their memorial also criticized the many vacant Episcopal parishes, which "have the Property at their disposal" but were no longer under "legal bonds to procure preachers for the Parishes."[34] This surprising lament for the absence of establishmentarian laws voiced the frustrations of many communities as they witnessed glebes and parish churches idly going to waste.

The petition also returned to the history of religious establishment and narrated events from the English Reformation forward. The petitioners declared that "Edward, Elizabeth, Charles, and the British Parliament was wrong in forcing creeds and salaries… and that the British Power in this state in purchasing Glebes and forcing salaries was as wrong." The Baptists recalled centuries of religious oppression coercion while reminding the legislature that tyrannical monarchy and religious establishment had worked governed hand in hand. The General Committee's petition cited the "cruelty" and injustice of the levying system under the colonial establishment in "forcing property away from the People, for religious Purposes whether they would or no." Baptists then argued that they were entitled to a "reimbursement of property." Under this framework, the seizure of the glebes amounted to a form of reparations by the state for its past wrongdoing. [35] This proposal for disestablishment sought not only to secure rights moving forward but to correct the imbalance of power stemming from the history of Anglican oppression.

[34] Baptist Associations: Petition, November 14, 1789, LPDC, LVA.
[35] Baptist Associations: Petition, November 14, 1789, LPDC, LVA.

These wide-ranging arguments did not strictly adhere to constitutional rationale but offered a number of pragmatic and principled reasons to support confiscation. However, the Baptist General Committee's 1789 petition also included constitutional arguments in favor of glebe confiscation. Much of their petition echoed the rationale raised in the Presbyterians' petition from two years earlier. But, in the Baptists' hands, these constitutional arguments were delivered with characteristic rhetorical drama and righteous fervor.

The Baptists argued that the current settlement under which Episcopalian parishes held the glebes violated Virginia's Constitution. They accused the legislature of being "intirely too partial" toward the Episcopal Church and endowing it with an "exalted distinction in Government." The Baptists insisted that Virginia's failure to seize the glebes amounted to a perpetuation of state preference for the Episcopal Church.[36] Their petition framed the glebes as a benefit granted by the state to only "one Society," and therefore an unconstitutional "emolument." Using the language of emoluments emphasized the unconstitutionality of the Episcopalians' retaining the glebes.

Like the Presbyterians, the Baptists rejected the claim that the Episcopalian parishes were the legal successors to the former Anglican parishes. They asserted that, "if men, upon changing their religious sentiments, lose all claim to parish Property, the Parish property in Virginia is intirely without claimants. The Episcopalians have dissented from a Number of the articles and Forms; but if the Episcopalians, who have dissented, can claim this property, why may not others, who dissented a few years before them?" The following year, they went so far as to make the outlandish claim that the Episcopalians "have actually dissented from more Articles of the Church of England than we did." The claim that the Baptists had a greater right to the glebes

[36] Baptist Associations: Petition, November 14, 1789, LPDC, LVA.

because they had more in common doctrinally and liturgically with the Church of England was a patently ludicrous assertion, but it expressed a deeper point that *all* American denominations diverged from the Church of England after independence. [37]

The Baptists' 1789 petition also nodded to national political events, namely the recently proposed amendments to the Constitution. While Virginia had voted to ratify the Constitution, the convention had also proposed these "recommendatory" amendments to the document, which expressed the concerns of Antifederalists like George Mason and Patrick Henry for personal liberty.[38] In the minds of contemporaries, the Convention carried more authority than a mere legislature. The convention system, in the words of R.R. Palmer, made "the people a constituent power."[39] The people of Virginia had endorsed a version of non-establishment in which "no particular religious sect or society ought to be favoured or established by Law in preference to others."[40] The Virginia Convention embodied the highest sovereignty of the people and therefore the state legislature was bound by the Convention's sentiments as much as Congress.

Virginia's Baptists were eager to remind the legislature that the state's Constitutional Convention had reiterated the people's opposition to any form of state preference for one religious denomination over another.[41] The Baptists declared:

> It was the Opinion of the Convention of Virginia in the Declaration of Rights, that no Set of Men ought to be favoured by Government, except for Services done: Nor was this sentiment so momentary as to spring up and die in a Night: for in the late Convention, who ratified the Federal Constitution, the same opinion was living. In the 20th Article of the Amendment proposed to the United States, it is expressed, "That no particular religious sect or society ought to be favoured or established by Law in Preference to others." The Convention last spoken of,

[37] Baptist Associations: Petition, November 14, 1789, LPDC, LVA.
[38] Pauline Maier, *Ratification*: *The People Debate the Constitution, 1787-1788* (New York: Simon & Schuster, 2010), 309.
[39] R.R. Palmer, *Age of Democratic Revolutions*, 166
[40] "Ratification of the Constitution by the State of Virginia; June 26, 1788," *The Avalon Project: Documents in Law, History, and Diplomacy,* Lillian Goldman Law Library, Yale University, last modified 2008, https://avalon.law.yale.edu/18th_century/ratva.asp.
[41] Robert Baylor Semple, *The Rise and Progress of the Baptists in Virginia* (Richmond: 1810), 76-7.

> charge the Representatives in Congress, to have this in view in all their Acts; that every Law may participate of the Spirit thereof, as far as the Constitution will admit of. And as we have no Reason to believe that the Patriots of Virginia would wish to recommend that in the Capacity of a Convention, which they would be loath to enact in the Capacity of a Legislature; or charge their Representatives in Congress to do what they themselves would refuse, we have the most lively Hopes of obtaining our Request.[42]

With this statement, the Baptist petition made the claim that Virginia's legislature was bound by the forty proposed amendments to the U.S. Constitution drawn up by the Virginia Ratifying Convention. They did not simply express the importance of individual rights but again framed the demand for religious non-preference by citing the 1776 Declaration of Right's prohibition against emoluments. This framework of non-establishment for the state and federal governments knit together the issues of property and religious freedom.

The Baptist petitioners insisted that "every law" passed by Virginia's legislature ought to "participate" in "the Spirit" of the ratifying Convention's recommendations. Not every amendment could have applied to the State legislature, but the words concerning religious establishment certainly did. The Baptists, some of loudest voices in the fight for religious freedom, were staunch Antifederalists and suspicious of the encroachment of federal power.[43] In may seem surprising, then, that they endorsed a reading of Constitutional ratification in which the state legislature was beholden to the ratifying Convention's proposed amendments to the Federal Constitution. Because the Convention was the purest expression of the people's will, all government was duty bound to heed its sentiments. The Baptists continued to push for Virginia to abide by a definition of "establishment" that enforced non-preference among religious sects.

[42] Baptist Associations: Petition, November 14, 1789, LPDC, LVA.
[43] For a more detailed discussion, see J. Gordon Hylton, "Virginia and the Ratification of the Bill of Rights, 1789-1791," 25 U. Rich. L. Rev. 433 (1991)

The Baptists did not, however, mention the language of these constitutional amendments actually ratified by the First Congress in September of 1789. Five states had proposed amendments to the Constitution, including Virginia. The resulting language reflected a hard-fought compromise and declared that, "Congress shall make no laws respecting an establishment of religion or prohibiting the free exercise thereof," which did not deliver the complete concept of non-preference as suggested by Virginians.[44] It is not clear whether the Baptists petitioners had already written their address before reading the text of Congress' newly drafted amendments. In later petitions, Baptists across the state would begin to employ the language of the First Amendment as ratified when calling for a repeal of "all the laws respecting an establishment of religion."[45] But, in 1789, the Baptist General Committee urged the Virginian legislature to heed the amendments as written by the Virginia Convention in 1788.

Most consequentially, in their 1789 petition the Baptists put forward a radical, majoritarian claim to glebe property. They argued that, "claims of Land are neither founded in Nature nor in Grace; but in Social Right." They insisted that "all acts of Society in free Governments, are framed by a Majority of Voices; and Voices should be always governed by Right." They expressed an extreme popular sovereignty by claiming that "now if a majority of Voices governed by the Principles of Right, say, that the Episcopal Church ought to have all the Property before mentioned, than s[ai]d church is entitled to it; otherwise the Law by which they had it, may be as easily repealed as any other Law whatever." The Baptists proclaimed, "we are not convinced that the supposed Danger of destroying claims of Lands, is as Great as the real Danger of Injustice." This statement dismissed the slippery slope argument that seizing parish

[44] For more on the debates over the language of the amendments, see Vincent Phillip Muñoz, "The Original Meaning of the Establishment Clause and the Impossibility of its Incorporation," 8 U. Pa. J. Const. L. 585 (2006).
[45] Inhabitants: Petition, Hardy County, December 4, 1799, LPDC, LVA.

property would undermine all private property rights in favor of a sweeping ideological statement. Moreover, the petition sidestepped the technical question of whether seizing parish property would violate the Virginia Constitution's guarantee of private property. Like Antifederalists and populists elsewhere in America in the late 1780s, this petition argued that property should not take precedence over liberty. [46]

This line of argument evinced the Revolution's contradictory impulses, which juxtaposed liberty and property. The federal Constitutional Convention had been called amidst anxiety among elites about this exact kind of levelling, democratic language. The violence that had erupted against debt collectors in Shays' Rebellion and that would break out again the following year against tax collectors in the Whiskey Rebellion channeled the same anger toward property-holders and stoked the fears of those who viewed property rights as sacrosanct. In their 1789 petition, the Baptists had personified Madison's worst fears of those unchecked majorities mentioned in the *Federalist* No. 10 and the threat they posed to "personal security or the rights of property." [47] Madison had described "a religious sect" that might "degenerate into a political faction" along with the "other improper or wicked project" such as the "rage for paper money, for an abolition of debts, for an equal division of property," a statement that captured critics views' of glebe confiscation.[48] Fears that private property rights could be "repealed as easily" as any other law, like the Baptist 1789 petition had claimed, confirmed the Federalists' greatest anxiety that the security of their property could be undermined at the whim of the masses. [49] The Baptists' construction of property rights as "social" rights and subject to the "majority of voices" was sure to inspire fear among elite members of the legislature, rather than rallying support for

[46] Baptist Associations: Petition, November 14, 1789, LPDC, LVA.
[47] *Federalist* 10 (November 23, 1787).
[48] Ibid.
[49] Baptist Associations: Petition, November 14, 1789, LPDC, LVA.

the Baptist cause.[50] The petitioners were eager to dismiss the "supposed danger" of destroying land claims, but their inclusion of this argument explicitly linked the glebes to the larger conflict between popular sovereignty and private property.

The Baptists' claims to parish property rested on the premise that all Virginians had been forced to contribute their property through taxation and therefore they had a claim to all property purchased with those funds. Their claims did "not extend to any donation property," but only to property purchased with the levy.[51] This abstract distinction attempted to rebuff critics who feared that seizing the glebes in turn threatened all private property. However, this reassurance likely did little to allay the fears of property-holders that seizing the glebes would prove just the first step in subjecting any and all property to the "majority of voices."[52] This language certainly exemplified the democratic, levelling spirit highlighted by Gordon Wood and which he specifically identified with evangelicals.[53] Of course, as Baptists' called for confiscation to achieve "equality in the laws," the property they eyed included not only lands and buildings but also the enslaved men and women who were treated as appurtenances to glebes. Only included free, white Virginians were counted among the "majority of voices."

The Baptist petitioners closed by noting, "we are not anxious whether it is considered as the Property of the Commonwealth, or as belonging to the different Parishes." They deferred to the "wisdom" of the legislature about implementing a specific plan, as long as "all the Lands and other Property, purchased by the People…should be put to a Publick Use; and that all the churches, built to worship God in, should be… open and free for all Preachers and People of every Denomination." The proposal to make public property available to all denominations did

[50] Ibid.
[51] Ibid.
[52] Baptist Associations: Petition, November 14, 1789, LPDC, LVA.
[53] Gordon Wood, *The Radicalism of the American Revolution* (New York: Vintage Books, 1991), 330-336

not respect any stark line between church and state but instead put forward a plan to make public resources available to religious sects without preference. In practical terms, then, the Baptists' 1789 petition did not call for a separation of church and state but public policies that treated all Christians equally.

Ideologically, Presbyterians and Baptists directly challenged the notion that the Episcopal Church was the proper inheritor of parish property. They asserted that the people, whether expressed as the inhabitants of every parish or the citizens of the commonwealth, were the true successors to the former Anglican parishes. This formulation underscored that all Virginians had been parishioners and suggested that making the Protestant Episcopal Church into a private body did not dispossess any parishioners of their property rights. Moreover, they put forward a specific version of events in which the legislature had acted to invest the post-Revolutionary Protestant Episcopal Church with all parish property, which amounted to an unconstitutional emolument. The legislature was a culpable antagonist in the fight over fundamental rights. Finally, they voiced a definition of "establishment" in which the state not only had to guarantee non-favoritism and non-preference among denominations moving forward but also had to correct inequalities left over from the colonial establishment.

Playing by the Rules of Private Property

In 1790, the legislature issued a careful resolution in response to these demands. The Committee for Religion, which included Patrick Henry, who had advocated for a general assessment only to be defeated by Madison, and Edmund Randolph, who had been a strong

supporter of the establishment.[54] They had considered the petitions and published their resolution, which anticipated widespread public interest in the glebe issue.[55] Their statement began by affirming their adherence to the Statute for Religious Freedom. The Baptists and Presbyterians had dwelt at length on Virginia's Constitution and even mentioned the Federal Constitution but had not specifically invoked the Statute for Religious Freedom in their 1780s petitions. The legislature reaffirmed that the 1786 statute remained its definitive stance on religious rights.

Their resolution pivoted away from religious freedom and instead framed the question as a dispute over property between two interested parties. The resolution maintained that "the contest for the glebes, churches and chapels, is not of a religious nature, but is to be decided by the rules of private property." Parish property had been granted to "the followers of the church in each parish, forming one society, exclusively of all other persons whatsoever." The suggestion of "transferring… the private donations" to another sect would be "an unconstitutional invasion of right" and could contravene the intent of the original donors. Asking the state to claim parish property as "public necessities" would amount to a "usurpation" of authority by the legislature. Glebes, churches and other property, "whether purchased or given," were "vested" in the respective parishes, which were "capable in law of taking and holding them to their own use." Former members of a religious society "who voluntarily depart from communion" could not "demand a share of their possessions." Though succinct, the committee's legal arguments dismissed the rhetoric of religious oppression and the claim that property was a social right. The

[54] Jon Ragosta, however, argues that Henry was opposed to the Episcopal Church retaining it glebe lands. See Ragosta, Patrick Henry: Proclaiming a Revolution (Routledge: New York, 2016), 77.
[55] November 27, 1789, *Journal of the House of Delegates of the Commonwealth of Virginia* [October 1789] (Richmond: 1828), 83-4.

legislature would not entertain that a popular majority had any power to interfere with legal title to property.[56]

The 1790 resolution also refuted the claim that the glebes were an "emolument" because the state had never "given" the property to the Episcopal Church; they merely respected the existing property claims of parishes. The petition effectively rejected the Presbyterians' and Baptists' characterization of the state as an actor or antagonist in the drama and repositioned the legislature as a neutral arbiter. Their resolution declared, "[t]hat the Legislative sanction for such a sale, would soon grow into a precedent for the constant intrusion of the State into all things which concern religion."[57] With this, the legislature voiced a policy of non-intervention as the best means of preserving religious freedom. This savvy response used evangelicals' longstanding plea for the legislature not to intrude on spiritual matters to defend their glebe policy. While the invocation of private property rights certainly appealed to Federalists who hoped to prevent any levelling policies, leading Antifederalist Patrick Henry was a member of the Committee of Religion that drafted the resolution.[58] Moreover, in the coming years, the legislature transferred the handling of the glebe issue from the Committee for Religion to the Committee for the Courts of Justice. The legislature signaled that the glebes were a matter of property rights, not religious liberty.[59]

If the legislature hoped to cow the Baptists by removing the question of the glebes from realm of religion, they failed. Undaunted by the legislature's response, the Baptists quickly pivoted and their petitions evolved in two important ways during the 1790s. First, they readily accepted the assembly's resolution and pivoted to making arguments framing the glebes as a

[56] Ibid.
[57] Ibid.
[58] Eckenrode, *Separation of Church and State in Virginia,* 136-137.
[59] Eckenrode, *Separation of Church and State in Virginia,* 142.

matter of private property. Baptist petitioners continued to emphasize that a "majority" agreed with them and that "the grand, leading principle of Republicanism" was "equality in the Laws."[60] But their legal arguments shifted Soon, majoritarian and levelling arguments were replaced with liberal calls for the protection of natural rights. Secondly, they backed away from calling for the sale of churches and instead focused squarely on the glebes.

After 1789, the Baptists jettisoned any claim that property was a "social right" and instead adopted a liberal, natural rights framework in order to build a convincing case. They reiterated that the glebes had been paid for by "property which was drawn from [the parishioners] for the use of their own parishes."[61] The state had "confer[red] emoluments on a part of the community" by reserving the glebes to the Episcopal Church, which was a violation of all non-Episcopalians' "natural rights."[62] Their facts remained unchanged, but they framed their case using the language of private property.

The 1795 petition included rhetorical flourishes when it reminded the legislature that "when called to defend this Country, they gave their money freely and laid down their lives as the Price of liberty and equality. But now alas! They suffer the mortification to see their rights impinged.. They now see the strong Basis of Civil and Religious liberty upon the tatter, and all their privileges precarious." Without the seizure of the Glebes, they could not "consider themselves secure in their property, and equal privileges with the rest of their fellow men." Baptists had adopted a form of the slippery slope argument, which they had so recently scorned, but it inverted it for their purposes. They now heartily agreed that any infringement of private

[60] Baptist General Committee: Petition, November 17, 1795, LPDC, LVA.
[61] General Committee of Baptists: Petition, October 10, 1792, LPDC, LVA.
[62] General Committee of Baptists: Petition, October 10, 1792, LPDC, LVA

property rendered all fundamental rights insecure.[63] Only once the glebes were confiscated would all private property be safe.

To underscore their claim to private property, Baptists began referring to themselves as "the parishioners." Adopting this name underscored that they, like all Virginians, had paid tithes under the levy system and therefore they still had rights to the property of "their own parishes." In these appeals, the term parish embraced the "whole" community, not a private and voluntary religious community. These evangelical Virginians, who had for so long grudgingly been Anglican parishioners, now claimed that that status gave them durable claims to parish property. When they instructed the legislature, "you will repeal said laws & return to parishes their property," they were, of course, referring to themselves. As Baptists proudly claimed the label of parishioners and articulated a stake in their parishes, they were fundamentally making an argument about property rights. The material relationship between church and state had been dissolved but the claims of parishioners to their property had withstood the revolution.[64]

By the late 1790s, the Baptists began to offer a focused legal argument that parishes were dissolved at the outset of the Revolution. Again, they returned to the past, recalling that "under the regal government of Great Britain, which formerly extended to this Country, certain Glebe Lands, and other parish property, was purchased with money received by taxing the inhabitants of the several parishes with in this state, without respect to Sect, or Denomination…" This level of detail was certainly unnecessary but set forth as detailed of a legal case as possible. They continued that "since the purchase of the property aforesaid, a separation has taken place between the Kingdom of Great Britain, and these States, in consequence of which, a dissolution of the Church." As a result, "the Church of England cease[s] to have any title to the Glebe Lands,

[63] Baptist General Committee: Petition, November 17, 1795, LPDC, LVA.
[64] General Committee of Baptists: Petition, October 10, 1792, LPDC, LVA.

and other parish property aforesaide." Political independence and a dissolution of the establishment negated the Episcopal Church's property claims. The Baptists felt they "ha[d] sustain'd privation of right" and that the legislature had violated "the foundation on which our Government was raised."[65] This argument, which stated that private property rights were the very basis of republican government, was a stunning reversal from democratizing statements made just a decade earlier about the social nature of property.

It has been remarked that the political atmosphere became increasingly amenable to the Baptists' demands as their republican allies won more seats in the Virginia legislature.[66] However, it is essential to note that the Baptists' arguments about the glebes also evolved sharply over the course of the 1790s. They moved away from their populist, levelling calls to seize parish property on the basis of social right and instead claimed that seizing the parish glebes would be a vindication of their private property rights. It seems like no coincidence that during the exact same period, Virginia's Baptists also moved away from their critique of slavery. As Virginia's Baptists became republicans and made claims to natural rights and equality under the law, they also backed away from their more egalitarian social policies. Numerous scholars have looked closely at this reversal but the connection between their changing position on slavery and their embrace of natural rights in the fight over the glebes during the same period has not been made explicit.[67] Indeed, many of the glebe properties included enslaved men and women who were

[65] The General Committee submitted the same petitions in 1796 and 1796. Baptist General Committee: Petition, November 17, 1796; Baptist General Committee: Petition, December 9, 1797, LPDC, LVA.
[66] For more on the changing political alignment of Virginia, see Eckenrode, 130-150, Buckley**,** S.J., "Evangelicals Triumphant: The Baptists' Assault on the Virginia Glebes, 1786-1801," *William and Mary Quarterly,* ser. 3, 45 (Jan. 1988): 33-69.
[67] James David Essig, "A Very Wintry Season: Virginia Baptists and Slavery, 1785-1797," *The Virginia Magazine of History and Biography* 88 (1980): 170-185; Charles F. Irons, *The Origins of Proslavery Christianity*: *White and Black Evangelicals in Colonial and Antebellum Virginia* (Chapel Hill, NC: University of North Carolina Press, 2008), 55; Donald G. Matthews, *Religion in the Old South.* (Chicago: The University of Chicago Press, 1977); Janet Moore Lindman, *Bodies of Belief: Baptist Community in Early America* (Philadelphia: University of Pennsylvania Press, 2008), 33-52; idem, "Acting the Manly Christian: White Evangelical Masculinity in Revolutionary Virginia,"

treated as legal appurtenances to the land. Baptists not only abandoned their pre-revolutionary commitment to spiritual equality in favor of "refinement and respectability" but also while in pursuit of parish property.[68] Their retreat from social radicalism and political radicalism went hand in hand in the 1790s.

Local Petitions

In addition to the petitions sent by religious denominations, the legislature would receive more than a hundred local petitions about glebe lands. Some were clearly submitted in tandem with denominational petitions. Scholar Thomas Buckley notes that Baptists had more success seizing glebes on a parish by parish basis.[69] However, there were also many local requests that reflected deep-seated confusion about the reformed legal relationship between church and state. Many local communities were mired in conflicting property claims and uncertainty about the practical implications of the legislature's recent disestablishmentarian laws.

Some petitions were sent by vestries, ministers, or self-identified "parishioners." Others were signed by "inhabitants," freeholders, or housekeepers, terms that explicitly underscored a vested political or property right in the parish after disestablishment. Petitioners leveraged how they styled themselves and how they defined their status vis-à-vis the parish in order to make a variety of arguments. The same community members might send one petition calling themselves parishioners and another signed by the inhabitants of a county. In doing so, they made distinct

William and Mary Quarterly, 3rd ser., 57 (2000): 393-416; Jewel Spangler, "Becoming Baptists: Conversion in Colonial and Early National Virginia," *The Journal of Southern History* (2001): 243-286; Najar, *Evangelizing the South,* 137-162.

[68] Matthews, *Religion in the Old South,* xvi.

[69] Thomas Buckley, *Establishing Religious Freedom: Jefferson's Statute in Virginia* (Charlottesville, VA: University of Virginia Press, 2014), 95.

claims about who had the right to determine the future of glebes. The definition of the parish shifted based on the purposes of the petitioners. Sometimes, petitioners described the parish as a geographic area or a republican civic body; on other occasions, it was a private religious institution. And still other petitioners clung to the older definition of an all-encompassing expression of the community.

Parishes were long accustomed to turning to the Assembly for permission to sell land, change their boundaries, dissolve a vestry, or undertake a host of other administrative actions. The legislature continued to receive and assent to these types of parochial petitions into the 1790s. For instance, in 1790, the legislature created Hampshire County by dividing Hardy County in two. A petition was sent from the inhabitants of the two counties asking for a second parish to be established along the new county lines.[70] The old glebe of Hardy was to be sold and the profits divided between the two parishes. This request could have been sent a century earlier; it was indistinguishable from dozens of petitions throughout the eighteenth century. A holdover from the practices under establishment, this request exposed legal blurriness between public and private in which parishes looked to the legislature for permission to form new parishes and sell property. Establishing a parish had always been the prerogative of the legislature. The passage of such an act continued the special relationship between the Episcopal Church and the legislature, one that was sure to rankle other religious denominations.[71]

Moreover, the petition and the law passed in response reflected a lack of certainty about whether parishes and their property were truly independent bodies over which trustees had full control. Did a parish have to receive legislative permission to sell a glebe or to create a new parish? Did the state still possess the obligation or even the authority to direct church trustees to

[70] Inhabitants of Hardy & Hampshire: Petition, Hardy County, October 28, 1790, LPDC, LVA.
[71] Hening, 13: 189-191

buy and sell property with particular instructions? But, looking to the legislature for clarification undermined any sense that parishes were truly private institutions. By continuing to exercise this power, the state underscored that it had not relinquished supervision of parishes to the Protestant Episcopal Church but still viewed parishes as semi-public bodies.

After the repeal of the Protestant Episcopal Church's incorporation, vestries were uncertain about their legal standing. The Repeal of the Act of Incorporation included an express provision, "saving to all religious societies the property to them respectively belonging," and declaring that all denominations could appoint trustees, "according to the rules of their sect…who shall be capable of managing and applying such property to the religious uses of such societies."[72] In so doing, the state proffered a civil mechanism, trusteeship, for churches to hold property without venturing into the thorny territory of incorporation. To reiterate the point that denominations should be regulating their own affairs, the statute asserted that, "so much of all laws now in force, as prevents any religious society from regulating its own discipline, shall be, and is hereby repealed."[73] But the legislature had passed laws regulating the election of vestries throughout the 1780s.[74] Petitioners wondered if these laws were still in force. The act asserted that all religious institutions were empowered to independently manage their property and regulate their internal governance, but what that meant in practice remained ambiguous.

Petitions from three parishes, Lynnhaven, Frederick, and Nottoway, testify to local confusion in the wake of the repeal of incorporation. The residents of Lynnhaven Parish expressed concerns about their property rights in a petition sent by "sundry Inhabitants of the Parish of Lynnhaven in the County of Princess Anne," which explained that before the

[72] Hening, 12: 266-267.
[73] Hening, 12:266-7.
[74] Hening, 11:73, 112, 130, 279, 538; 12: 93.

Revolution their late minister, Robert Dickson, had left "a certain part of his Estate to the Vestry of the said Parish, & their successors, in Trust, to maintain his Sisters in Scotland & to support a School in the said Parish of Lynnhaven" to educate poor, orphaned boys. [75] However, since the repeal of the Incorporating Act and the election of a new Vestry, "doubts hath arisen" about whether the current vestry could "legally take Charge of the Estate abovementioned."[76] The petitioners hoped to avert "any Dispute respecting the matter" and therefore sought an act of assembly "giving the Powers to the present Vestry, or Trustees for the Care of religious Property, & their successors, with which the former Vestry & their successors were invested."[77] Of the 36 petitioners, six were former and current vestrymen.[78] This appeal reflected not only confusion but an abundance of caution to protect a valuable legacy for the parish.

In response, the legislature did not simply pass a local act that empowered the present vestry of Lynnhaven to manage the endowment but delivered a broad statute clarifying the rights of trustees. The phrasing borrowed the exact wording from Lynnhaven's petition, citing that "doubts hath arisen," about the rights of "trustees appointed in the several parishes in this commonwealth, to take care of the property belonging to the Episcopal Church." The statute expanded upon the provision in the act of repeal and unequivocally stated that "the said trustees, and their successors, shall, to all intents and purposes, be considered as successors to the former vestries, and shall have the same power of holding and managing all the property formerly vested in them." [79]

[75] Inhabitants of Lynnhaven Parish: Petition, Princess Anne County, November 22, 1788, LPDC, LVA.
[76] Ibid.
[77] Ibid.
[78] Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish,* Appendix A.
[79] Hening, 13:705-6.

The following year, "sundry Inhabitants" of Princess Anne sent another petition to the Legislature about Lynnhaven's parish property. This time, rather than identifying themselves as inhabitants of the Parish, they instead styled themselves "Inhabitants of Princess Anne County."[80] Despite the intentional shift in their title, eight of the 28 legible signatures had also signed the previous year's petition on behalf of the parish. The petitioners included long-time churchwardens and vestrymen, as well as the current parish minister, Anthony Walke.[81] These petitioners sought permission for the Princess Anne Overseers of the Poor to sell "the Houses on the Parish land of Said County" at public auction, and "apply the money arising from such Sale towards lessening the Parish Levy."[82] The parish and the county cooperated to transfer the responsibility of running the poorhouse from church to state with the approval of inhabitants, including the vestry and minister.

Lynnhaven Parish was willing to give up this house and land because it had other sources of wealth. In the late 1780s, the parish owned a large collection of silver, three active churches, a library, and a glebe of two hundred acres.[83] The parish had also secured a large bequest from Robert Dickson, which included a large plantation of several hundred acres and four enslaved persons: Lydia, Harris, Lewis and Gefford. Dickson had given this donation for a school to freely educated "poor orphan boys," well as fee-paying pupils under the tutelage of the parish rector.[84] Given their recent endowment and other wealth, the parish proved willing to part with the old poorhouse. The parish had already sold off "sundry articles" from the poor house in 1777 and the

[80] Inhabitants: Petition, Princess Anne County, October 21, 1789, LPDC, LVA.
[81] Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish,* Appendix A.
[82] Inhabitants of Lynnhaven Parish: Petition, Princess Anne County, November 22, 1789, LPDC, LVA..
[83]Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish,* 119-120.
[84] The Will of Rev. Robert Dickson, Inhabitants of Lynnhaven Parish: Petition, Princess Anne County, November 22, 1789, LPDC, LVA. See discussions of the running of the school in the vestry book in Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish*, 111, 120-122

building had stood vacant ever since.[85] The farm on which the poorhouse stood amounted to about 50 acres and had brought in £7:5:0 annually in rent, roughly 13.5% of the parish's total income from renting its other property.[86] The house and building were "old," "unfit," and in "want of repair."[87] The parish poorhouse had been relatively ineffective at keeping the cost of poor relief down. Lynnhaven ceded its poorhouse while retaining other valuable assets.

The slippage between parish and county in Lynnhaven's request underscores that lines between religion and government were neither clearly demarcated nor always carefully maintained in local communities. Though the poorhouse was parish property, the petitioners referred to it as "the parish land of said county."[88] The muddled phrasing here reflected the competing claims of parishes and counties to the same property. The petitioners hoped for the Overseers of the Poor to auction the land and buildings and use the profits to reduce the cost of poor relief, which they funded through a tax that they still called "the parish levy."[89] The continued use of this name reflected that the term "parish" retained its traditional association with local welfare. It proved difficult to dislodge the term "parish" and its customary association with poor relief, particularly when parishes continued to carry out charitable work through private endowments like Dickson's. The legislature acquiesced to Lynnhaven's request.[90] In practice, it seemed that the Assembly hoped to defer to communal preferences when possible. However, doing so opened the door to serious inconsistency about the property claims of parishes and the independence of the Episcopal Church from the state.

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[85] Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish*, 108
[86] These figures are come 1785. Income from the glebe amounted to £8:0:0 and income from Dickson's donation came to £25:5:0. *Colonial Vestry Book of Lynnhaven Parish,*120.
[87] *Colonial Vestry Book of Lynnhaven Parish,*119.
[88] Inhabitants of Lynnhaven Parish: Petition, Princess Anne County, November 22, 1789, LPDC, LVA.
[89] Ibid.
[90] Hening, 13:72.

Often, the struggle over parish property is framed as a political fight between religious denominations and between republicans and federalists. But, as this petition makes clear, communities were actively deliberating about the future of their institutions. In Lynnhaven, many of the same people, including leaders of the parish, hoped to protect the property rights of their parish while also supporting the County's desire to sell some parish property and lessen the tax burden. If the Baptists and Presbyterians were pushing for the sale of glebes on the basis of constitutional principles, local communities were also focused on lowering the cost of poor relief and ensuring that their property – no matter its legal owner – didn't fall into ruin. At the end of the day, these community members would be footing the bill for any social welfare programs and therefore hoped to use all available resources to lower the burden.

Buoyed by the 1788 law that upheld vestries' legal standing as successors to the vestry, the minister and vestry of Frederick Parish petitioned to have a lawsuit restored against John Neville for "very considerable sums of money due him to the Parish." The parish alleged that Neville had served as collector of the parish levy and pocketed some £600 in 1773 and 1775, which had been raised for the express purpose of building a "church in a quarter of the County where it was much wanted." The parish was "left without a house to assembly in for public worship." The parish had brought the suit in 1785 in the Frederick County Court, but the suit was "abated" in 1786 following the Act's repeal. The Frederick County Court concluded that the vestry no longer had standing because it was not a corporation. The minister and vestry asked for an act "reinstating the suits… as if they had never been abated." Neville had "removed himself to another state," and the parish lacked "a remedy and in hazard of losing the money so justly due."[91]

[91] Minister & Vestry of the Protestant Episcopal Church in Frederick Parish: Petition, Frederick County, October 29, 1789, LPDC, LVA.

Virginia's colonial vestries had been able to collect extraordinary sums of money for poor relief and building projects because they were assured a means of recovery in court. As corporations, parishes had recourse to recover outstanding debts. The plight of Frederick Parish in losing its funds on the eve of the Revolution reflected the turmoil of war; their inability to recover its loss in the 1780s reflected the legal confusion of disestablishment. Under the 1786 and 1788 statutes, the trustees for the church property should have been able to carry on the suit of the former vestry. However, the county court may have had little sympathy for the parish or simply been uncertain about the parish's legal status. The legislature refused to intervene and rejected the vestry's petition. The county court's decision stood; the parish trustees did not have standing to continue its pre-Revolutionary suit.

However, the assembly did pass a law to reimburse Louis Joyner, the former Churchwarden of Nottoway Parish, for the outstanding balance owed to him by the Overseers of the Poor of Southampton County. Joyner had served four years as churchwarden of Nottoway Parish, from January 1782 to December of 1785 and spent £126.11.5 ½ out of pocket, "for the support of the poor & to prevent their suffering for the common necessaries of Life." Joyner had advanced these "considerable sums of money," under the assumption "of being speedily reimbursed." But, the County Court and the Overseers of the Poor "suppose[ed] they had no power to levy on the people the balance which is acknowledged on all hands to be so justly due to him." The vestry sent Joyner to the County Court, which in turn sent him to the Overseers of the Poor; meanwhile his family endured "impoverishment" and great "difficulties," without the funds. Ultimately, the Overseers of the Poor agreed he was "intitled" to the sum but asserted they were not "invested with sufficient power" to use levy funds to repay a former churchwarden. The Court issued a writ of mandamus against the Overseers of the Poor, but they simply refused to

pay him. Joyner sought an act that compelled the Overseers of the Poor to raise a levy equal to the sum of the principal, the interest, and the costs of his many lawsuits.[92]

The legislature passed an act on Joyner's behalf, and in so doing, affirmed his standing to receive repayment as a former churchwarden.[93] The confusion of whether the Overseers had the power to levy the people to reimburse a former churchwarden reflected uncertainty about when and if the customary corporate rights of parishes had been extinguished with the repeal of the Act of Incorporation. The legislature sent mixed messages by intervening in local affairs to ensure that Joyner was repaid and affirming Lynnhaven's title but choosing not to intervene on behalf of Frederick Parish.

Unable to win redress on a statewide basis, Baptists began pursuing a new strategy by petitioning on a local basis to seize vacant glebes. In parishes without ministers or vestries, who were the legal successors of the property? In 1777, St. Patrick's Parish in Prince Edward County received permission from the legislature to sell its glebe, which was "worn out" and inconvenient, and use the funds to buy another.[94] However, no such glebe was purchased, and the funds, £211.2.3, remained in the hands of churchwardens.[95] In 1784, the parish also sold its furniture and communion plate, which raised an additional £100. Prince Edward was a longtime stronghold of Presbyterians, and in 1792, "the inhabitants of the County" sent a petition to the legislature asking for the funds from the sale to be put to "publick uses" so that the "publick may be benefitted." Their petition explained that that there had been "no vestry in this county since 1784, and "neither do we know of any people that call themselves Episcopalians in the County."

[92] Joyner, Lewis: Petition, Southampton County, October 16, 1792, LPDC, LVA.
[93] *Acts VA* (1792-1793), Ch. 39, "An act authorizing and directing the Court of the County of Southampton to levy a Sum of Money for the purposes therein mentioned," 91.
[94] Hening, 9: 440-1.
[95] Inhabitants: Petition, Prince Edward County, 1792-10-04, LPDC, LVA.

They argued that these funds were "publick property" and ought to be "appl[ied] to some publick use." The petition garnered 262 signatures, including influential Presbyterians leaders, which underscored the connections between local petitioners and broader denominational goals.[96]

The request from Prince Edward was a clever means of testing the legislature's 1790 resolution that vestries were the successors to all parish property. In the absence of a vestry, who benefitted? The assembly debated this petition for months until it passed an act empowering four trustees to collect the funds and use them for whatever they "consider most just and beneficial from their said county."[97] This proposal could have been defended and defined on the grounds of escheatment, the customary doctrine that property reverts to the state in the absence of an heir. However, the petition had offered no basis in common law for its request, nor had the state explicitly used these terms. Instead, the petition claimed that parish property already belonged to the community at large and therefore scored a major ideological victory when the legislature acquiesced. The legislature had tacitly accepted the argument that the public had a right to parish property.

Charitable Bequests

Evangelicals called only for the confiscation of parish property that had been purchased using tax funds; any privately donated property would remain in the hands of parishes, per the terms of the donors' instructions. The legislature had reasserted this rationale in its 1790 resolution.[98] The numerous charitable bequests left to parishes for the benefit of the poor complicated this distinction. One of the primary responsibilities and certainly one of the highest

[96] Buckley, *Establishing Religious Freedom*, 106; 283n76
[97] Inhabitants: Petition, Prince Edward County, October 4, 1792, LPDC, LVA.
[98] November 27, 1789, *Journal of the House of Delegates of the Commonwealth of Virginia* [October 1789] (Richmond: 1828), 83-4.

expenses of colonial parishes had been poor relief (see Chapter 2). After disestablishment, communities questioned whether parochial endowments made for the poor belonged to the church or to the public. Practically speaking, it was often impossible to distinguish between parish property bequeathed a century earlier from parish property purchased with levy funds. Anyone familiar with parish vestry books would recognize the near impossibility of discriminating between these two sources of property. Lands given by donors were maintained by funds raised through the levy; income raised from enslaved people left to the parish were often not tracked separately from other sources of revenue. Across the state, Overseers of the Poor argued that donations made specifically for the care of the poor now belonged to them, as the public administrators of poor relief. These endowments sparked heated local disputes.

In 1789, the Overseers of the Poor of Norfolk County hoped to take possession of a tract of land and "sundry" enslaved persons given by Matthew Godfrey in 1715/16 "to the Poor of Norfolk County for ever and ever."[99] Per the terms of Godfrey's will, the vestry held and managed the land and enslaved persons throughout the eighteenth century. Throughout the eighteenth century, this legacy was not managed as a separate endowment for poor relief but pooled with the rest of the parish's funds.[100] However, after the creation of the state's new poor relief system in 1780, the Overseers of the Poor argued that they were "by law appointed guardians of the poor," so Godfrey's donation now came under their purview.[101] As the public body charged with caring for the poor, "the poor of all societies come under their notice as well as those of the Protestant Episcopal Church." The Overseers of the Poor invoked the specific

[99] The will of Matthew Godfrey from 1715/6 is included in a legislative petition from 183. The pages are unnumbered, but the discussion of his donation is on page 7 of the will. See, Citizens: Counter-Petition, Norfolk County, December 31, 1832. LPDC, LVA.
[100] Alice Granbery Walter, ed., *Vestry Book of Elizabeth River Parish, 1749-1761,* (New York: Alice Granbery Walter, 1969), 3.
[101] Overseers of the Poor: Petition, Norfolk County, November 5, 1789, LPDC, LVA.

wording of Godfrey's will, which specifically named the Poor of Norfolk County as his intended beneficiary. They argued that the post-disestablishment administrative shift made the county the proper inheritor of both responsibility and property for the poor.

Godfrey's bequest not only sparked a clash between parish and county; there were also fights between localities. The Borough of Norfolk, which had formed part of Elizabeth River Parish at the time of the donation, also petitioned to claim their part of the land and enslaved community in 1789.[102] The County and the Borough were eager not to lose their share of the property. The County rejoined quickly to insist that if the Borough was to obtain any "proportion of land & slaves," they must "also receive their proportion of the poor."[103] Ultimately, the legislature agreed that the property should be sold, and the proceeds should be divided proportionally.

A similar case posed even more vexing questions about how to accomplish the donor's intent in the wake of disestablishment. John Yeats made a donation to the Lower Parish of Nansemond County in 1731 for the support of two free schools in the parish. Yeats expressed a deep attachment to Lower Parish, "being the parish I have so long lived in, among such friendly neighbors."[104] He framed his sense of community in terms of parochial belonging and articulated the physical demarcation of space in terms of the parish's boundaries. He hoped that "with God's blessings, the most or all the children of these parts will be educated from the Glebe down to the extent of that part of the parish lying to the south side of Nansemond River."[105]

[102] Inhabitants: Petition, Norfolk Borough, November 2, 1789.
[103] Overseers of the Poor: Petition, Norfolk County, November 5, 1789, LPDC, LVA.
[104] "The Will Of John Yeates, Sept. 18th, 1731" in W. E. MacClenny, "Yeates' Free Schools," *William and Mary Quarterly,* 2nd ser., 5 (1925): 30.
[105] "The Will Of John Yeates," in MacClenny, "Yeates' Free Schools," 31.

Yeats' will had left detailed instructions about the endowment for the parish free schools. He bequeathed funds to buy books for "the poorer sort of inhabitants," and left the "pulpit cloth, the silver flagon, and silver chalice and silver plate" to the parish church.[106] Yeats also bequeathed land and an enslaved family to the parish for the benefit of the free schools:

> It is my will and desire that those gentlemen vestrymen living this side of Nansemond river, may have the management of the disposal of the rents yearly, and the hire of my negroes aforesaid forever. And for-as-much as I have lived the most of my days in the said parish and limits, and got my estate therein, therefore the inhabitants have the best rights to the aforesaid uses.[107]

Seventy years after John Yeats' death, in December of 1802, the legislature received a petition from inhabitants living on the south bank of the Nansemond River in Nansemond County.[108] The petition complained that Yeats Free School and its property ought to be taken out of the hands of the parish vestry and given to an elected board of trustees to manage instead. The school had been funded by Yeats and three other donors who had specified their contributions were "for the benefit & support of the poor." By the terms of all four wills, the parish vestry were the trustees of the free schools. This choice reflected the legal framework of religious establishment in which the parish comprised the entire community and the vestry was responsible for poor relief. According to the petitioners, though, Yeats Free School was never "intended to be confined, to any particular sect persuation or society of people whatever, but was designed for the general & mutual advantage of every description of persons residing within the said bounds." Moreover, they complained that male inhabitants who were "not of the Episcopal Church" could not vote in vestry elections, which meant "only about one tenth of the inhabitants" were able to cast ballots to shape the future of the free school. Reserving the

[106] "The Will Of John Yeates," in MacClenny, "Yeates' Free Schools," 33; 31.
[107] The Will Of John Yeates, Sept. 18th, 1731,"33.
[108] Inhabitants on the South Side of the Nansemond River: Petition, Nansemond County, December 21, 1802, LPDC, LVA.

property to a private religious society was in fact "contrary to the true principle of Justice & totally inconsistent & repugnant to the true meaning and intent of each testator."

The petitioners argued that these testators had "had no Idea of the great Revolution in Church as well as state." They could not have predicted American independence and the breakdown of Anglican establishment, which had made the vestry and the parish free school into a private, exclusive body, rather than a public institution. What would truly fulfill the intent of the testators – an endowment that served only a select few or a public institution that served the community as a whole?

Disestablishment, so often narrated as story of individual rights, posed significant questions for communities. Parish property had been envisaged as an investment in the public good and for the community's future welfare. As the Nansemond petitioners argued, colonial donors had no expectation of a coming Revolution. The testators had given their property in the context of a legally established religion in which the parish was concomitant with the whole community and served the public at large. To serve the intent of the donors, it was necessary for the state to intervene and return bequests made to the poor to the new public administrators, rather than allowing this property to remain under the control of a private religious sect. Fundamental to this argument was the belief that the Revolution had created a fundamentally new society, one that could not have been foreseen, and in which republican institutions served the public good. There had been a "great Revolution" in religion and government, and it was incumbent upon the legislature to ensure that the community did not lose valuable assets as collateral damage.[109] These queries were not posed about individual liberty but the fabric of communal life in republican Virginia.

[109] Ibid.

The rupture of disestablishment had fundamentally changed the relationship between parish and community by removing the church's public status. The glebes, enslaved persons, and other property purchased by or donated to the parish had been intended for the community's benefit, or at least the white community. Questions arose about whether it ought to remain so in the wake of the disestablishment. These arguments were a continuation of the dissenters' petition from 1784-1786, discussed in Chapter 4, which argued that the glebes were an endowment for the good of the whole community. The issues raised in the Yeats Free School petition were difficult legal questions that had yet to be answered.

Disestablishment brought the wealth of the established church to the surface and revealed the extent of parishes' roles as landholders and slaveowners. The rich material culture of Anglican practice and the accrual of resources on behalf of the community were fundamental to the experience of Anglicanism in the colonial Chesapeake. The scale of the church's material wealth shaped post-revolutionary disestablishment. Parochial holdings were not on the same scale as the handful of wealthiest Virginians, to be sure. However, both on a local level and taken together, the church amassed visible wealth from private donors and the public at large. This property mattered not only as an ideological issue but as a practical question of community resources. The assembly received a slew of local petitions about glebe lands after the repeal of incorporation. These petitions grappled with the legal and material consequences of disestablishment. Local petitions presented circumstances that were not clear-cut and did not always reflect political or religious differences. They exposed the difficulty of transitioning the administration of public services from church to state and the desire for communities to settle disputes over property.

In practice, these petitions triangulated around and left unresolved the same set of questions. First, who were the rightful successors to parishes? Second, what was the role of the continued state in disestablishment? Finally, what constituted an establishment if parishes were still under the direction of the legislature after "disestablishment"? However, while the denominational petitions operated in the abstract sphere of natural rights, local petitions highlighted the real property at stake. Angry neighbors with long simmering grievances embodied the factions Madison had imagined in *Federalist 10*.

And, of course much of the property that elicited such fierce claims of ownership and cries for egalitarian laws were enslaved people purchased to work at poorhouses, held as part of charitable endowments, and treated as appurtenances to the glebe lands. Communities and individuals, both for and against the sale of the glebes, demanded that the state respect equality under the laws by awarding them with property, namely the enslaved people held as property. The liberty secured under republicanism and appeals to the state's duty to protect natural rights were limited to white Virginians.

The Glebe Acts

With each year, support for the seizure of the glebes mounted in the legislature. During the 1790s, as Virginia became increasingly evangelical and Virginia's House of Delegates became increasingly republican, the Baptist petitioners garnered more votes. The state's republicans were eager to secure Baptist voters and confiscation gained ground.[110] The state's Episcopalians, meanwhile, still appeared shell-shocked in the wake of disestablishment. Their

[110] Beeman, *The Old Dominion and the New Nation, 1788—1801*, 198-199.

position had only worsened since the mid-1780s – there were fewer ministers, fewer parishioners, and persistent internal disorganization. The state's first Bishop, James Madison (a second cousin of the future President), proved an ineffectual statewide leader. Individual clergymen voiced horror at the prospect of losing their glebes. Alexander Hay, rector of Antrim Parish in Halifax County, VA, decried that the plan to seize glebes would "violate the most sacred of all rights," that is, his right to private property.[111] Such an act would not only be unconstitutional grab of power by the legislature but would endanger every other right held dear by Virginia's citizens.

While there had been scattered local responses from Episcopalians, it was not until 1796 that the denomination offered an official response. That year, the General Convention sent a petition echoing and elaborating on the legislature's 1790 resolution that the fight over the glebes was not a matter for the legislature but a dispute over private property. They argued that the popular call for the "sacrifice of private rights to a 'whole community'" meant that "the enjoyment of private rights is at one blow taken away." Indeed, the Episcopalians argued that "laws exist to protect private property and consequently, without criminal forfeiture can never be taken away," and any plan for glebe confiscation was "beyond the sphere of legislation." They stated they were "at loss to conceive upon what plausible pretence that petition might be supported." Their memorialists hoped that the Assembly would continue not to "yield to attempts which hitherto had always been thought unreasonable."[112] The House voted to postpone Episcopalian and Baptist petitions in 1796, effectively tabling them.

However, in January of 1799, the legislature took a decisive step toward seizing the glebe by passing a law entitled, "An act, to repeal certain acts, and to declare the construction of the

[111] Minister & Members of Antrim Parish: Remonstrance, Halifax County, December 21,1802, LPDC, LVA
[112] Convention of the Protestant Episcopal Church: Petition, November 22, 1796, LPDC, LVA.

Bill of Rights, and Constitution concerning religion." This statute, which was debated for more than a year, ultimately adopted the arguments made by Presbyterians and Baptists. This was not just an Act of repeal but a bold indictment of the previous twenty years of legislation concerning religion. The law's preamble declared that several laws, "do admit the church established under the regal government, to have continued so, subsequently to the constitution: have bestowed property upon that church: have affected a legislative right to establish any religious sect: and have incorporated religious sects." All of these actions were "inconsistent with the principles of the constitution, and of religious freedom, and manifestly tends to the re-establishment of a national church." The fundamental premise of the 1799 law was that the legislature had actively and unconstitutionally perpetuated a form of religious establishment not only by incorporating religious denominations but also by protecting the property of the Episcopal Church. The statute reaffirmed that the Statute for Religion Freedom was the "true exposition" of Virginia's Constitution and Bill of Rights. [113]

While the 1799 law laid out the philosophical and legal groundwork for the state to confiscate parish property, it was not until 1802 that the legislature authorized a specific plan to seize church lands when it passed the Glebe Act. This 1802 statute declared "that all property formerly belonging to the Church, of every description, devolved on the good people of this commonwealth, on the dissolution of the British government here." The law claimed that all parish property, except for donations, rightfully belonged to the state. This sweeping claim included not only glebes but also "churches, and the property therein contained." However, the legislature only authorized the sale of glebe lands at that time, and only once the parish became

[113] "*Acts VA* (1798-1799), Ch. 9, "An act, to repeal certain acts, and to declare the construction of the Bill of Rights, and Constitution concerning religion," 8-9.

"vacant," which meant that it no longer had an inducted rector.[114] The text of the act framed these concessions as a magnanimous attempt "to reconcile all the good people of this commonwealth." The legislature declared it would be "inexpedient" thought not illegal "at this time to disturb the possession of the present incumbents." The legislature thus restricted the ability of counties to seize vacant glebes without yielding the ideological ground that the state had the right to seize all parish property if it so chose. Moreover, this logic fundamentally rejected that parishes were perpetual, corporate bodies. The only legal claim that the state would respect was the minister's freehold right to the glebe, which extinguished at his death or departure. This act followed the plan suggested by Jefferson in 1776 when he first outlined the laws that had to be repealed for the "establishment of the Church of England" to be "discontinued" in the state, which included the sale of the glebes upon the death of the incumbent minister.[115]

In this formulation, the parish as an institution still retained an uncertain position between public and private. After a county seized parochial land, the "parishes" could still petition to determine how these resources would be deployed. The 1802 Act's language suggests that the petitioners writing on behalf of the parish did not necessarily have to be practicing Anglicans; rather, the terms used to describe who could subscribe to such a petition -- "freeholder" and "house-keeper" -- denoted particular residency and property rights within the bounds of the parish as a geographical unit, rather than membership in a private religious institution.[116] Thus,

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[114] This stipulation respected the property rights of the inducted rector as a *personae ecclesiase* to the use of the glebe during his lifetime. Waiting for parishes to become vacant only slightly slowed down the pace of land seizures because there was a dearth of Episcopal ministers in the state. For a discussion of the Episcopal clergy in Virginia after the Revolution, see G. MacLaren Brydon, "A List of Clergy of the Protestant Episcopal Church Ordained After the American Revolution, who Served in Virginia Between 1785 and 1814, and a List of Virginia Parishes and Their Rectors for the Same Period," *William and Mary Quarterly,* 2nd series, 19, (1939): 397-434.
[115] "I. Rough Draft of Jefferson's Resolutions for Disestablishing the Church of England…," *Founders Online.*
[116] Definition of Freeholder: "A person who possesses a freehold estate," which is defined as "An estate in land or other real property, of uncertain duration; that is, either of inheritance of which may possible last for the life of the

the legislature seemingly accepted the Baptists' argument that they, and all other Virginians, were still parishioners. With the passage of the 1802 Act, it was no longer the hierarchical vestry but the will of the majority that would decide parochial matters, a reconception of the parish that reflected evangelical congregational practices, as well as republican political ideology.

Under the Glebe Act, local communities had significant discretion over how to spend the money raised from the sale of glebes; however, the proceeds could not fund "any religious purpose whatsoever." The legislature had declared that previous laws had unconstitutionally granted property to a church; they would not be caught out using public money to fund religious life again, or enabling local officials to do so, either.

Together, the 1799 and 1802 Glebe Acts further refined Virginia's definition of a religious establishment. Proposals throughout the 1780s to offer general incorporation to all religious denominations and to provide funds for all Christian teachers in the state had made non-preference the standard of disestablishment. This definition, which closely resembled Maryland's position, had been championed by Patrick Henry but was ultimately defeated by Madison with the passage of the Statute for Religious Freedom. But even after the 1786 Statute for Religious Freedom rejected the general assessment, evangelicals had called for the legislature to distribute parish property, including churches and glebes to denominations. This proposal had left open a possibility for the flow of funds from state to church. The Glebe Act closed this door firmly by prohibiting the use of glebe funds for any religious purposes. This provision shifted away from non-preference or legislative entanglement and articulated yet another a specific

tenant at the least, (as distinguished from a leasehold;) and held by free tenure, (as distinguished from copyhold or villeinage.)" Definition of Housekeeper: "One who is in actual possession of and who occupies a house, as distinguished from a 'boarder,' 'lodger,' or 'guest,'" in Henry Campbell Black, *A Dictionary of Law*, (St. Paul: West Pub. Co., 1891), 520; 588.

financial boundary between church and state. The legislature could not impose taxes for religion, nor could they appropriate other state funds for any religious purposes.

With this provision in the Glebe Act, Virginia's definition of establishment recognized that material power and religious freedom were just as intertwined in the era of non-establishment as they had been under the former establishment. In their protests, evangelicals had used the framework of emoluments to characterize the glebes. The Glebe Act not only accepted this rationale but added restrictions on public spending for the benefit of religion. The law underscored that the state's role was not merely to remain "non-intrusive" but to implement affirmative legislation to maintain the permissible relationship between church and state. The state could only guarantee religious freedom by actively policing a financial boundary between church and state. The law underscored that articulating the permissible use of public property was essential to securing religious freedom and preventing any form of religious establishment.

The Glebe Act Before the Courts

The courts soon took up the decades-long fight over Virginia's glebes. Episcopalians around the state sought to prevent the seizure of their glebe property. Both the Virginia Supreme Court and the U.S. Supreme Court would weigh in on the issue. Just as incorporation and property were intertwined in the minds of petitioners, the lawsuits challenging the Glebe Act reflected the inextricability of the two issues. These cases were framed as questions of private property and had significant consequences for the status of corporations in the early republic. Virginia's two most radical disestablishmentarian policies – the seizure of church property and the revocation and prohibition of incorporation – were under scrutiny as the courts weighed the balance

between property and liberty in the new republic. The courts would have the final say over the same set of questions raised which Virginia's petitioners and legislators has been debating for years regarding the incorporation and vested rights of parishes and of legal successorship to the parish. In deciding these matters, they also implicitly endorsed a particular interpretation of a religion "establishment."

A challenge to the law reached the Virginia Supreme Court in 1802 after the vestry of Manchester Parish tried to prevent the Chesterfield County Overseers of the Poor from selling their glebe. The case, *Turpin v. Lockett* (1804), halted the sale of glebe lands across Virginia as the state's high court deliberated. The parish vestry argued that the state's actions had violated their private property rights and infringed their religious freedom. The Virginia Supreme Court's Chief Justice was then Edmund Pendleton, a longtime vestryman of Drysdale Parish in Caroline County and a staunch Episcopalian. He had personally overseen the conviction of numerous dissenters under the colony's establishmentarian laws before the Revolution.[117] Not surprisingly, Pendleton authored a decision in 1803 that ruled in favor of the Manchester Parish Vestry and would have struck down the Glebe Act's confiscation of church property. However, the day before delivering his opinion in court, the eighty-two-year-old Justice died suddenly purportedly with the *Turpin* opinion in his pocket. Because Pendleton had not yet delivered his opinion in court, and the case had to reargued once Pendleton's seat on the high court was filled.[118]

Almost theatrical in its many twists and turns, the case had to be reargued once Pendleton's seat was filed. Pendleton's successor as Chief Justice, St. George Tucker, was a rising start in the generation of Virginian republicans. Ideologically aligned with Jefferson and

[117]John Kukla, *Patrick Henry: Champion of Liberty* (New York: Simon & Schuster, 2017), 127.
[118] "The Episcopal Church in Virginia, 1607-2007," *Virginia Magazine of History and Biography* 115 (2007), 214-215.

Madison, Tucker reached a radically different conclusion than had his predecessor when he ultimately dismissed the vestry's claim and upheld the Glebe Act as constitutional. Tucker's opinion voiced disappointment that the issue had "been agitated" with such hostility on all sides.[119] Tucker had been a close friend of numerous Episcopalian clergymen and was sympathetic to the predicament of the church and its ministers.[120] He described the controversial case as an "unpleasant" and "arduous task" for the judiciary and expressed "regret, that this question, on which the legislature were so repeatedly urged to pass a law, was so long, and so repeatedly avoided and procrastinated by them."[121]

Tucker began with a review of common law in the colony, as well as the colonial statutes, regarding the established Anglican Church. He concluded that under both common law and colonial statute, "the vestries in Virginia were a body politic, capable of purchasing and holding lands for the use of the ministers of their respective parishes; and capable of a perpetual succession," and that all "the legal titles to all the glebe lands in Virginia" were "at the period of the revolution vested in the vestries."[122] However, according to Tucker, the Revolution affected an immediate abolition of the established church, along with every other vestige of the monarchial government. He argued that "the mere act of rejecting the king and the ancient constitution of the colony, and adopting one totally different therefrom, did operate an immediate dissolution of every part of the body politic connected with, and dependent upon, the ancient constitution, or form of government."[123] Vestries were "subordinate parts of the body politic"

[119] *Turpin v. Lockett*, 6 Call 113 (1804), 129.
[120] For Tucker's personal connection to the case, see Thomas Buckley's excellent discussion in *Establishing Religious Freedom: Jefferson's Statute in Virginia,* 116-122.
[121] *Turpin v. Lockett*, 6 Call 113 (1804), 129.
[122] *Turpin,* 10 Va. 113, 139
[123] *Turpin,* 10 Va. 113, 148.

and did not "continue to enjoy such parts of their ancient rights" once Virginia had declared independence.[124]

Under this rationale, one of the nation's leading experts on common law in the new republic declared that customary law no longer afforded incorporation to Anglican parishes. Tucker argued that the Revolution had destroyed the conditions necessary for the continued status of customary corporations. The rights secured under common law relied on the King's implied consent, as discussed in Chapter 3, and thus had not survived the political revolution. This conclusion, which was reached swiftly in the decision, dealt a death blow to common-law incorporation as a secure mechanism of incorporation in the new republic and was one of the most significant implications of Tucker's line of argument. It foreshadowed the question of whether charters granted by the King had likewise been invalidated by the Revolution, which would become a central object in the Supreme Court's decision in *Dartmouth College v. Woodward* (1819).

The Chief Justice then set aside the colonial history to examine the Episcopal Church's property and legal standing since the Revolution. Tucker argued that Act of Incorporation of 1784 amounted to an "entirely new, and essentially different, constitution of incorporation."[125] While the colonial established church had been "a branch of the hierarchy for the monarchical constitution, and engrafted upon the government itself," the Episcopal Church and its parishes "were, at most, an eleemosinary body, for private, although in some measure, spiritual purposes: and that the acceptance of such a private foundation, in lieu of their former privileges, immediately connected with the government itself, must be construed as a total surrender of their

[124] Ibid.
[125] *Turpin,* 10 Va. 113, 144.

former state."[126] Tucker concluded "the ancient vestries were dissolved, either by the change of government, or by the act for incorporating the protestant episcopal church: and that the new bodies corporate, consisting of the minister and vestry (or in case of a vacancy in the ministry), in the vestry alone, were private incorporations, essentially differing from the former, and owing their existence and their rights, solely to that act of the legislature."[127] The standing of colonial vestries under common law mattered not at all, according to Tucker. The corporate existence of the established colonial church had been destroyed by the Revolution.

But did the legislature have the authority to revoke its 1784 Act of Incorporation and what happened to the property of a dissolved corporation? Tucker turned to analogous historical examples. He concluded "[t]hat such corporations may be dissolved by the authority of the parliament or legislature alone, without the intervention of judicial proceedings, has been practically evinced by the dissolution of the monasteries in England… And, in Virginia, both before and since the revolution, the legislature has never scrupled… to exercise the right, whenever the occasion seemed to require it."[128] Tucker's choice to use the Henrician dissolution of the monasteries as an example of Parliamentary power emphasized the parallel between the English Reformation of the 1530s and Virginia's own program of disestablishment. His opinion did not address the fact that, according to his own judicial reasoning, these corporations had been public bodies, and therefore occupied a different relationship to the legislature. Nor did he look closely at the terms of these acts. Under these laws, the membership of a vestry might have been dissolved by the legislature, but they did not affect the vestry's corporate existence. Colonial

[126] Ibid.
[127] *Turpin,* 10 Va. 113, 148.
[128] *Turpin,* 10 Va. 113, 150.

vestries whose members had been removed were empowered to continue legal proceedings and retain their property; they existed in perpetuity as corporate bodies.

Tucker devoted significantly more attention to addressing whether a dissolved corporation retained its property. Writing about the proposition in the abstract, Tucker noted that the legislature retained greater rights over the property of corporations than it did over the rights of an individual's property. He claimed, "if the legislature without any consideration whatever, but merely *mero motu*, grant lands to a private person, in his natural capacity, without any fraud, or fault on his part, such donation I hold to be irrecoverable, under the first article of the bill of rights."[129] Tucker was, of course, citing Virginia's constitutional protection of "the enjoyment of life and liberty, with the means of acquiring and possessing property," in the first section of its Declaration of Rights.[130] The state could not reclaim grants of private property that it had previously made.

But Tucker suggested that seizing property from a dissolved corporation presented an entirely different situation. The difference, to Tucker, lay in the fundamental purpose and definition of a corporation. The judge explained, "where the legislature creates an artificial person, and endows that artificial person with certain rights and privileges, either in respect to property, or otherwise, this must be intended as having some relation to the community at large."[131] Tucker drew stark distinctions between individuals and corporations by arguing that the underlying motive of creating a corporation was always communal and public. According to Tucker, "if such creation, or endowment, be either unconstitutional, or merely impolitic, and unadvised, the legislature, I apprehend, is competent to amend, or repeal its own act, provided it

[129] *Turpin,* 10 Va. 113, 156.
[130] Virginia Declaration of Rights of 1776, Section 1.
[131] *Turpin,* 10 Va. 113, 156.

do not annul, or avoid any private right, which may have been legally acquired by any individual in his natural capacity." Unlike in its dealings with private individuals, the legislature retained significant power to alter or annul property grants to corporations in its role as superintendent of the public good. The basis for the legislature to grant property to a corporation was fundamentally public; thus, the legislature retained the power to reassess the relationship between the corporation and the community and alter it accordingly. Tucker's interpretation did not require unconstitutionality as a basis for revoking incorporation or remanding property; merely deeming a prior act of incorporation as "impolitic" or unadvisable gave the legislature sufficient grounds to amend its earlier delegation of property.

This view of corporations reflected a communitarian ethos in which corporations were communal, collective, fundamentally public institutions, rather than a mechanism for private individuals to operate jointly. Tucker's rationale rejected the notion that corporations were legally equivalent to persons in all respects. His decision made a significant distinction between the ability of the legislature to interfere with the property of corporations versus that of individuals. Corporations in this rendering were explicitly fictive individuals whose rights, including the right to property, were not fundamental but were derived from the public function they performed at the pleasure of the legislature.

Tucker's opinion argued that the multiple statutes that had made the Episcopal Church into a private corporation and preserved its property had violated the provision for religious freedom and the prohibition against emoluments in Virginia's Declaration of Rights. Allowing the Episcopal Church to keep this property had been unconstitutional because it allowed only one sect "to receive from the community at large, exclusive, or separate emoluments, for teaching

doctrines, from which a majority of the community dissent."[132] Tucker readily accepted the constitutional arguments made by Presbyterians and Baptists that glebes were emoluments. Tucker concluded that the Glebe Acts of 1799 and 1802, which had repealed the earlier "repugnant" laws, should stand.[133] The legislature was fully within its rights to dissolve the vestries as corporations and to appropriate parish property for the use of the public at large. Doing so, in fact, reversed earlier unconstitutional grants of property. The disestablishmentarian laws stood, and counties around the state began confiscating glebes. For Virginians, Tucker's decision in *Turpin* (1804) was the final word on the matter of the glebes.

The Supreme Court Weighs in

The case of *Terrett v. Taylor* (1815) resembled *Turpin v. Lockett* (1804) in many ways. The key difference was jurisdiction. Christ Church, represented by Taylor and the other vestrymen, now stood in the nation's capital city. Federal jurisdiction over the case allowed the Supreme Court to pass judgement on the most radical disestablishmentarian program in the early republic.

In *Terrett*, the Vestry of Christ Church in Alexandria sought to block the Fairfax County Overseers of the Poor from seizing the 517-acre glebe. In the colonial era, Fairfax Parish had stretched along the Virginia side of the Potomac River from Falls Church to Alexandria. Located only a few miles from the bustling ports of Alexandria, Virginia and Georgetown, Maryland, the parish glebe boasted a brick mansion, several outbuildings, orchards, and fertile farmlands. George Washington had served as one of the parish vestrymen and his family still worshipped there when this case arose. By 1812, the year this lawsuit began, Christ Church was the only

[132] *Turpin,* 10 Va. 113, 151.
[133] *Turpin,* 10 Va. 113, 152.

active congregation in Fairfax Parish. The church and its glebe lands now stood in Alexandria County, one of the two counties in the District of Columbia. The area, which had been part of Virginia, was ceded to form the new national capital and officially became organized as Washington, DC in 1801.[134]

[134] An Act Concerning the District of Columbia, 2 Stat. 103 (1801).

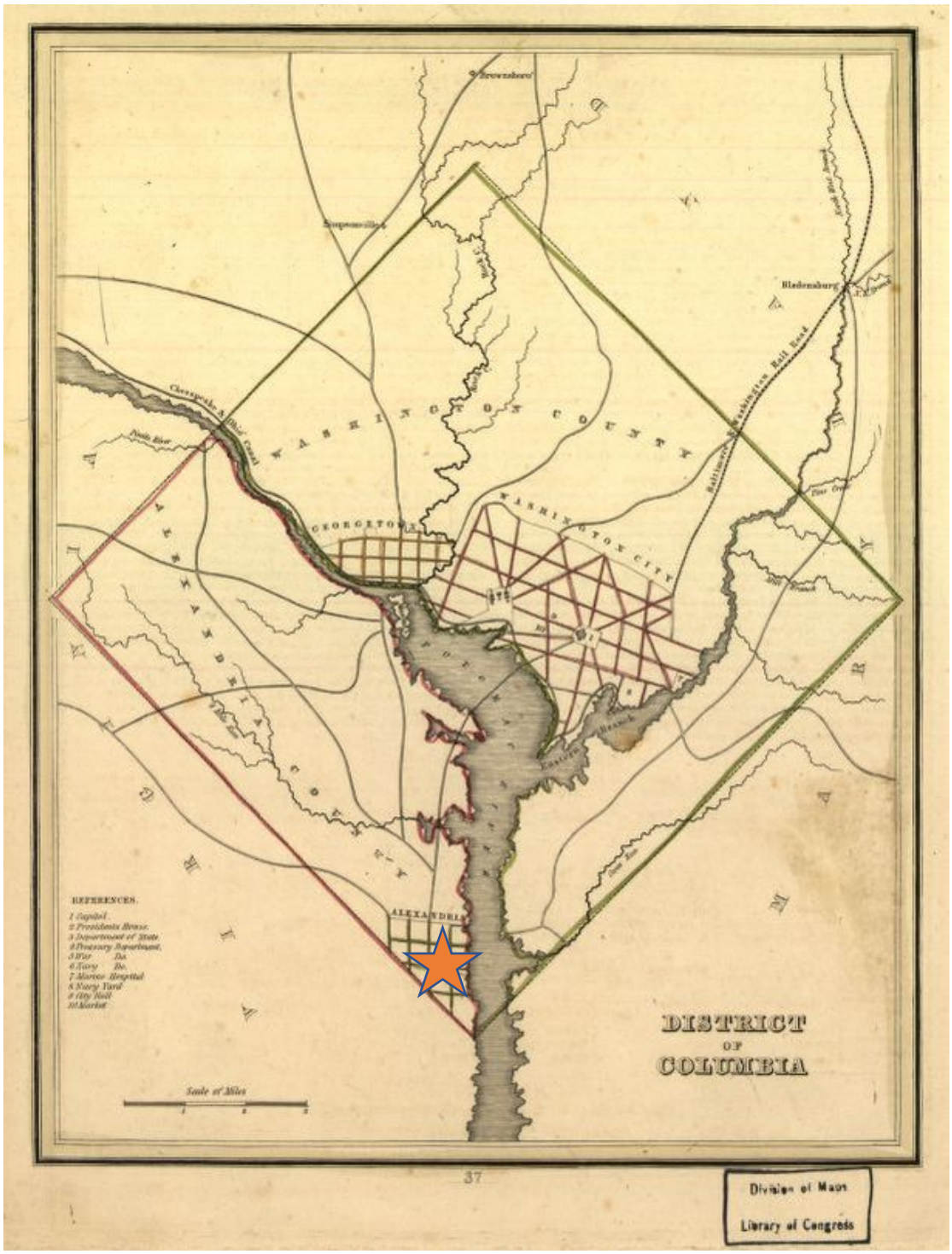


Figure 5.3. An 1835 map of Washington, DC. A star indicates the location of Christ Church, formerly in Fairfax County and located in Alexandria County, DC after 1800. **Source:** T. G. Bradford, District of Columbia, (Boston: T.G. Bradford, 1835), Library of Congress, Digital Collections. https://www.loc.gov/item/88694084/.

By 1809, the church's minister had died, and the parish glebe stood vacant. Trying to stave off the seizure of their lands, Christ Church's vestry applied for and received an Act of Incorporation from the US Congress.[135] However, President James Madison promptly vetoed the legislation (see the discussion in Chapter 4.) He explained that incorporating any church *"*exceeds the rightful authority to which governments are limited by the essential distinction between civil and religious functions and violates in particular the article of the Constitution of the United States which declares that 'Congress shall make no law respecting a religious establishment.'"[136] Madison's words echoed those arguments made by evangelicals almost thirty years earlier who had criticized the incorporation of the Episcopal Church as a fundamental violation of the separation of church and state. This veto message articulated a far-reaching vision of non-establishment at the national level, which resembled Virginia's policies at the statewide level by insisting that incorporation was an unconstitutional form of entanglement between church and state. After Madison's veto, Fairfax County moved forward with the seizure of Christ Church's property under the authority of the Virginia 1802 Glebe Act. At this point, the vestry sued in equity to prevent the sale.[137] The suit set the Vestry of Christ Church against three defendants: the Overseers of the Poor of Fairfax County, VA, the Churchwardens of Christ Church, and the architect of the church building, James Wren.[138]

The Supreme Court were faced the same set of issues raised by local petitioners, religious denominations, the legislature, and the Virginia Supreme Court throughout the struggle over the

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[135] "An act incorporating the Protestant Episcopal Church in the town of Alexandria, in the District of Columbia," January 28, 1811, in *The Debates and Proceedings in the Congress of the United States,* (Washington, DC: Gales and Seaton, 1853), 22:105.
[136] "From James Madison to the House of Representatives, 21 February 1811," *Founders Online,* National Archives, https://founders.archives.gov/documents/Madison/03-03-02-0233.
[137] The rarity of a federal case in equity might suggest why the decision sits outside the cannon of the early case law about the rights of states vis-a-vis corporations.
[138] The decision never mentioned James Wren again, which suggests that the Court dismissed his claim altogether.

glebes. Most immediately, the Court had to determine whether the vestry of Christ Church held legal title to the glebe. To answer this question, though, they tackled a series of broader questions with far-reaching implications. Had customary corporations survived the Revolution intact? Could a state legislature could revoke an act of incorporation? Finally, did a dissolved corporation retain its property? Furthermore, there was also an important jurisdictional issue of whether a county in Virginia could confiscate property belonging to a church now in Washington, DC.

Terrett v Taylor has by turns "puzzled" some legal scholars while seeming "absurdly easy to decide" to others.[139] Some scholars have analyzed as a Contracts Clause case while at the same time admitting that "it is hard, from the case's facts, to know just what contract a state had impaired."[140] Other scholars have studied it as an application of natural law with little specific basis in the Constitution, or suggested it is best understood as a Takings Clause case.[141] The variety and ambiguity of these analyses underscore the difficulty of understanding *Terrett* as a prequel to *Dartmouth* with first considering its long backstory. *Terrett* arose out of controversies in Virginia about the customary incorporation of parishes, the Episcopal Church's charter and its repeal in the 1780s, and the popular fight over the glebe lands. This case and its subsequent

[139] James W. Ely Jr., "The Marshall Court and Property Rights: A Reappraisal," 33 *J. Marshall L. Rev.* 1023 (2000), 1050; G. Edward White, *The Marshall Court and Cultural Change, 1815-1835*, 609.
[140] White's account of *Terrett* confuses the timeline of several statutes and omits any discussion of the church's incorporated status under common law or of its rights under the 1784 Act of Incorporation. When he states it was difficult to know which contract had been violated and suggests there was no "grant" in *Terrett*, these conclusions overlook the statutes passed affirming titles to glebe lands, as well as the multiple contracts signed by the parish to acquire property. White, 608. Jonathan Wright's discussion of this case helpfully raises the point that Story opposed the right of Virginia to abolish the church's incorporation, but this brief discussion should be extended for a clearer picture of the specifics of the parish's corporate status and the significance of this case for the development of corporate law. Jonathan Wright, *Shapers of the Great Debate on the Freedom of Religion: A Biographical Dictionary* (Westport, CT: Greenwood Publishing Company, 2005), 131-2.
[141] Kent's *Commentaries*, printed in 1826, framed the rationale as based on the Contract Clause. James Kent, *Commentaries on American Law*, 4 vols. (New York: 1826), 1, 387. White interrogated Story's reasoning but ultimately support Kent's interpretation that the Contract Clause provides the constitutional basis for Story's decision. Ely Jr., on the other hand, argues that it is best understood as a Takings Case. Ely, 1050.

legacy in American corporate law, like *Dartmouth College*, must be understood in the context of religious disestablishment.[142]

In their opinion in *Terrett,* the Court found that the vestry held legal title to the glebe and determined that a county in Virginia had no right to seize land in Washington, DC. Indeed, the decision could have just left it at that. However, Justice Story used his decision as an opportunity to offer a lengthy rebuke of Virginia's disestablishmentarian laws, which he believed had trounced private property rights and threatened the very foundation of all corporations.

Justice Story began his analysis by looking at the history of religious establishment in colonial Virginia. He stated that colonial Anglican vestries, churchwardens, and ministers of every parish had possessed distinct types of corporate power under common law. Virginia's 1784 Act of Incorporation reaffirmed the customary rights of these three parochial bodies. Under common law and post-Revolutionary statute, the minister and the vestry, but not the churchwardens, had legal title to the glebes. After the death of their minister, Christ Church's vestry, a corporate body, was the proper inheritor of the glebe. The churchwardens' rights were limited only to moveable property. Story thus quickly removed one set of defendants from the suit.

The opinion then attacked the popular claim of Democratic-Republicans and evangelicals that the Revolution had made the church's property into a public asset. The Justice argued that "the property... acquired by the church remained unimpaired, notwithstanding the revolution."[143] Here, Story diverged from Tucker and concluded that American independence had not undermined or modified parishes' legal claims to their property. Customary corporations still

[142] For an excellent discussion of the Dartmouth College case as an outgrowth of New Hampshire's fraught disestablishment, see Mark McGarvie, *One Nation Under Law: America's Early National Struggles to Separate Church and State* (DeKalb, IL: Northern Illinois University Press, 2005), 152-190.
[143] *Terrett v. Taylor,* 13 U.S. (9 Cranch) 43, 47.

held title to their property. But, the contended that the status of parish property during the Revolution was altogether beside the point. The Virginia post-Revolutionary legislature had incorporated the Episcopal Church in 1784 and guaranteed the Episcopal Church all parish property in six different statutes passed in 1776, 1777, 1784, 1785, 1786, and 1787.[144] With these many laws, the question of whether or not parishes' colonial property had become a public asset at the outset of the Revolution no longer mattered. The 1784 Act of Incorporation had "expressly" conferred corporate status to "the minister and vestry, and, in case of a vacancy, the vestry of each parish respectively and their successors forever," and gave each parish corporation the right "to have, hold, use and enjoy all the glebes, churches and chapels, burying-grounds, books, plate and ornaments appropriated to the use of, and every other thing, the property of the late Episcopal church."[145] The state had passed multiple pieces of legislation that made the Episcopal Church into a private corporation and explicitly protected its existing property after American independence.

The Justice then carefully examined the 1787 Repeal of Incorporation, as well as the 1799 and 1802 laws that empowered the state to seize the glebes. Story castigated the Virginian legislature, and by extension, the sitting president, James Madison, for their interpretation of Virginia's Constitution. Story dismissed out of hand Madison's argument that incorporation was "inconsistent with the principles of the constitution and of religious freedom."[146] He insisted that the laws incorporating the Episcopal Church and protecting its property had in no way contradicted the Virginia State Constitution's principle of free exercise or prohibition against emoluments. To Story, it was Virginia's legislature that had violated the state Constitution.

[144] *Revised code*, v. 1, 79.
[145] *Terrett v. Taylor,* 13 U.S. (9 Cranch) 43, 47.
[146] *Terrett v. Taylor,* 13 U.S. (9 Cranch) 43, 48.

Though Story acknowledged that this was "a subject of much delicacy," his response was anything but delicate. He minced no words in declaring the Glebe Act an "embarrassing" disregard for "the rights and property" of the Episcopal Church, and private property rights more generally.[147] Story's choice of words ironically echoed Madison's stated "embarrassment" from three decades earlier about the issue of the glebes.[148]

Story then affirmed the common law distinction between private and public corporations. The legislature could alter, with some limitations, a public corporation such as a town, city, and although he did not mention it by name, a parish of an established church. However, only abuse could jeopardize the rights of a private corporation and only after a judicial judgment. Once the state had conferred incorporation on the Episcopal Church in 1784, its parishes had become private corporations. Story upbraided Virginia's legislators, and by extension the state's high court, for completely abusing of "the principles of natural justice," "the fundamental laws of every free government," and "the spirit and the letter of the constitution of the United States."[149] Story believed that by creating a private corporation, then repealing its charter, and ultimately vesting all of its property in the state, Virginia's statutes were "utterly inconsistent with a great and fundamental principle of a republican government, the right of the citizens to the free enjoyment of their property."[150] In this rendering, the corporation carried the rights of its constituent members, and therefore any state incursion on the powers of a corporation amounted to an attack on the fundamental property rights of private citizens. Tucker's earlier distinction in *Turpin* between the property of private individuals and that of corporations held no water for

[147] *Terrett v. Taylor,* 13 U.S. (9 Cranch) 43, 48.
[148] From James Madison to Thomas Jefferson, 15 February 1787," *Founders Online,* National Archives, accessed September 29, 2019, https://founders.archives.gov/documents/Madison/01-09-02-0138.
[149] *Terrett v. Taylor,* 13 U.S. (9 Cranch) 43, 49.
[150] *Terrett v. Taylor,* 13 U.S. (9 Cranch) 43, 50.

Story. The decision went so far as to rule that Virginia's Glebe Act was "not, therefore in our judgment, operative so far as to divest the Episcopal church of the property acquired, previous to the revolution, by purchase or by donation."[151] This ringing statement seemingly invalidated the Virginia law across the board, not simply in the case of Christ Church.

However, as his decision came to a close, Story noted that because the Glebe Act had been passed after Christ Church and its glebe had become part of Washington, DC, county officials in Virginia lacked any jurisdiction over the glebe. This jurisdictional argument could have been invoked at any point in the ruling to throw out Fairfax County's claim to the glebe. Instead, Story saw this case as an opportunity to articulate the power of private corporations and therefore chose not to address the jurisdictional question until after he laid out a detailed critique of Virginia's disestablishmentarian program. A stroke of political genius, Story's decision gave Virginia some room to sidestep the federal court's ruling. Justice Story was able to attack Virginia's state laws without formally holding them unconstitutional. After dwelling at great length on the unconstitutionality of Virginia's statutes, the Justice ultimately relied on a much narrower jurisdictional rationale to uphold the vestry's claim that a county in Virginia could not seize lands outside the state.

The vestry had won their case. This ruling concluded that the parish as a private corporation, not the county Overseers of the Poor, held legal title to the glebe. Rather than simply stating this conclusion, which he could have done without delving as deeply into Virginia's history or laws, Story chose to dwell on the unconstitutionality of the repeal of incorporation and the Glebe Act. Though Story never mentioned *Turpin v. Lockett*, his opinion took aim at the earlier ruling and excoriated its logic point by point. His decision declared two

[151] *Terrett v. Taylor,* 13 U.S. (9 Cranch) 43, 52.

Virginian laws inoperative and contradicted Madison's interpretation of the 1776 Virginian Constitution, the US Constitution, and the Bill of Rights, all three of which the sitting president had helped draft. Story condemned the state legislature's action and used the case to articulate the distinction between private and public corporations. The Court affirmed that the charters of private corporations, once granted, could not simply be revoked. [152]

The Virginia Supreme Court and the U.S. Supreme Court provided contradictory answers to the fundamental questions that had divided Virginians for decades. Tucker's opinion in *Turpin* argued that the Revolution had dissolved the church's customary incorporation and destroyed its property claims. Afterward, the state had actively and unconstitutionally granted parish property to the newly founded Episcopal Church. Justice Story, on the other hand, concluded that parochial corporate rights under common law endured the Revolution in *Terrett*. The post-revolutionary state had incorporated the church, and the legislature could not simply repeal this charter and seize parish property without endangering the foundation of private property and corporate rights. These cases also endorsed distinct views about what type of state action constituted an "establishment" of religion. Tucker endorsed Virginia's stance that religious incorporation was a form of establishment and therefore unconstitutional in Virginia; Story rejected this interpretation and argued that if incorporation was available to all denominations, it was not an establishment. Neither decision framed its arguments as an appraisal of the lawfulness Virginia's disestablishmentarian policies, but that was, in effect, what had happened. Tucker upheld the repeal of incorporation and the seizure of the glebes. The decision in *Terrett* set an important precedent for *Dartmouth College*, but as a matter of practical policy, the case

[152] John Marshall would later articulate a very similar set of principles in the more celebrated case of *Dartmouth College v. Woodward*, yet another case about corporate status in the wake of disestablishment. *Trustees of Dartmouth Coll. v. Woodward*, 17 U.S. 518 (1819). McGarvie, *One Nation Under Law*, 152-190.

had no significance outside of the District of Columbia. Tucker's ruling in *Turpin* stood in Virginia.[153]

The Legacy of the Glebes

In petitions, in state legislation, and in court decisions about the glebes, Americans retold the story of the Revolution to argue for their interpretation of its meaning. They grappled with the legal consequences of independence for religious liberty, for property rights, and for state power. Debates over the glebes exposes the contradictory and contested legacy of the Revolution in concrete terms. The question of whether the Revolution had been a conservative event that secured private property rights or whether it ushered in a radical, majoritarian expansion of liberty lay at the heart of these disputes. These issues were never confined to the ideological or philosophical realms. At stake was valuable property in every parish. The future of this property will be explored in the next two chapters.

[153] Hoping to use the Supreme Court's rulings in *Terrett* and later in *Dartmouth College,* the vestry of Shelburne Parish sued in equity to prevent the sale of their glebe lands by the Overseers of the Poor of Loudoun County. Henry St. George Tucker, the son of former Virginia Chief Justice St. George Tucker, ruled on the matter while serving as Chancellor in the Court of Chancery in Winchester in 1830. Not only did he reject the court's legal rationale in *Terrett,* he went even further to declare that, "the question in this case is not touched by the constitution of the United States, which was not adopted until two years afterwards; . . . this is a subject over which the supreme court of the United States have no manner of jurisdiction." *Selden v. Overseers of Poor of Loudoun*, 38 Va. 127 (1840); Henry St. George Tucker, "The Opinion of Chancellor Tucker in the Case of Selden and Others against the Overseers of the Poor of Loudoun and Others," *Commentaries on the Laws of Virginia*, Volume 2 (Winchester: 1837), 12.

CHAPTER 6

Material Disestablishment

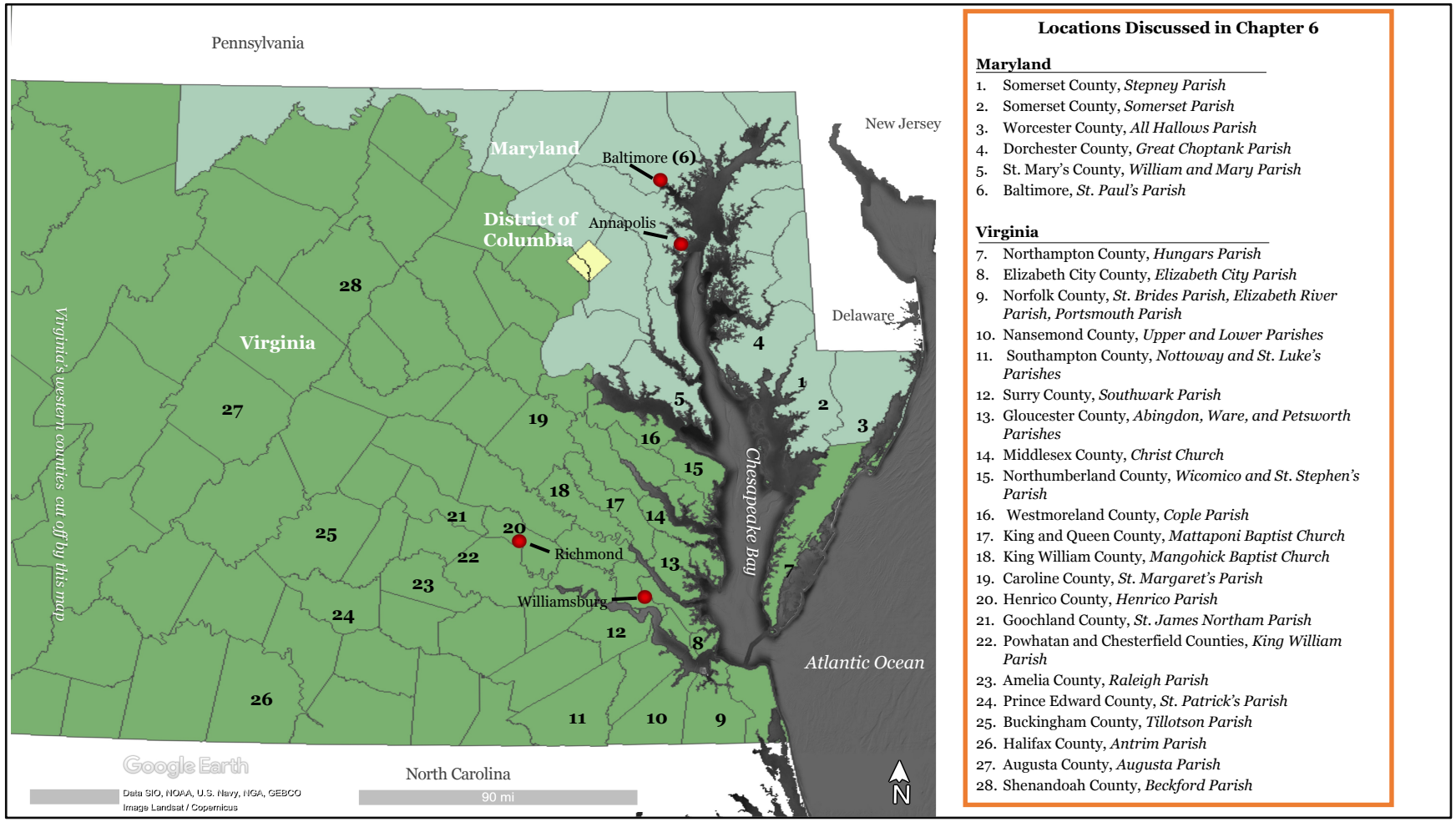


Figure 6.1. Map of locations discussed in Chapter 6. Map created by Alyssa Penick using data from the *Atlas of Historical County Boundaries*, The Newberry Library, last accessed May 15, 2020, , https://publications.newberry.org/ahcbp/index.html.

In 1832, the Overseers of the Poor of Norfolk County asked the Virginia General Assembly to emancipate, Billy Pugh, an enslaved man who had belonged to the county since disestablishment. Their petition explained that Pugh had "behaved for nearly thirty year with great propriety and deported himself in the most respectful manner & having paid to the Poor by his heirs &c several thousand dollars."[1] The petition made its math explicit: the price of Billy Pugh's emancipation was the continued enslavement of his children, whom the Overseers of the Poor considered just payment along with his previous decades of labor. Their "humane" request asked the legislature to free Pugh and allow him to stay in Virginia. By law, no manumitted person could remain in the state without legislative permission. Only a year after Nat Turner's Rebellion, one of the largest slave uprisings in American history, Virginia's legislature remained warier than ever of free black communities in the state. They were willing to accept Pugh's freedom only on the condition that he emigrate to Liberia. A week later, the Norfolk County Overseers of the Poor won permission to sell more than thirty enslaved individuals, including the "disorderly" and "impossible family" of Billy Pugh.[2]

[1] Overseers of the Poor: Petition, Norfolk County, December 22, 1832, LPDC, LVA.
[2] Overseers of the Poor: Petition, Norfolk County, December 31, 1832, LPDC, LVA.

Pugh began life around 1800 as the disputed property of Elizabeth River Parish. He was likely descended from the three enslaved persons bequeathed to the parish in 1715/6, in addition to 100 acres for "the poor of Norfolk."[1] More than 115 years later, Pugh and dozens of other men, women, and children were still enslaved for the "benefit for the poor." After the Revolution, the lives of Pugh and the rest of the parish's enslaved community were caught in the power struggle between church and state as three parishes, the Borough of Norfolk, and the Norfolk County Overseers of the Poor all laid claim to their bodies and labor.[2] Racial hierarchy had long underwritten the social welfare program administered by colonial parishes, and enslaved people became a valuable asset of Virginia's counties after disestablishment. In the wake of the Glebe Act and *Turpin* (1804), parochial endowments that had been made generations earlier were transferred from church to state. However, the enslaved people themselves remained in bondage for the welfare of the white community.

The enslavement of Billy Pugh, his ancestors, and his descendants provides a new window into the story of disestablishment. Scholars often conclude their discussion of Virginia's disestablishment with the passage of the Glebe Act or the court's decision in *Turpin* (1804). But these events initiated a massive transfer of wealth from church to state, which has yet to be fully explored by scholars.[3] This chapter offers a new reading of disestablishment by exploring its

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[1] The Will of Matthew Godfrey from 1715/6 is included in a legislative petition from 1832. The pages are unnumbered, but the discussion of his donation is on p. 7 of the will. See, Citizens: Counter-Petition, Norfolk County, December 31, 1832. LPDC, LVA.

[2] The original endowment had been given to Norfolk Parish, which was divided into three parishes: Elizabeth River, Portsmouth, and St. Bride's. Norfolk County and Norfolk Borough made claims to the enslaved people. See Overseers of the Poor: Petition, Norfolk County, November 5, 1789, LPDC, LVA; Mayor, Recorder, & Aldermen: Petition, Norfolk (Borough/City), October 16, 1792, LPDC, LVA; Inhabitants: Petition, Norfolk (Borough/City), November 2, 1789, LPDC, LVA.

[3] Sarah Barringer Gordon and Thomas Buckley both call attention to the transfer of specific parish glebes in their scholarship. Gordon, "The Landscape of Faith: Religious Property and Confiscation in the Early Republic," in eds., Daniel J. Hulsebosch and R. B. Bernstein *Making Legal History: Essays in Honor of William E. Nelson*, (New York: NYU Press, 2013), 13-48; Buckley, Establishing *Religious Freedom: Jefferson's Statute in Virginia* (Charlottesville: University of Virginia Press, 2013), 116-118. H.J. Eckenrode concluded his study with a brief overview of the glebes. See. Eckenrode, *Separation of Church and State in Virginia,* 151-155. Episcopalian historians from the late

material stakes. Putting property, including persons held as property like Billy Pugh and his family, at the center of the story reveals that disestablishment was as much a material process as an ideological one and underscores the consequences of transferring parish property to state institutions.

This chapter begins by returning to Maryland, where no parish property was seized by the state. Despite losing public financial support, Maryland's parishes were able to leverage their glebes to continue hiring ministers, maintaining their churches, and holding worship. Looking at how Maryland's parishes relied on their glebes for financial security underscores just what Virginia's parishes lost. No other state seized church property on the scale of Virginia.[4] Thus, while Virginia's disestablishment has received more attention from scholars, Maryland's story exemplifies how disestablishment played out across the rest of the early national U.S.

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nineteenth and early twentieth century also emphasized the transfer of wealth. See William Meade, Old Churches, Ministers and Families of Virginia, 2 vols. (Philadelphia, Lippincott, 1857); George MacLaren Brydon, *Virginia's Mother Church and the Political Conditions Under Which It Grew*, 2 vols., (Richmond, VA: Virginia Historical Society, 1947-1952), 2:500-509.

[4] The only other state that undertook post-revolutionary seizure of church property was Vermont, but confiscation was markedly different in the two states. Vermont's legislature passed statutes in 1794 and 1805 empowering townships to take possession of glebe property for schools. On their faces, these laws resembled Virginia's 1802 Glebe Act, but there were significant differences in context. In Vermont, glebe property had been granted in vague terms by a 1761 royal charter to "the Church of England." Vermont did not have active Anglican parishes or parsons before the Revolution, though, so this property had never been vested in any colonial corporate bodies. In Pawlet, Vermont, a society of Episcopalians formed in 1802 sued to prevent the town from expropriating the glebe. Their case, *Town of Pawlet v. Clark* (1815), made its way to the US Supreme Court. The Court ruled in favor of the town and upheld the state's policy, just weeks after the decision in *Terrett v. Taylor* (1815). It may seem contradictory for the Court to reject Virginia's plan to seize glebes while approving Vermont's policies. But, the judicial reasoning in the two cases was the same, namely that the state could not take vested property from corporate bodies. While Vermont seized more than 15,000 acres of land, this property had devolved back on the state at the time of the Revolution because no corporate body had laid claim to it under the original colonial charter. In Virginia, however, rectors and parishes held title to the glebes before the Revolution. Virginia's seizure was held unconstitutional because it undermined the vested property rights of longstanding corporate bodies. The cultural weight of glebe confiscation in the two states was also different; in Virginia, confiscation was an attack on the traditional privileges of the former establishment and undermined preeminent local institutions. This cultural legacy was absent in New England. See *Town of Pawlet v. Clark,* 13 U.S. (9 Cranch) 292 (1815). For a comparison of the two policies of confiscation, see Gordon, "The Landscape of Faith: Religious Property and Confiscation in the Early Republic," in eds., Daniel J. Hulsebosch and R. B. Bernstein *Making Legal History: Essays in Honor of William E. Nelson*, (New York: NYU Press, 2013), 13-48.

Next, I examine the massive transfer of property from church to state in Virginia. I estimate the total value of glebe property sold during disestablishment and consider how glebe confiscation unfolded in local communities. I consider the fate of enslaved people, like Billy Pugh and his family, who were seized as part of glebe properties by county Overseers of the Poor. Finally, I investigate the many other parish assets seized and sold by counties during the early nineteenth century. Though prohibited by the terms of the 1802 Glebe Act, counties confiscated additional property, often with the legislature's consent.

The material consequences of other religious ruptures have long been recognized – the Henrician Confiscation of the monasteries, the iconoclasm during the English Civil Wars, and the *biens nationaux* of the French Revolution. Disestablishment in the early national Chesapeake must be added to this list. Churches and glebes were sold, along with scores of enslaved people. Altars were smashed, chapels abandoned, and churches taken apart brick by brick. Republicanism made liberty and property inseparable ideological categories, but neither liberty nor property was ever an abstraction. The abolishment of primogeniture and entail, the confiscation of loyalist property, and the daily reality of racial slavery all underscored that tangible property was central to the republican legal reform. Glebes were, for many, the material representation of what happened when power trampled liberty. The story of Virginia's disestablishmentarian confiscations cannot be separated from the fate of this property itself.

Maryland's Glebes

Maryland's parishes retained control over all colonial-era property after disestablishment. Maryland's struggling parishes relied on their glebes as a way to raise funds while their congregations adopted to the loss of public support. Looking at events in Maryland provides a

revealing corollary to the cost of Virginia's policy of glebe confiscation. Article 33 of Maryland's Constitution of 1776 had expressly affirmed that "the churches, chapels, glebes, and all other property now belonging to the church of England, ought to remain to the church of England forever."[5] But the Church of England no longer existed in the colonies after the Revolution. A new denomination – the Episcopal Church – was created from the remnants of the old Anglican system in a parallel act of religious independence. Many Episcopal vestries were anxious that other religious denominations would contest their title to parish property on the grounds that the newly independent denomination was not, in fact, the Church of England as named in the Constitution. The zealous Presbyterian minister Patrick Allison bemoaned the settlement and framed it as a serious blow to religious equality, as we saw in Chapter 4. Reformers did not mount a serious attempt to seize glebes or other assets, though. Maryland's parishes retained control of their glebes and other property without ever facing an organized campaign for state confiscation.

Still, the colonial Anglican Church had been built on a model of state support, and the transition out of legal establishment proved difficult. Not only had parishes lost the ability to raise annual levies in 1776, but two thirds of Maryland's clergy had been loyalists, and more than half of parishes were without ministers in 1780.[6] After the Revolution, fewer English-born Anglican minsters willing to settle in the new nation, which left parishes competing over a

[5] Maryland Constitution of 1776, Art. 33. One of the most easily accessible versions of the 1776 Maryland Constitution mistakenly replaces the word "glebe" with "globe" in its text of Article 33 (as of April 1, 2020). This typo underscores that church property has been widely overlooked as a constitutional issue in Maryland and that the question of glebe lands has been largely forgotten. See "Constitution of Maryland - November 11, 1776," *The Avalon Project: Documents in Law, History, and Diplomacy,* Lillian Goldman Law Library, Yale University, last modified 2008, accessed April 1, 2020, https://avalon.law.yale.edu/17th_century/ma02.asp.

[6] Nelson Waite Rightmyer, Maryland's Established Church (Baltimore: The Church Historical Society for the Diocese of Maryland, 1956),119.

smaller pool of ordained ministers.[7] Moreover, evangelical sects were rapidly expanding across the Chesapeake in the final third of the eighteenth century. Baptists, Methodists, and Presbyterians all gained numerous converts from the former established church.[8]

Facing these numerous challenges, Maryland's parishes struggled to keep up their extensive property. Part of the problem was that many colonial parishes had operated three, four, or even five different churches and chapels to serve far-flung communities. Under the established system of worship, parishes had built and maintained this multi-congregational structure in their bounds using the parish levy. Many parish churches fell into disrepair between 1776 and 1800. For example, Stepney Parish in Somerset County had three churches and a chapel. By the late 1790s, the brick parish church was reportedly in good condition and had an active congregation. But, a second church would require at least some "expence [to] be made comfortable," and its third church stood in ruins. [9] The dilapidation of the latter sanctuary "would be very discouraging to a young man (were they to procure one) who should preach in it: the doors and windows are entirely demolished; it is open to cattle and every abomination under heaven."[10] A visiting clergyman castigated the vestry for letting the valuable brick church go "to ruin." His report reflected that parishes saw their churches and chapels as a direct reflection of the "state of religion" in their communities.[11] Houses of worship were a material representation of spiritual

[7] See Sandra Ryan Dresbeck, "The Episcopalian Clergy in Maryland and Virginia, 1765-1805," Ph.D. diss., University of California, Los Angeles, 1976.
[8] For more on the rise of non-Anglicans in Maryland after the Revolution, see Werline, *Church and State in Maryland,* 180-192. For a discussion of Methodists in Maryland during and after the Revolution, see Dee E. Andrews, *The Methodists And Revolutionary America, 1760-1800: The Shaping of an Evangelical Culture* (Princeton, NJ: Princeton University Press, 2000), 56-59, 80, 129-133, 138, 160-1, 188-9. For a discussion of the post-revolutionary rise of evangelicalism across the south, see Christine Leigh Heyrman, *Southern Cross: The Beginnings of the Bible Belt* (Chapel Hill, NC: University of North Carolina Press, 1997).
[9] Reverend Thomas Scot, "Seventh District Report: Stepney Parish," Queries 14-15, 1798, V.F., Episcopal Diocese of Maryland Archives, Baltimore, MD [Hereafter EDMA].
[10] Ibid.
[11] Ibid.

vibrancy and could either deter or attract worshippers and clergymen. The widespread pattern of material decay underscored parishes' struggles to raise funds, retain congregants, and hire ministers in the wake of disestablishment.

The Diocese of Maryland had suggested that parishes raise funds by asking parishioners to rent pews in the churches and chapels. However, most congregations found that the proposal was not particularly effective. All Hallows Parish in Worcester County concluded in 1797 that "we have tried it but with bad success."[12] Somerset Parish in Somerset County likewise complained, "we cannot say that as yet it has been very flattering. A considerable no. of pews have been taken up, but many yet remain vacant."[13] Great Choptank Parish in Dorchester County explained that "we have tried the pew rent scheme… Its success has perhaps been equal to what can be expected in the present state of religion. Still, we are of opinion that is has lessened our congregation. Some appear to remain at home on Sunday, because they are too parsimonious to rent a pew."[14] The pew-rent scheme could not raise enough funds to combat the decreasing number of parishioners spread out between multiple chapels and churches in every parish. The proposal even seemed to dissuade poorer parishioners from attending worship altogether, which was certainly the last thing any church needed as it fought to attract congregants.

After voluntary contributions and pew rent schemes failed, Maryland's parishes turned to their glebe properties to provide an important financial lifeline. Reports from parishes to the Bishop of Maryland from the late 1780s through the early 1810s underscore how heavily parishes relied on their glebes to raise adequate funds. Many sold their glebes and used the

[12] Rev. John Kemp, "Seventh District Report: All Hallows Parish," Part II, Query 9, 1797, V.F., 1797, EDMA.
[13] Ibid..
[14] Ibid.

profits to hire ministers, repay debts, and escape financial collapse.[15] Even parishes with smaller or poor glebes could rent out the land and then use these funds to pay a minister to preach occasionally. Parishes that held valuable glebes used profits from the estates to employ ministers, hire slave labor, contribute to the support of the Bishop, maintain and improve their churches and chapels, and pay sextons and clerks.

For example, William and Mary Parish in St. Mary's County was desperate to find a new minister after the death of their rector in 1807. The vestry reported in a letter to the Bishop that the minister's passing was "the more unfortunate at this particular period as a certain sect of dissenters is for the first time gaining proselytes here…the late melancholy occurrence may contribute not a little to their efforts." The vestry asked for the Bishop to recommend a "worthy" clergyman to fill the post. However, with few available ministers in the state, their letter also went to great lengths to underscore the many advantages that a minister could expect there. The vestrymen mentioned that the parish owned "an excellent Glebe containing three hundred acres as good farming land as any in the neighborhood" which could "yield handsome support for a large family, [and] has generally been from £100 to $300." They even mentioned the plentiful oysters and fish in the coastal waters near the property. The vestry's letter concluded that the income from the glebe along with voluntary contributions and fees from funerals and marriages would provide an "amount exceeded by very few parishes in the state as remote from wealthy Towns as we are." Apparently, their advertising worked, and William and Mary Parish was able to recruit William Bradley to take the position. [16]

[15] For examples of parishes discussing selling real estate to raise funds, see Vestry of St. Margaret's Westminster Parish, Anne Arundel County to Bishop Claggett, Nov. 6, 1809, V.F., Oversize, EDMA; Reverend Thomas Scot, "Seventh District Report: Stepney Parish," Queries 14-15, 1798, V.F., EDMA ; Bishop Thomas John Claggett to a Vestry, c. 1809?, V.F., EDMA.
[16] William Hebb to Bishop Thomas John Claggett, May 16, 1807, 1-2, V.F. EDMA.

However, Bradley soon got a better offer from another parish, and the vestry were yet searching for a new rector. They turned to the Bishop of Maryland for help. They vestry acknowledged that "the advantages held out to [Bradley] were so flattering that none of his friends could attempt to dissuade him from it." The parish hoped to recruit a new minister "with as little delay as possible because "our Glebe is now stocked with everything." Writing in March, the vestry expected that if a new clergyman could be found quickly, a valuable wheat crop could still be raised that year as "the hands and overseer" were already on the glebe. The passing references to the glebe being "stocked" with "hands" reveals that glebe's reliance on enslaved labor. The parish had not listed enslaved people in its inventory of assets, which makes it more likely that the vestry had hired these laborers from their owners to live and work on the glebe for the year. The inclusion of these details reflected a desire for the vestry to underscore the valuable living that awaited a minister in their parish where he could expect to live as a wealthy planter. [17]

Together, these two letters from the vestry of William and Mary highlighted how the scarcity of ministers created a competition between parishes hoping to recruit and retain a rector. The disparity between parishes' wealth engendered a system of trading up as clergy were eager to move from parish to parish in search of higher-paying offers. Wealthy parishes endowed with valuable real estate were at a significant advantage. As William and Mary's vestry had noted in their letter, urban parishes in wealthy towns were often able to pay the highest salaries. St. Paul's Parish in Baltimore, for example, owned 17 lots in the city.[18] The parish rented out thirteen of these lots for a total of £127 annually and raised nearly five times that amount annually from contributions and renting pews. The valuable income a minister could expect in the booming city

[17] William Hebb to Bishop Claggett, March 18, 1810, 1, V.F., EDMA.
[18] St. Paul's Parish, Baltimore, "Account of the Glebe belonging to the Vestry of St. Paul's Parish in Baltimore County," June 1789, V.F., EDMA.

certainly made it harder for rural parishes, even those with valuable glebes, to recruit and retain ministers.

Maryland's clergymen also acknowledged that they were eager to attain posts that paid well. The Rev. George Ralph wrote to the Bishop in June of 1802 about his current situation in All Faith Parish. He had accepted a one-year position there, even though "the salary is trifling." He wrote that a "sense of duty prevailed, I hope, over interest." Ralph touted his decision to prioritize his spiritual calling above any earthly compensation. However, by sending this account of self-sacrifice to his superior, Ralph was angling for the Bishop to recommend him for another parish the following year that would offer him a better living. [19]

Maryland also experienced its fair share of controversy over parish property but most of it occurred within the ranks of the Episcopal Church. There were bitter disputes between vestries and clergymen, between parishes and the diocese, and between clergymen over valuable glebe property. Whether glebe property was entirely at the discretion of the vestry or belonged to the diocese remained unresolved. The animosity of these internal disputes reflected how important glebes were for the struggling Episcopal Church. Many parishes continued the colonial practice of housing the minister and raising crops on the glebe using enslaved labor while other parishes rented or sold their glebe lands and invested the proceeds. Retaining all of their property gave many parishes an important form of financial security while trying to rebuild their congregations without state support. How different was the situation in Virginia, where counties seized glebe resources and acrimonious disputes between church and state lasted for decades into the nineteenth century.

[19] Rev. George Ralph to Bishop Claggett, June 5, 1802, 3, V.F., EDMA.

The Confiscation of Virginia's Glebes

Virginia's Glebe Act brokered a compromise by allowing Episcopalian parishes to retain some property while empowering counties to seize glebe lands and their appurtenances. The preamble to the 1802 law categorically declared that all parish property belonged to the public after independence. This sweeping statement echoed arguments made by Baptists between the 1780s and 1800s, asserted by the legislature in 1799, and later adopted by Tucker in his decision in *Turpin v. Lockett* (1804). However, the law included two important qualifications. First, the state only authorized the seizure of vacant glebes. Counties would have to wait for ministers to die, resign, or depart their parishes before seizing their glebes. Second, while the state asserted that all parish property belonged to the people, only glebe property could be claimed; churches, churchyards, and private donations were not subject to confiscation under the law. These concessions attempted to accommodate "all of the good people of the commonwealth."[20] The legislature maintained that the state had a right to all parish property while nonetheless imposing restrictions on the process of confiscation. By trying to appease both sets of claimants, the legislature failed to fully reconcile the incompatible property claims of the two sides.

Accepting the terms of the Glebe Act at face value obscures the far-reaching material consequences of disestablishment in Virginia. The phrasing of the act's title is misleading; glebe property not only included "lands" but all of the buildings thereon and their contents. Moreover, enslaved people were treated as appurtenances to glebe lands and therefore eligible for seizure under the terms of the Act. And, the glebes represented only part of the actual transfer of wealth in Virginia. In many counties, Overseers of the Poor ignored or successfully challenges stipulations preventing the seizure of reserved or donated property and claimed it anyway.

[20] *Acts VA* (1801-1802), Ch. 5: "An Act concerning the Glebe Lands and Churches within this Commonwealth," 9.

Enslaved people, churches, communion silver, libraries, furnishings, and other valuable assets frequently came into public possession.

The Glebe Act outlined a statewide framework for confiscation, but the actual process unfolded locally. The Overseers of the Poor in every county were responsible for confiscating glebe lands. The legislature had established these county administrators in 1780 to take over many of the civic duties of parish vestries. By default, the funds from glebe sales would be used for poor relief at the discretion of the Overseers of the Poor; however, the freeholders and housekeepers of a parish could elect to use the proceeds for another public, non-religious purpose. The seizure of the glebes proceeded on a parish-by-parish basis, as did decisions over how to spend these funds.

The Glebe Act thus created multiple ways for local authorities to confiscate property. Some counties immediately seized and sold glebes while others had to wait until the death of the incumbent parish minister. The kind of property that would be seized also varied widely. Some parishes owned tens, even dozens of enslaved persons and more than 1,000 acres of land. Other parishes held only small farms. Some communities respected the exemption of private donations, churches, their contents, and churchyards. Other Overseers ignored this provision and moved to seize non-glebe property. The Glebe Act itself must be understood as a starting point for a sprawling and localized process of property confiscation, not just as the conclusion to a decades-long political struggle over property rights.

After all the attention paid to the sale of the glebes as a political issue over the previous twenty years, the actual process of claiming and selling glebe lands proceeded unremarkably (see Appendix B for a list of Virginia's glebes, their date of sale, and their use after disestablishment). The average glebe farm was roughly 380 acres, so the seizure of Virginia's 95 glebes amounted

to roughly 36,100 acres of land.[21] This figure underestimates the total land seized from parishes during the course of disestablishment, though. In addition to the glebes, many parishes held churchyards, purchased land for poorhouses in the mid-eighteenth century, and acquired acreage through charitable endowments. These estates were not vast stretches of wilderness like the claims held by western speculators but cleared farms with finished homes, kitchens, slave quarters, timber, and orchards. They were often centrally located near the county seat and had access to water.

Some historians have claimed that glebes were roughly worth $8,00-10,000, but based on the records from seventeen glebes, I calculate that an average value of a glebe fund was $3,401 (see Figure 6.2).[22] The value of glebe funds varied widely from county to county.[23] Moreover, the money recouped from selling glebes does not capture the full value of parish property seized by counties. Overseers of the Poor may have chosen to hold onto enslaved persons, which happened in Norfolk County, the glebe house and farm, as was the case in Shenandoah County, or tracts of land that were rented out, as in Nansemond County.[24]

Fifteen glebes were sold before passage of the Glebe Act in 1802 (see Appendix B for a table of Virginia's seized glebes). In some of these cases, vestries had received the legislature's consent to sell glebes before disestablishment. In other instances, counties without active

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[21] Nelson, *A Blessed Company,* 51.
[22] Eckenrode and Brydon relied on an estimate from a petition sent by the Presbyterian General Committee in 1783 since to come up with these figures and estimate a total value of the glebes of roughly £300,000. The reliability of this figure, though, is dubious. The Presbyterians had an incentive to emphasize the high value of this land in making their case for its seizure as a public asset. Clergy of the Presbyterian Church: Petition, May 26, 1784, LPDC, LVA; Eckenrode, 77; George MacLaren Brydon, *Virginia's Mother Church and the Political Conditions Under Which It Grew*, 2 vols., (Richmond, VA: Virginia Historical Society, 1947-1952), 2:501, 509.
[23] There was significant variety between the value of different glebes. For example, Goochland's glebe sold for just $601.92 while Halifax's glebe, which included least five enslaved people, sold for $6,618. Some counties also had multiple parishes in their bounds whereas other counties only had one. Goochland County: Report, 1829, Box 5, Folder 2, OP Annual Reports, APA, LVA; Halifax County: 1829 Report, Box 5, Folder 7, OP Annual Reports, APA, LVA.
[24] Fred P. Painter, *The Alms House of Shenandoah County: A brief history* (Stephens City, Va.: Commercial Press, 1979).

Episcopal vestries won permission to sell glebes in parishes without an incumbent minister. After the Glebe Act was upheld in 1804, Overseers of the Poor were enabled to collect the funds from these sales.[25] In vacant parishes, glebe lands immediately came into the possession of county Overseers of the Poor. In the decade after *Turpin*, another fifty-two glebes were sold or converted for public use by the Overseers. By 1820, 81 glebes had been transferred to the Overseers of the Poor, leaving just fourteen glebes in the hands of Episcopalians.

The Value of Selected Glebe Funds in Virginia

County	Number of Glebes	Sale Price ($)
Albemarle	2	3,200
Amelia	1	2,816
Augusta	1	3,552
Caroline	1	8,000
Charlotte	1	2,326
Gloucester	3	12,802
Goochland	1	602
Halifax	1	6,682
King George	1	4,249
Nansemond	1	1,102
Norfolk	1	4,889
Prince William	1	1,106
Princess Anne	1	1,110
Surry	1	5,382
Total	17	57,819
Average		3,401

Figure 6.2. These figures reflect the value of glebe funds in selected counties as reported between 1813-1829. Amelia County's figure also includes the proceeds from the sale of the plate because the Overseers included that money in the glebe fund. Data from Albemarle, Augusta, and Surry reflect the value after several years of investment. The Nansemond Overseers continued to rent out ten additional tracts of land for $265 annually, so their glebe fund represented only some of the total property seized. **Sources**: Amelia, Charlotte, Gloucester, Goochland, Nansemond, Norfolk, Prince William, Princess Anne, and Surry Counties, Overseer of the Poor Annual Reports and Checklists, 1800-1909, Accession APA 739, Auditor of Public Accounts (1776-1928), State government records collection, The Library of Virginia, Richmond. For Albemarle County, see January 6, 1818, *Journal of the House of Delegates of the Commonwealth of Virginial;* Augusta: William Patrick, "To the Citizens of Augusta Count," (Staunton, VA: Printed by L. Collett, at the Rep. Farmer Office, 1812), Broadsides Collections, LVA. For Caroline County, see Rappahannock Academy, *Record Book of the Trustees of Rappahannock Academy,1810-1822*, 46, Accession 24654c, Organization records collection, LVA.

[25] Inhabitants of St. Anne's Parish, Albemarle County, December 7, 1803, LPDC, LVA.

Parishes that avoided the initial flurry of confiscation either had an inducted rector or could prove that the original land had been acquired through a private donation. Slowly, though, even these glebes were also seized and sold. Hungars Parish in Northampton County, King William Parish in Powhatan and Chesterfield Counties, and Henrico Parish in Henrico County had originally held on to some part of their glebes by arguing that this property has been privately donated and was therefore exempt from confiscation under the terms of the Glebe Act. However, these claims faced increasing scrutiny as time passed, and all three parishes ended up ceding their glebes to the Overseers.[26] The vestry of Hungars Parish fought a bitter, decades-long case against Northampton's Overseers of the Poor, but eventually lost their lawsuit and forfeited the glebe in 1859. The vestry of Henrico Parish, on the other hand, decided not to continue fighting their case "because of the discord and unhappiness which would certainly attend it."[27] There was a strong sense of inevitability to glebe confiscation, and many parishes were resigned to losing even their donated property. The only glebe remaining in a parish's possession after the Civil War was the glebe of the Lower Parish in Nansemond County.[28]

The uneventful sale of the Raleigh Parish glebe by the Amelia County Overseers of the Poor exemplified the process of glebes in vacant parishes. There had been a significant amount of controversy in Amelia over the glebe confiscation in the 1780s and 1790s. Episcopalians in Amelia had implored the legislature to prevent the sale of the glebe lands, while Methodists and Baptists in the county vocally supported confiscation.[29] Their petitions revealed an acrimonious

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[26] Freeholders, Housekeepers, & Inhabitants of King William Parish: Petition, Powhatan County, December 13, 1834; Sarah Barringer Gordon, "The Landscape of Faith: Religious Property and Confiscation in the Early Republic," in eds., Daniel J. Hulsebosch and R. B. Bernstein *Making Legal History: Essays in Honor of William E. Nelson*, (New York: NYU Press, 2013), 34; Meade, 1:144.
[27] Meade, 1:144.
[28] Eckenrode, *Separation of Church and State in Virginia*, 153; Brydon, *Virginia's Mother Church,* 2:511-12n30.
[29] A petition sent from Amelia County in 1790 mentions that Amelia's Methodist and Presbyterian communities had circulated and supported petitions coming from Petersburg and Prince Edward, even though there are no specific petitions from Amelia in favor of selling the glebes that year. Freeholders & Inhabitants of Raleigh Parish: Petition,

split in the community. The Raleigh Parish vestry alleged that their opponents had fraudulently collected signatures for their petitions and characterized these tactics as "menacing" and preying upon the "unenlightened" people. The vestry insisted the legislature protect their private property as citizens. Those in favor of seizing Amelia's glebe compared the Virginia Assembly's protection of glebes to the British Government's infringement of colonists' fundamental rights. Both camps invoked the legacy of Revolution and its rhetoric of liberty to make their case about the glebe.

Once the Amelia Overseers of the Poor actually took possession of the vacant glebe under the Glebe Act, the process of selling the property and using the proceeds proved humdrum, if not entirely overlooked. The records from the Amelia County Overseers of the Poor show they sold the property for £711 in 1805, though it took, "some years before the money was collected."[30] Amelia's Overseers of the Poor did not keep particularly careful records of the glebe fund. An 1830 report noted it was "probable" that the Overseers had used the proceeds from the sale of the glebe to cover the cost of poor relief in one or two years between 1805 and 1819, but they could not be sure.

Amelia's extant records favor the ideological over the material but that does not mean we should follow their lead. Although the legislature received over one hundred petitions demanding the sale of the glebe lands between the Revolution and the *Turpin* decision, very few of these appeals included any concrete statements about the value of the property they so ardently sought. This silence is intriguing. Certainly, local petitioners should have been able to hazard a guess at the value of land or the number of enslaved persons on a glebe or the condition of its buildings

Amelia County, October 24, 1787, LPDC, LVA; Inhabitants: Remonstrance, Amelia County, November 4, 1790, LPDC, LVA.

[30] Amelia County: Report, 1829, Box 1, Folder 7, OP Annual Reports, APA, LVA.

and gardens. The striking omission of any material details about glebes – their worth, their size, and their contents – not only makes it difficult for historians to estimate their value but it suggests that these petitioners did not wish to admit their pecuniary motives or ambitions. Their arguments rested on the revolutionary language of rights and invoked materiality only in the abstract – oppressive taxes, common property, free churches. Historical scholarship on the fight over the glebes has largely followed suit and emphasized the ideological stakes of this debate and its implication for liberty. This framework, adopted by contemporaries and historians alike, sets revolutionary disestablishment apart from other moments of religious rupture, where material activity –hiding communion silver, demolishing churches, and selling monasteries - has been understood as one of the best illustrations of popular belief and motivation. American disestablishment has long been de-materialized but, as we shall see, the property at stake is central to understanding the motivations of these actors and appreciating who would benefit from the transfer of glebe lands.

Challenging Incumbent Ministers

While the sale of glebe lands may have proceeded fairly quietly in vacant parishes like Amelia, communities with an incumbent minister continued to press the issue with the legislature. Under the terms of the Glebe Act, a parish with an inducted minister would not surrender its property to the state. The statute initiated a sort of bizarre waiting game as communities anticipated the minister's resignation or death. This provision meant that Episcopalian congregations were highly motivated to recruit and retain inducted ministers, thereby keeping the Overseers of the Poor at bay.[31] In an ironic twist of fate, after 150 years of

[31] Landon C. Bell, ed., *Cumberland Parish, Lunenburg County, Virginia, 1746- 1816, Vestry Book,* (Richmond, VA: The William Byrd Press, 1930), 497-98.

Virginian vestries' resisting the legal induction of ministers, nineteenth-century parishes scrambled to quickly install parish rectors.

In Halifax County, near the North Carolina border, a long-simmering conflict over the Antrim Parish glebe lands became even more hostile after the passage of the Glebe Act. In 1802, the parish had an inducted minister, Alexander Hay, and therefore the glebe was not eligible for confiscation until he resigned or died. The 1802 Glebe Act did not prove to be the long-awaited victory for the many non-Episcopalians in Halifax, but only the mid-point in a decades-long struggle over the glebe.

During the Revolution, the churchwardens and vestry of Antrim Parish, as well as non-Anglican inhabitants of Halifax, wanted to sell the glebe. The churchwardens and vestrymen complained in a petition in October of 1779 and again in November of 1781 that their minister "presume[d]" to rent the glebe out for his own benefit, despite having left the parish. They asked for a law dissolving the vestry and instructing a new vestry to sell the glebe or rent it for the "use and emolument of the Parish."[32] Six months later, another petition arrived in Richmond, this time signed by the "Inhabitants of Halifax County." Like the churchwardens, these petitioners alleged that the current parish rector had left the county claiming ill-health but continued to pocket the rent "for his own emolument."[33] The careful use of the term emolument by both sets of petitioners presented a constitutional argument in favor of dispossessing the minister of his freehold, which was a tenured property right. An individual receiving an emolument without having performed his public duties stood in violation of Article 4 of Virginia's 1776 Constitution. Therefore, they argued, the glebe ought to be seized. The churchwardens asked for the sale to benefit the parish; the 112 signers of the second petition asked that the glebe be turned

[32] Church Wardens & Vestry of Antrim Parish: Petition, Halifax County, Nov. 22, 1781, LVA, LPDC.
[33] Inhabitants: Petition, Halifax County, June 8, 1782, LPDC, LVA.

over to the public. The Assembly allowed for the parish to elect a new vestry but rejected the proposal to sell the glebe or otherwise interfere with the minister's freehold.[34]

In 1784, the inhabitants renewed their request asking for the sale of the glebe lands. They made no reference to the minister but called the parish "vacant," suggesting the absentee minister had passed away. Arguing that the glebe was in a "ruinous state," and that the cost of repairs would exceed the value of the worn-out land, the community again asked for the glebe to be sold, and the funds put "towards lessening the Parish levy."[35] The legislature authorized the vestry to sell the glebe and purchase a new "more convenient" glebe.[36] The Assembly did not release the funds to the public but took the petitioners at their word that the glebe lands were poor and needed replacing.

During the next six years, the fight over disestablishment intensified and evolved significantly in Virginia, as discussed in Chapters 4 and 5. However, these political debates did nothing to affect the everyday running of the parochial system in Halifax, where the vestry purchased a new glebe and inducted a new minister, Alexander Hay, in 1790. Hay's arrival apparently did little to win support for the Episcopal Church in the local community, and petitions from the inhabitants of Halifax continued calling for the glebe to be sold and the funds to be given to the county.

Halifax's non-Anglican petitioners complained that the Antrim Parish Vestry had "most improperly and unjustly" sold the old glebe and used the funds for the "purchase of another Glebe, sundry slaves, etc."[37] Their claim seemed to grasp at straws. The act passed in 1784 had expressly empowered the Vestry to "dispose of" the "worn-out" and "inconvenient" old glebe,

[34] Henig, 11:73-74.
[35] Inhabitants Petition, Halifax County, June 12, 1784, LPDC, LVA.
[36] Hening, 11: 404-5.
[37] Inhabitants: Petition, Halifax, 1795-11-16, LPDC, LVA.

and "to lay out the money arising from the sale thereof in purchasing other lands for a glebe." From all extant records, the actions of the vestry were lawful. Regardless of the terms of any particular law, though, the Halifax petitioners put forward broader ideological objections. The glebe lands had "been procured by the joint expense of the community," and their appropriation "to the sole use of one denomination of Christians" infringed on "our present happy constitution."[38] They asked for the sale of the glebes to benefit "the public at large" and to "promote the welfare of the state."[39] As long as the Glebe lands remained the property of the Episcopal Church, the "total abolition of the exclusive privileges of the Episcopal Church has not been affected."[40] Like other evangelical petitioners across the state during the 1790s, the inhabitants of Halifax argued that disestablishment would not be achieved if parishes retained their property.

The passage of the "Act to Repeal Certain Acts," in 1799 overturned a host of statutes respecting the legal rights and property of the Episcopal Church. Those Halifax residents who had long advocated for the state to seize glebe lands initially celebrated the 1799 statute.[41] They jubilantly sent a petition asking for the proceeds from the sale of the Antrim parish glebe to be vested in the Overseers of the Poor. The petitioners understood the law to "repeal all those obnoxious laws which favored the Church of England by continuing her ministers as occupants on the Glebe lands" and thereby upheld "the true meaning of the Constitution."[42] Halifax's petition asked for their glebe funds to benefit a school for "poor children" in the county.[43] However, another petition arrived in Richmond two days later from the Antrim Parish vestry and

[38] Ibid.
[39] Inhabitants: Remonstrance, Halifax, 1794-11-25, LPDC, LVA.
[40] Ibid.
[41] *Acts VA* (1798-1799), Ch. 9, "An act, to repeal certain acts, and to declare the construction of the Bill of Rights, and Constitution concerning religion," 8-9.
[42] Inhabitants: Petition, Halifax County, December 17, 1799, LPDC, LVA.
[43] Ibid.

their rector, Alexander Hay. The parochial officials described their opponents as Baptists who were "zealous for the sale of our glebe."[44] The parish sought reassurance that the county could not seize its glebe while it had an inducted rector. The Episcopalian petitioners appealed to the legislature's "wisdom, its impartiality, its patriotism" as the guardian of citizens' rights under the state's Constitution[45] The meaning of Virginia's Constitution remained a point of contention in debates over glebe on both sides. The legislature did not act on either petition, and Antrim Parish retained its glebe lands for the time being.

The Halifax County Overseers of the Poor had expressed their "great satisfaction" with the Glebe Act in December of 1802.[46] However, Antrim Parish still had an inducted minister, Hay, whose freehold rights would extinguish upon his death or resignation. Until then, the county was not yet entitled to seize any parish property. The Glebe Act turned out not to be the long-awaited moment of deliverance but yet another legal roadblock.

The Overseers of the Poor were not about to give up, though. The only legal route left for them was to argue that the rector, Alexander Hay, was no longer the rightful incumbent minister and thus did not have any tenured rights over the property. The Overseers of the Poor tried this tack, explaining that their community was facing "a case not provided for by the act." They accused Hay of refusing "the good people of this county at large" even "the smallest return of service for the benefit derived from said possession." The minister had "abandoned their interests both temporal and spiritual" and had not met with "full and complete satisfaction" as a "preacher

[44] While the Halifax petitions in favor of the sale had not specifically declared any denominational affiliation, the Episcopalians made it clear that its authors belonged to evangelical churches outside the Anglican faith. Given the large Baptist population of Halifax and their commitment to seizing glebe lands across the state, there is little reason to doubt that this petition was organized by Baptists. Minister & Vestry of Antrim Parish: Remonstrance, Halifax County, December 19, 1799, LPDC, LVA; For more on the influence of Baptists in Halifax, see Clifton Ellis, "Dissenting Faith and Domestic Landscape in Eighteenth-Century Virginia," *Perspectives in Vernacular Architecture* 7 (1997): 23-40.
[45] Minister & Vestry of Antrim Parish: Remonstrance, Halifax County, December 19, 1799, LPDC, LVA.
[46] Overseers of the Poor & Others: Petition, Halifax County, December 21, 1802, LPDC, LVA.

of the gospel," as reflected in the low number of voluntary subscriptions for his support. Hay had acted with "unchristian arrogance, contempt, disrespect" toward the petitioners and abandoned the parish churches. According to the Overseers, Hay had "so far prostituted his holy calling" that he had surrendered his legal claim as rector of the parish. By arguing that Hay had failed to fulfill spiritual duties, the Halifax petitioners asked the legislature to judge who truly counted as a Christian minister and what standards one had to meet to fulfill a spiritual calling. In this respect, they certainly did not respect any firm boundary between church and state but actually called on the state to police the clergy. [47]

The Halifax Overseers' next set of arguments moved from matters spiritual to temporal and revealed a fixation on the enslaved people who belonged to Antrim Parish. The parish owned an enslaved couple and their three young children. The Overseers' framed their petition as a desire to prevent "abuses, to which said property may be liable" on the minister's watch. They staked out their position as guardians of the public's interest and soon-to-be inheritors of all parish property. Their petition accused Hay of leaving the glebe and "conveying the slaves along with him," of "vainly pretending he acquired title to" the enslaved family and claiming he owned them "independent of all control." The alarm with which the Overseers of the Poor reported that Hay had left the glebe with the enslaved family underscored their anxiety about the possibility of this family leaving the area.[48]

The rebuttal sent by the Antrim vestry and minister also fixated on the enslaved family, and their missive became something of a sermon on the sanctity of property rights. Hay was

[47] Thomas Buckley argued that dissenters rejected legislative "intervention" but that church and state remained nonetheless "entangled." However, these invitations for direct disqualification of a minister's freehold based on his poor spiritual performance evidence a call for more direct oversight, at least of the Anglican Church. Buckley, *Church and State in Virginia,* 182; Buckley*, Establishing Religious Freedom*, 141-143.
[48] The parish's 1802 petition mentions an enslaved "man and a woman," as well as their three children. Minister & Members of Antrim Parish: Remonstrance, Halifax County, December 21,1802, LPDC, LVA.

insistent that he had never moved the family off the glebe, let alone out of the county. He admitted that he had thought he owned the enslaved persons outright but now understood that his claim extended only as far as his claim to "the Glebe, that it is, the use and benefit of them while he continues minister of Antrim Parish, and of which he cannot be disposesse[d] without a violation of the rights of property and the common rights of a citizen." Hay and the vestry fired back at the Overseers of the Poor for attempting to "violate the most sacred of all rights and to commence the most unjustifiable of all persecutions" in the guise of "patriotism and respect for right." When invoking the most "sacred of all rights," Hay and the vestry were, of course, referring to their property rights. They declared that the legislature, bound by "the gospel of Jesus Christ" and "the purest morality," would never "attempt to extinguish that light which has so auspiciously shown on this land, will never remove that rock on which the church so founded; but that it will regard as sacred and inviolable those rights which are ours by the laws of the land, by the original laws of society, and by the equal laws of God." There could be no clearer statement of the intertwined values of Christianity and republicanism in which the absolute protection of private property was an expression of divine, natural, and civil law. And, of course, this invocation of natural and divine rights was made in order to bolster the ownership of five enslaved people. [49]

Halifax's ugly fight over the enslaved family reflected that while the law sought to treat slaves as "appurtenances" to glebe lands, their very humanity undermined this legal framework. The focus of both parties on people held by the parish not only reflected their monetary value but also of the inherent vulnerability of treating persons as property. The dehumanizing language of use, possession, acquisition, and benefit was undermined at every turn by the reality that

[49]Minister & Members of Antrim Parish: Remonstrance, Halifax County, December 21,1802, LPDC, LVA.

enslaved people were, in fact, people. The community's preoccupation with the enslaved family who belonged to the parish revealed the absurdity of theoretically "attaching" people to land; land cannot escape or depart, but people can. The dueling petitions reflected no concern for the well-being or experience of this family but only the ability to control them as a material asset.

At the same time, Hay and the vestry responded with indignation that the Overseers of the Poor would have the gall to criticize his performance as parish rector in an attempt to claim parish property. They condemned the Overseers' petition as nothing more than a "philippic" filled with "calumny," "obloquy," and "abuse." Hay denied failing as a spiritual leader, arguing that even "at those churches where he has no subscriptions, he attends sufficiently often to just discharge the duties of his office." Moreover, their petition asserted that his ministerial "conduct… is amenable only to his own church," which did not "come under the cognizance of the General assembly of Virginia, or of the petitioners, the mass of whom, in what relates to church affairs, are in the interests of the Baptists." Hay refuted the right of the Overseers of the Poor, the community, or the legislature to stand in judgment of his fitness as a minister and defended the institutional independence of the Episcopal Church from state oversight. Hay's impassioned argument did not reflect a strict separation of religion and government.[50] In the same petition, he had implored the legislatures to be guided as much by the Gospels as by statutory law in respecting his property rights. But he differentiated between the legislature enforcing Christian principles and superintending ecclesiastical institutions; he extolled the former and rejected the latter.[51]

[50] Hay exemplified the expectation that the legislature would uphold Christian values without governing its churches. See, Carl H. Esbeck, "Dissent and Disestablishment: The Church-State Settlement in the Early American Republic," *Brigham Young University Law Review* [2004]: 1579-80.
[51] Minister & Members of Antrim Parish: Remonstrance, Halifax County, December 21,1802, LPDC, LVA.

Hay's position reflected the institutional growing pains felt by the Episcopal Church in Virginia as it transitioned out of legal establishment and lost numerous communicants to other denominations. Hay admitted that he "derive[d] his sole support from the use of the Parrish property, and voluntary contributions by subscription." The Overseers of the Poor's petition argued that because the parish raised very little money through voluntary subscriptions for the minister's salary, the rector had clearly failed in his clerical duties. The parish raised on average of £17 a year through subscriptions during Hay's tenure, less than a fifth of the annual salary provided to parish rectors before 1776. This paltry sum reflected the small size of the Episcopalian community worshiping in Halifax. However, the apparent reluctance of Episcopalians to make voluntary contributions to the minister's salary also highlighted their assumption that the glebe would provide an adequate income for the minister. As in Maryland, Virginia's parishes that managed to hold onto their glebes used this property to provide support to their rectors. While Halifax's Baptists used the lack of voluntary contributions as evidence of Hay's failings, this fact underscored that the Episcopalian congregation likely viewed their glebe as the best means of supporting the minister.[52]

Hay admitted that "an immense majority" in Halifax had left the Episcopal Church and stood "against them." But he insisted that the parish "will never concede that any majority can trample on the constitutional rights of the minority." Hay and the Episcopalians may have been in the minority in Halifax, but "as a citizen and a minister, [Hay] possesses rights in common with others, and he would consider himself as unworthy of either Appelation if he did not defend them. He knows them, and will defend them. Will the General assembly of Virginia, the guardian of those rights, say that they shall be violated?" For Hay, the struggle over Halifax's

[52] Ibid.

glebe became a test of whether the legislature would bow to "the capricious and arbitrary will" of the majority rather than defend the most essential right of a citizen, private property.[53]

The two sides in Halifax County framed this dispute as a test of their constitutional rights. The sale of the glebe would uphold the "true meaning of the Constitution" for the Baptists; to Hay, the protection of the glebe would reflect the guarantee that his rights did not "exist only in name" but were secured under the Constitution. Both sides painted the glebe property as a gauge of whether the state would protect the fundamental rights of its citizens, but their lofty claims cannot be disassociated from the property over which they fought, namely land and enslaved people.

The legislature did not intervene in the quarrel over Antrim Parish's property. Hay lived until 1819, when he apparently died while on a voyage for his health to St. Croix.[54] One can easily imagine the fury of Halifax's Baptists as the glebe sat unattended while the ailing rector traveled abroad. One can likewise recognize, as none of the petitioners at the time did, the vulnerability and plight of the enslaved family left behind in Halifax and surrounded by neighbors eagerly awaiting their chance to seize them and their home. The Overseers of the Poor sold the glebe and the enslaved family in 1820 almost forty years after first raising the issue. The Glebe Act proved to be a very delayed victory for the advocates of glebe confiscation in Halifax.

Some Overseers of the Poor tried their luck at getting courts to approve the sale of glebes in parishes with inducted rectors. Their arguments, like those made by Halifax's evangelicals, attempted to use the apparent failure of a minister or vestry to perform specific religious duties under canon law as the legal basis for disqualifying parochial title. The Overseers of the Poor in

[53] Ibid.
[54] This information comes from the obituaries in a denominational publication, See "Miscellaneous," *The Christian Journal, and Literary Register*, 4 (New York, 1820), 64.

Northumberland County had proceeded to sell the St. Stephen's Parish glebe over the objections of the incumbent rector, Duncan McNaughton. The minister sued for an injunction to prevent the sale. The county's Overseers responded by arguing that the minister's induction had only been a "pretended ceremony" and that the vestry's elections had been "canonically irregular."[55] This reasoning harkened back to those sacred rituals that had secured the legal rights under colonial establishmentarian laws. The county administrators alleged doctrinal errors to argue that the parish minister was not in "actual possession" of the glebes. In a similar case from 1806, *Young v. Pollock*, the Norfolk Overseers of the Poor sought to seize the glebe of Portsmouth Parish from its incumbent, George Young. Norfolk's Overseers of the Poor had hoped to disprove the legal claims of Episcopalian ministers as "inducted" rectors.

The Overseers in Halifax, Northumberland, and Norfolk invoked canon law to challenge vested property rights and invited the legislature to superintend the Episcopal clergy's performance of their spiritual duties. Parish rectors maintained their freehold rights under the traditional establishmentarian laws, which left the door open to using these same laws to dispossess them of those rights. These petitioners hoped to wrest glebe property from the former establishment once and for all, which required the intervention of state officials. In these cases, local administrators prioritized securing parish property, which they viewed as the ill-gotten gains of the establishment, above an ideological commitment to a strict separation between church and state. Litigants fought to dismantle religious establishment using any available legal avenue, which sometimes invited further entanglement between church and state in the process.

However, the Virginia Supreme Court refused to authorize the sale of the Norfolk or Northumberland glebes, just as the legislature had refused to intervene in Halifax. The opinion of

[55] See *Claughton v. MacNaughton* (1811) in *Reports of Cases Argued and Determined in the Supreme Court of Appeals of Virginia,* (New York: Joseph Gold, 1814), 2: 513-517.

the court in *Young* recalled that the "spirit" of the Glebe Act "had been to reconcile all the good people of this Commonwealth."[56] By reaffirming the freehold right of parish ministers to use glebes during their lifetime, the court hoped to "promote this spirit." Both the courts and the legislature refrained from weighing further into ecclesiastical waters. A variety of views could have motivated judges and legislators to remain uninvolved, ranging from a desire to aid Episcopalians to a commitment to the absolute rights of private property. This reluctance could also have stemmed from an ideological commitment to the separation of church and state or sheer exhaustion at the political question of the glebes. Whatever their philosophical rationale, Virginia's courts and legislature did not intervene to dispossess incumbent ministers from glebes in the early nineteenth century.

The state's pattern of non-interference mattered. By refusing to get involved in property disputes after the Glebe Act, the legislature and courts maintained one important form of church-state separation. Even if the views of some Virginians toward the separation of church and state vacillated, state courts and the legislature stuck to the path of non-intervention in Halifax, Northumberland, and. Norfolk. The state's hands-off attitude to ongoing disputes over property and their refusal to pass judgment on the spiritual fitness of ministers was an important legacy of the fights over parish property in the early nineteenth century.

"A worthless and impossible family of slaves"

The controversy in Halifax illustrates another important and often overlooked point – the sale of the glebes included many enslaved persons owned by parishes. While this property remained a focus of the petitioning war between Hay and the Halifax Overseers of the Poor, this

[56] See a discussion of *Young v. Pollock* (1806) in *Reports of Cases Argued and Determined in the Supreme Court of Appeals of Virginia,* 2:517-8. This decision quotes directly from the 1802 Glebe Act. See, *Acts VA* (1801-1802), Ch. 5: "An Act concerning the Glebe Lands and Churches within this Commonwealth," 9.

legal back and forth barely acknowledged them as a family of five – a couple and their children. So often reduced to "glebe property" or "appurtenances," enslaved communities were caught in the crosshairs of disestablishment. Like Antrim, many of Virginia's parishes owned entire families. Numerous colonial parishes had acquired enslaved people through bequests, but the terms of these gifts often limited the capacity of a vestry to sell any of its property. In the early nineteenth century, Virginia's Overseers of the Poor did not only win ownership of enslaved persons from parishes; they went on to successfully challenge the terms of colonial endowments and gain absolute property rights to enslaved communities. As disestablishment gathered momentum, Overseers and trustees proved eager to sell off parish property, no matter the human cost. It is essential to consider not only the acres of land confiscated in disestablishment but also to recognize the scores of enslaved people seized and sold in the process.

A newspaper advertisement remains the only extant record that Christ Church Parish in Middlesex County owned enslaved people.[57] A notice placed in the summer of 1807 informed readers that Jemmy and Jeffy, two young men both around the age of twenty, had fled to the Norfolk or Hampton area. The Glebe of Middlesex Parish was put up for sale in the winter of 1807 and the two men were sold "as part of the Glebe property."[58] The young men fled to escape bondage, rather than facing the possibility of sale and separation. The notice ran for several months, which suggests they managed to avoid capture. The transfer of parish glebes threatened longstanding enslaved communities on glebe plantations. When counties seized glebes, the communities who lived and labor were torn apart.

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[57] *Norfolk Gazette and Publick Ledger* (Norfolk, Virginia), January 19, 1807; *Norfolk Gazette and Publick Ledger* (Norfolk, VA) August 5, 1807.

[58] The parish minister, Henry Heffernen, was still alive, so it seems that the parish must have struck some sort of deal with the Overseers of the Poor to sell the glebe and use the proceeds to maintain the minister during his lifetime. G. MacLaren Brydon, "A List of Clergy of the Protestant Episcopal Church Ordained After the American Revolution, who Served in Virginia Between 1785 and 1814, and a List of Virginia Parishes and Their Rectors for the Same Period," *The William and Mary Quarterly*, 2nd Series, 19 (1939), 430.

This advertisement also exemplifies the difficulty in tracking the sale of enslaved men and women owned by parishes and sold by Overseers of the Poor during disestablishment. This 1807 ad is the only extant record of enslaved individuals belonging to Christ Church parish. The Christ Church Parish vestry book contains no record of Jemmy and Jeffrey's purchase or labor.[59] This omission could suggest that they worked and lived on the glebe and their labor directly supported the minister, or they might have been hired out and the churchwardens tracked the proceeds privately. Either way, their absence from any sort of institutional record is striking and serves as a cautionary reminder for scholars attempting to estimate the proportion of slaveholding parishes using vestry records. Moreover, it is difficult to know how many parishes still held enslaved people in 1804.[60]

Using the evidence available, though, we can still reach a minimum figure for the number of enslaved people seized during disestablishment. As discussed earlier, Antrim Parish owned a family of five in 1802, and given their relative youth, it would seem likely that all five had survived until 1820 when the Overseers took possession of the glebe.[61] Twelve enslaved people belonged to Hungars Parish, who were all sold after the rector's death in 1803.[62] The Glebe of Elizabeth City Parish, which was sold in 1806 by the Elizabeth City County Overseers of the Poor, had included 24 enslaved men and women in the late 1780s; though it is difficult to

[59] See C. G. Chamberlayne, ed., *The Vestry Book of Christ Church Parish, Middlesex County, Virginia, 1663-1767,* (Richmond, VA: Old Dominion Press, 1927).
[60] Assuredly some enslaved people were sold or fled from bondage between 1776 and 1804. Estimates of the number of persons who escaped slavery in Virginia during the Revolution range from 5,000 to 100,000 individuals. For more on the debate over this figure, see Cassandra Pybus, "Jefferson's Faulty Math: The Question of Slave Defections in the American Revolution," *William and Mary Quarterly,* 3rd ser., 62 (2005), 243- 264.
[61] Halifax County: 1829 Report, Box 5, Folder 7, OP Annual Reports, APA, LVA.
[62] Buckley, Establishing *Religious Freedom: Jefferson's Statute in Virginia* (Charlottesville: University of Virginia Press, 2013), 118.

estimate how the community had changed since then.[63] Several enslaved persons who had belonged to Abingdon and Ware parishes in Gloucester county were sold in 1814.[64] The Norfolk County Overseers of the Poor sold off an enslaved community of at least thirty men, women, and children in 1832.[65] Together, this data shows that Virginia's counties came to hold approximately seventy-five enslaved persons from nine of Virginia's 95 parishes. These records should not lead us to extrapolate any sort of average, but they do provide a base minimum of the number of enslaved people seized by the state from parishes during disestablishment.

Parochial poor relief had long on enslaved black labor, and this practice continued in the early decades of the nineteenth century. As discussed in Chapter 3, enslaved men and women were often donated to parishes as a form of charitable endowment or were purchased by parishes to work in poorhouses. In both cases, the poor were understood to be white, and their welfare was served through the institutional enslavement of African Americans. Some counties hired enslaved labor to work at poorhouses, just as parishes had. [66] When the Overseers of the Poor in any given county came into possession of glebe property, they were carrying on the parochial tradition of using slave labor to benefit "the poor," a term that remained ill-defined in all ways but race. The "poor" who received assistance were overwhelmingly white, and the relationship between race and poor relief will be discussed in Chapter 7.

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[63] A description of the glebe appears in the *Virginia Independent Chronicle* (Richmond), September 17, 1788 cited in Buckley, "Evangelicals Triumphant," *William and Mary Quarterly,* 3rd ser., 45 (1988): 34. The sale of the parish property by the Overseers of the Poor appears in Jacob Hellelfinger, *Kecoughtan Old and New, or, Three Hundred Years of Elizabeth City Parish* (Hampton, VA: 1910), 28.

[64] Freeholders and Housekeepers, Gloucester County, Dec. 16, 1813, LPDC, LVA; Gloucester County: 1829 report, Box 5, Folder 1, OP Annual Reports, APA, LVA; *Acts VA* (1813-1814), Ch. 56 , "An Act appropriating the proceeds of the Glebe Lands, and other Property, belonging to the parishes of Abingdon, Ware, and Petsworth the County of Gloucester," 117-119.

[65]Overseers of the Poor: Petition, Norfolk County, December 31, 1832, LPDC, LVA.

[66] For example, the Overseers of the Poor in Nansemond recorded their annual spending to hire "negroes" to work at the poorhouse. See Nansemond County: Report, 1829, Box 8, Folder 5, OP Annual Reports, 1829, APA, LVA.

After disestablishment, Overseers of the Poor increasingly moved away from administering these institutional endowments as parishes had. Antrim Parish had purchased its slaves outright, and therefore the Halifax Overseers of the poor could quickly sell enslaved people once they gained title to the property. After the death of Alexander Hay in 1819, the Overseers of the Poor swiftly sold the glebe and presumably the enslaved family whose ownership had been so contested, the next year for the sum of $6,682.25 There are no records of what happened to the enslaved family or whether any of them managed to stay together after being sold.

However, the terms of charitable bequests to parishes often prohibited the sale of the enslaved persons or their descendants indefinitely. Overseers of the Poor had fought for control of charitable endowments made to parishes on behalf of the poor, as discussed in Chapter 5. Once they came into the possession of parish property, Overseers often sought express permission from the legislature to contravene the specific terms of parochial bequests and sell their enslaved people. This shift away from public institutional slaveholding reflected increased anxieties about slave uprisings and the presence of free people of color, as did the willingness of the legislature to acquiesce to these requests. While Virginia's colonial assembly had often bent over backwards to closely adhere to the conditions set forth by the original donors, the republican legislature seemed willing to simply disregard the stipulations of colonial parochial endowments. The legal rupture of disestablishment had already so fundamentally challenged the terms of these donations that the legislature seemed to have no problem allowing counties to go one step further and begin selling off enslaved men and women, no matter the terms of the original bequest.

During the colonial era, both Ware and Gloucester parishes had acquired enslaved men and women through charitable bequests. As a result of disestablishment, the Gloucester County Overseers of the Poor came into possession of the property of both parishes, including their slaves.[67] In 1813, the Freeholders and Housekeepers of Gloucester petitioned to sell the enslaved men and women and to use the money to fund a workhouse or free school. The Assembly passed a law authorizing the sale. Both the community's petition and the text of the statute justified the sale with an opaque reference to the "particular situation of slaves in the lower country at the present time." The event to which they referred, known as the German Coast Uprising, was a revolt of enslaved people in Louisiana two years earlier.[68] News of this insurrection had convinced at least some of Gloucester's white residents that it would be "more advantageous" for the Overseers to sell the "several slaves" and use "the monies arising from the sales" to support the "benevolent intentions" of the original donors.[69] Under this scheme, the petitioners claimed that the "happiness" of the "community" would be better served, and thus the wishes of the donors upheld.[70] The invocation of this uprising underscored that whites' fears of insurrection changed their attitudes toward public entities holding enslaved people in perpetual trusts.

By contrast, when the Colonial Assembly had overhauled Ware and Gloucester parishes' original endowments in 1756, the statute went to great lengths to uphold the terms of the original donors. They reiterated that enslaved persons could only be hired for out a specific "term of

[67] Freeholders and Housekeepers, Gloucester County, Dec. 16, 1813, LPDC, LVA.
[68] For more on the 1811 German Coast Insurrection, see Nathan A. Buman, "Historiographical Examinations of the 1811 Slave Insurrection," *Louisiana History: The Journal of the Louisiana Historical Association* 53 (2012): 318-337. For a discussion of how the event shaped popular opinion, see Brian Gabrial, *The Press and Slavery in America, 1791-1859: The Melancholy Effect of Popular Excitement*, (Columbia, SC: University of South Carolina Press, 2016), 17-28.
[69] "An Act appropriating the proceeds of the Glebe Lands, and other Property, belonging to the parishes of Abingdon, Ware, and Petsworth the County of Gloucester," 118.
[70] Freeholders and Housekeepers, Gloucester County, Dec. 16, 1813, LPDC, LVA.

years," but not sold[71] By 1814, the legislature was willing to ignore the specific terms of the seventeenth-century bequest and grant the Gloucester Overseers absolute rights over these men and women.

Another longstanding enslaved community separated by disestablishment was in Norfolk, which brings us back to the story of Billy Pugh. He was descended from one of the three persons deeded to Elizabeth River Parish in 1715/16. The original grantor, Matthew Godfrey, had left a couple named Prince and Nell and a girl, presumably their daughter, Nance, to the parish. Godfrey provided explicit instructions for the future management of his estate, which he left in the hands of the vestry. He instructed that none of the land be sold, none of the timber be cut down, nor "any of the said Negroes [n]or any of their increase be sold." Instead, he instructed that the enslaved family should be "put on the said land to live and look after the… plantations" and specified that any "children said Prince and Nell shall have" should remain "with them as long as the said Prince and Nell shall" live. Godfrey sought to keep Prince, Nell, Nance, and any other of the couple's children together, but this provision extended only to the first generation of the family whom he knew personally.[72] Godfrey intended for the family not only to provide a labor source in the short term but for their descendants to benefit the parish long into the future. His will instructed that the "increase," the word he used to refer to the children and grandchildren of Prince and Nell, "be let out from year to year for the good of the poor… as the vestry… shall see good and most profitable."[73] Godfrey expected that bequeathing black women to the parish would ensure that the white community benefitted from future generations of enslaved labor.

[71] Hening, 7:41-42.
[72] Citizens: Counter-Petition, Norfolk County, December 31, 1832, LPDC, LVA.
[73] Ibid.

Three decades after Godfrey's death, Norfolk Parish was profiting from a new generation of enslaved persons, just as Godfrey had planned. The vestry recorded the proceeds from hiring out five enslaved persons: Davy, Soll, Ishmaell, Sarah, and Nell.[74] A few years later, in 1756, one of the women bore another child, which meant that at least six men and women belonged to the parish.[75] While Godfrey had specified that the first generation of Norfolk Parish's enslaved community would live and work together on parish land, the terms of his will outlined a system of hired labor that would separate future generations year in and year out. The enslaved community of Norfolk Parish was never to be sold, though; they were held in bondage as a perpetual investment for the benefit of poor, white parishioners.

In 1761, the Assembly divided the Norfolk Parish into three separate parishes: St. Bride's, Elizabeth River, and Portsmouth. Initially, the law sought to uphold the terms of Godfrey's bequest by transferring the oversight of the enslaved persons belonging to Norfolk Parish to the Justices of Norfolk County, who would distribute the annual profits from their labor between all three parishes.[76] However, this plan was abandoned after only a few years. The ministers and parishioners of the three parishes sent a petition informing the Assembly of "many inconveniences" and even "some losses have already happened in the hiring out of the said slaves, the persons to whom they have been hired not taking proper care of them when they have been sick." These "losses" were, of course, the deaths of multiple enslaved people. The petitioners framed this as the failure of the county's negligent administration, but it also revealed the particular vulnerability of enslaved persons owned by an institution and hired out on an annual basis. Institutional slaveholding removed people from the bonds of community and forced

[74] Alice Granbery Walter, ed., *Vestry Book of Elizabeth River Parish, 1749-1761,* (New York: Alice Granbery Walter, 1969), 6.
[75] Walter, ed., *Vestry Book of Elizabeth River Parish,* 20.
[76] Hening, 7, 418.

them to endure frequent discontinuity. Even the self-interest of slaveowners whose financial investment incentivized medical care for enslaved persons was absent in this system.

In response to the complaint, the Assembly issued a new plan in 1765: a group of commissioners would "make a fair, just, and equal division of all the said slaves, and their increase," and the land would be vested in Elizabeth River Parish.[77] Elizabeth River would effectively buy out the stake of the other two parishes, which would each use the proceeds to buy new land for the support of the poor. The complexity of this plan reflected the difficulty of carrying out the donor's very specific instructions half a century later.

After the Revolution, the Norfolk County Overseers of the Poor claimed ownership of the enslaved persons under the terms of Godfrey's will, which was made for the "benefit of the Poor of Norfolk County." This transfer of parish property from church to state was initiated nearly a decade before the Glebe Act, although the Overseers' notes suggested that it was not until after 1802 that their title to the property was secured.[78] Billy Pugh was born around 1800 amidst the turmoil of disestablishment. Ultimately, no matter the outcome of *Turpin*, Pugh, his family, and the rest of the enslaved community who once belonged to Norfolk Parish would have remained in bondage for the benefit of Norfolk County's poor white residents.

The restrictive terms of Godfrey's original donation made the enslaved community ineligible for sale. In 1823 a group of citizens sought permission to contravene the terms of the donation, more than a century after Godfrey had originally made his bequest. The descendants of Prince, Nell, and Nance, "now amount to about 30" but "their annual product has at all times fallen short of the sum, which their price, if converted into money would procure in interest." The easy "conversion" of currency imagined here – from people to cash –underscored the

[77] Hening, 8: 154-156.
[78] Overseers of the Poor: Petition, Norfolk County, December 31, 1832, LPDC, LVA.

driving motivation of the Overseers to break the terms of Godfrey's donation. The petitioners reasoned that due to "the frequent changes of the overseers of the poor and the inability of numerous individuals acting in an official capacity to regulate and direct such property, the slaves themselves acquire habits of indolence and insubordination Alike fatal to the interests of their owners, to the good order of the community and their own contentment." In the context of seeking permission to sell these enslaved persons, the petitioners argued that acting as a benevolent master was fundamentally incongruous with the reality of corporate ownership. Paternalism underlay this statement by suggesting that direct, personal oversight was needed to ensure those held in bondage were obedient, industrious, and, purportedly, content. The "natural augmentation of numbers," would continue to "only aggregate" the problem. Unabated and unmastered, the enslaved community threatened public order and the safety of white citizens.[79] The petition was deemed "reasonable" by the Assembly, but no law was passed.

Nine years later, another request arrived from Norfolk requesting the sale of the enslaved community. This time, their appeal came on the heels of Nat Turner's Rebellion, a slave revolt in Southampton Virginia in 1831 that shook the white South to its core. [80] Turner was a messianic figure who led a dozen enslaved men to rebel against their bondage, which left numerous white individuals dead in the process. White slaveholders killed scores of innocent people of color in retaliation. The revolt was a turning point for slavery in Virginia. White Virginians would go on to sell tens of thousands of enslaved people to the Lower South and imposed even more drastic restrictions on the bodies, rights, and movement of free people of color. The Norfolk Overseers

[79] Citizens: Petition, Norfolk County, December 12, 1823, LPDC, LVA.
[80] For more on Nat Turner's Rebellion and its legacy, see Randolph Ferguson Scully, *Religion and the Making of Nat Turner's Virginia: Baptist Community and Conflict, 1740–1840* (Charlottesville: University of Virginia Press, 2008); Patrick H. Breen, *The Land Shall Be Deluged in Blood: A New History of the Nat Turner Revolt* (New York: Oxford University Press, 2015); David F. Allmendinger Jr., *Nat Turner and the Rising in Southampton County* (Baltimore: Johns Hopkins University Press, 2014); *Nat Turner: A Slave Rebellion in History and Memory,* ed. by Kenneth S. Greenberg (New York: Oxford University Press, 2003).

again implored the legislature for permission to sell the men and women whom they had inherited from the parish. The Overseers of the Poor contended that the descendants "of the original stock now amount to about thirty and for the most part are a worthless and impossible family of slaves."[81] Of course, terming this community worthless and then asking for permission to sell them was a patently self-interested argument. These individuals were only worthless so far as they could not be sold by the Overseers.

Nor, it seems, could the enslaved community be easily controlled without the threat of sale. The Overseers made their case for the sale, explaining, that "difficulty arises in the management of a set of disorderly slaves, even when controlled by a single person, possessed of absolute power to dispose of them and that the difficulties are much increased when their governance is under the direction of a body so numerous as the board of overseers of the poor, with no other power then to hire them out from year to year."[82] The absence of absolute power – the ability to sell, or even make the threat of sale – denied the Overseers their most important method of controlling the enslaved community.[83] The Overseers claimed their limited power, which allowed them only to rent out of enslaved people as labor, deprived them of the ability to truly master these men and women. Just as the petitioners represented earlier, the fluctuating membership of the institution made it more difficult for the Overseers to continuously oversee the enslaved community.

[81] Overseers of the Poor: Petition, Norfolk County, December 31, 1832, LPDC, LVA.
[82] Ibid.
[83] For a discussion of slave owners threatening sale, see Walter Johnson, *Soul by Soul: Life Inside the Antebellum Slave Market,* (Harvard University Press, 1999), 22-29

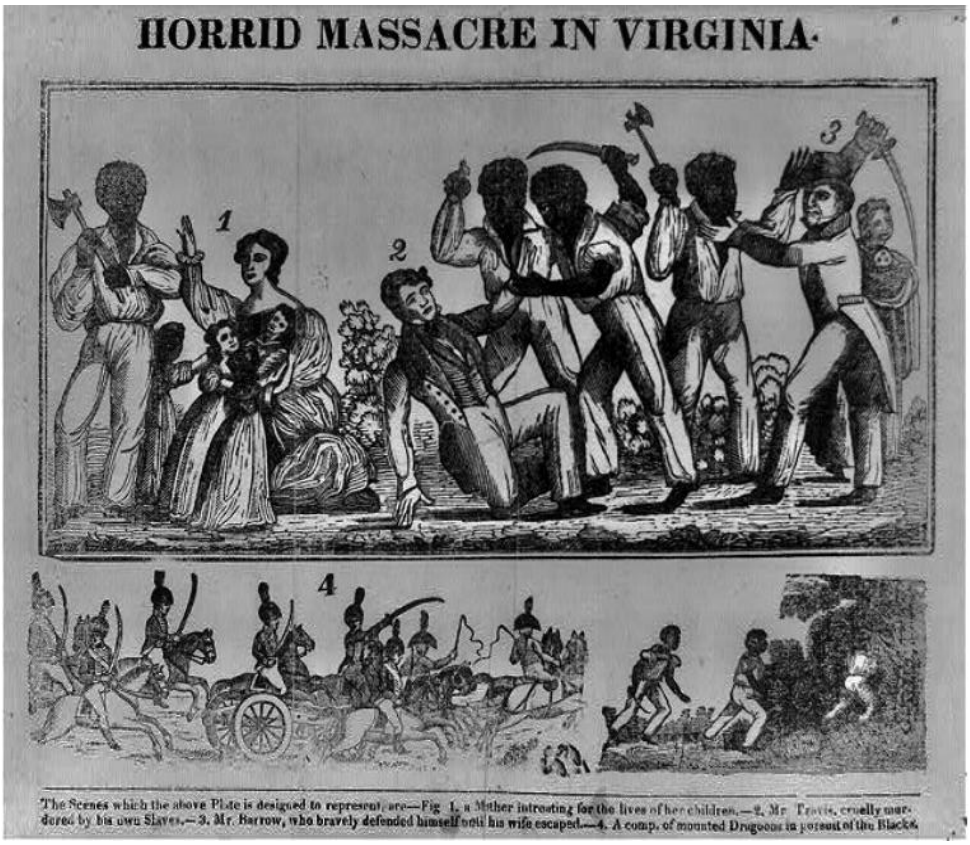


Figure 6.3. This woodcut of Nat Turner's rebellion was a popular piece of propaganda that emphasized of the violence of the revolt. **Source:** "Horrid massacre in Virginia," Southampton County Virginia, 1831, https://www.loc.gov/item/98510363/.

In the wake of Nat Turner's rebellion, the presence of a large community of "disorderly" black men and women seemingly persuaded the legislature to break the terms of Godfrey's will. This group of black men and women could not be controlled using the threat or deed of sale, nor could they be carefully supervised under a single authoritative gaze. The institutional nature of the county's ownership effaced the pretense of benevolent paternalism to which white Virginians clung. The legislature acquiesced and passed a law allowing the Overseers to "dispose" of any negroes belonging to the County. This time, the legislature made no mention of the original terms of Godfrey's will and gave no justification for amending the terms of the endowment.

Billy Pugh was not among those "disorderly" persons facing sale. Less than a month earlier, the Norfolk Overseers had petitioned the legislature for him to be manumitted. The legislature agreed, but only on the condition that Pugh leave the state and emigrate to Liberia. Starting in the mid-1820s, the work of the American Colonization Society had convinced many white Virginians that the forced migration of free people of color to Liberia was the only solution for maintaining order and safety in the state.[84] We have no records of how Pugh felt about his freedom being contingent upon his emigration to Liberia. The heartbreaking plea of Mary Watkins, a woman of color who was freed under similar constraints in 1827, might give us some sense of Pugh's plight. Watkins had been manumitted in the will of her former master on the condition of emigration to Liberia. However, her husband and son were still enslaved and would have to remain in Virginia. She appealed to the legislature for permission to stay in the state, explaining that her family were more "near & dear to her than almost her own existance and to leave her husband (who is now a slave) would be like suffering death."[85] Pugh was facing a similarly excruciating choice; accepting his freedom meant leaving behind his enslaved children, their mother, and his home. To remain in Virginia, however, risked re-enslavement. The legislature gave neither Mary Watkins, nor Billy Pugh the chance to live in Virginia as free people.

Not every request to break the terms of a parochial endowment was successful following disestablishment. Yeats Free School, which was discussed in Chapter 5, had also been endowed

[84] For discussions of how Americans and Virginians specifically imagined Liberia and encouraged the manumission of enslaved men and women on the condition that they emigrate there, see Jane Ailes and Marie Tyler-McGraw, "Leaving Virginia for Liberia: Western Virginia Emigrants and Emancipators," *West Virginia History*, New series, 6 (2012): 1-34 ; Marie Stango, "Vine and Palm Tree: African American Families in Liberia, 1820-1860," Ph.D Dissertation, University of Michigan, 2016; Brandon Mills, "'The United States of Africa': Liberian Independence and the Contested Meaning of a Black Republic, *The Journal of the Early Republic* 34 (2014): 79-107; Marie Tyler McGraw, "Richmond Free Blacks and African Colonization, 1816-1832," *Journal of American Studies* 21 (1987): 207-22.

[85] Mary Watkins: Petition, Powhatan County, December 12, 1828, LPDC, LVA.

with enslaved property under the direction of the parish in the colonial era. In 1815, the "Inhabitants residing…in the well-known bounds" of Yeats Free School asked for permission to sell the school's many enslaved people.[86] This nineteenth-century community was descended from the three individuals who had originally been donated to a free school under the management of the parish in 1731. The nineteenth-century petitioners complained that "some of the sd slaves have become a total expense through afflictions, others with young children and some of the males being disorderly abandoning a part of the year, very choice in their masters for the year and discontent hire but low." They asked to "sell the slaves at their discretion (apart or the whole)." Indeed, this language showed that the trustees did not want to get out of the business of slaveholding altogether but instead wanted greater discretion to exert control over the men and women who belonged to the school. Under the current system, enslaved men had the autonomy to be "choice in their masters," to express their dissatisfaction, and even to leave the grounds without fear of being sold. The terms of the original legacy insulated these men and women from the threat of sale. Only by breaking the terms of the colonial endowment could the trustees come into full power over the former enslaved people of the parish.

To legally justify their request, the petitioners argued that only absolute rights over those held in bondage could ensure the original intent of the donor. Enslaved men and women who were safe from the threat of sale were less productive and dared to flout the authority of the school's trustees. Thus, the trustees argued that the school's enslaved community had "not answered the intended purpose of the donor," which was "that they should be profitable." Under this logic, the school's trustees asked for the legislature to contravene the 1731 will's instructions "not to sell any" of the enslaved men and women in order to better to carry out the donor's

[86] Inhabitants: Petition, Nansemond County, December 9, 1815.

intent.[87] The assembly deemed the request "reasonable," but no law empowering the request was enacted.[88] In 1830, the legislature awarded some of the school's other land to the Nansemond County Overseers of the Poor, but apparently the endowment of people and land made by John Yeats remained intact.[89] On the eve of the Civil War, Yeats Free School owned eighty-six enslaved people, which made it one of the few parochial endowments that lasted until the Civil War.[90] It never proved as profitable as its trustees wished, though.

Longstanding parochial endowments to benefit the opening of free schools and other public institutions for white Virginians underscored the extent to which the welfare of the white community had long rested on the backs of enslaved African Americans. Upon the transfer of parish property in the early republic to secular institutions, white communities tried repeatedly to break the terms of colonial wills and win absolute property rights over enslaved people. While white Southerners may have been eager to sell off people held as property by corporate bodies, disestablishment was an essential context for this opportunity.

Disestablishment was a legally destabilizing process that threw long-standing property arrangements into question. Like common-law incorporation and royal charters, charitable bequests of property to parishes came under attack in republican Virginia. Removing parishes

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[87] "The Will Of John Yeates, Sept. 18th, 1731" cited in W. E. MacClenny, "Yeates' Free Schools," *William and Mary Quarterly,* 2nd ser., 5 (1925): 30-38.

[88] Inhabitants: Petition, Nansemond County, December 9, 1815. Without the passage of a law expressly disallowing the terms of the will, it seems unlikely that the trustees would have forged ahead, even if the petition was read and deemed "reasonable." Especially given the high number of enslaved persons still heled by the school and the high cost of their support, it stands to reason that the school did move to sell its property. Moreover, the school received express permission in 1809 to contravene the will and begin cutting and selling timber from the property. See *Acts of the General Assembly of the Commonwealth of Virginia* (1809-10), Ch. 61, 56.

[89] *Acts VA* (1829-1830), Ch. 122, 119. The legislature passed another law reaffirming the corporate standing of the school and their management of "all the donations and every of the property thereof" in 1856. *Acts of the General Assembly of the Commonwealth of Virginia* (1855-6), Ch. 236, 161-2.

[90] Jennifer Oast offers insightful research about the antebellum slaveholding of Yeats' Free School. My research complements her work by drawing attention to the attempt to win absolute control of this enslaved community in order to exert greater control through the threat of sale. Jennifer Oast, *Institutional Slaveholding: Slaveholding Churches, Schools, Colleges, and Businesses in Virginia, 1680-1860* (Cambridge, UK: Cambridge University Press, 2016), 59-86.

from a position of public authority and transferring traditional welfare services from church to state had already called into question the terms of colonial donations. A radical legal rupture, disestablishment handed Overseers of the Poor and other public institutions the opportunity to assert absolute property rights over those enslaved people who had previously belonged to parishes.

Silver, Bells, and Books: Confiscation Beyond the Glebes

While Overseers of the Poor were authorized by the Glebe Act to claim glebe lands and their appurtenances, including enslaved persons, the law expressly prohibited the sale of the "churches, and the property therein contained, or the church-yards."[91] Regardless, Overseers of the Poor frequently seized and sold churches, bells, liturgical silver, books, and other valuable property. They justified their actions under the 1802 Glebe Act's sweeping preamble and readily ignored the explicit provisions that protected this property from confiscation.[92] The legislature had crafted the Glebe Act as a compromise meant to quell political fights over the glebes. However, once the issue had lost its notoriety in later years, the state was willing to authorize counties to seize additional church property. To understand the full extent of material disestablishment, it is essential to look beyond the parameters of the Glebe Act and recognize all of the additional church property seized by counties.

The seizure of church silver was a lingering source of bitterness among Episcopalians. William Meade, who served as Bishop of the Episcopal Diocese of Virginia from 1841-1862, wrote a storied account of the colonial and early nineteenth-century church. He declared that "I cannot forbear remarking that there is no part of the conduct of the opponents of the Episcopal

[91] *Acts VA* (1801-1802), Ch. 5: "An Act concerning the Glebe Lands and Churches within this Commonwealth," 9.
[92] Ibid.

Church which appears so unamiable and unjustifiable as that in regard to the Church plate… the framers and supporters of the law would have felt themselves insulted, if that insinuation have been made at the time of its passage."[93] While Meade lamented that the sale of liturgical instruments would have been objected to by the framers of the Glebe Act, it is clear that the legislature gave express permission to Overseers of the Poor to seize and sell communion silver and other valuable objects to ten counties between 1810-1820.[94] The legislature had cleared the way for these acts by passing a law in 1805 that allowed Overseers of the Poor to claim the property of parishes without vestries.[95] If Overseers successfully argued that there was no active Episcopal congregation in their county, they were permitted to seize parish property.

For instance, in Amelia County, it was not long after the sale of the glebe in 1805 that the County Overseers began looking for another way to lower the cost of poor relief. In 1814, they sent an appeal to the legislature asking for permission to sell the "Plate, Bells, Books and other ornaments."[96] Their petition explained that there were "several churches in this county of Amelia formally belonging to the parish of Raleigh and built when we were under the British government for the use of the episcopal religion." In their opening gambit, the Overseers rejected the notion that the Episcopal Church still had any claim to its churches and its liturgical objects. Instead, this rhetoric took its cues only from the law's preamble, which asserted that all parish property had devolved on the people. From their view, all of Raleigh Parish's property had belonged to them since the Revolution.

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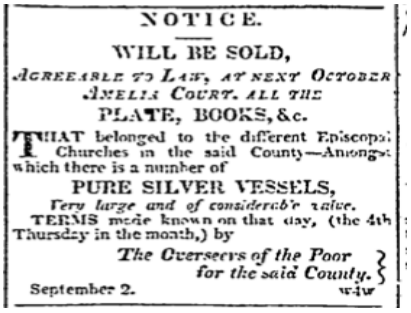
[93] Meade, 1:422.
[94] *Acts VA* (1809-1810), Chapter 33, 33-4 (Plate in Surry County); *Acts VA* (1811-1812) (Essex County and King and Queen County authorized to sell plate), Ch. 65, 100; *Acts VA* (1812-1813), Ch. 58, 89-90 (Overseers in County Richmond to sell plate); *Acts VA* (1813-1814*),* Ch. 55, 117 (Bell and Plate of St. Peter's Parish in New Kent County); Ch. 63, 126. (Books, Ornaments, and Plate of St. Margaret's Parish in Caroline); *Acts VA* (1814-1815), Ch. 78, 137 (Bell, plate, books, and ornaments belonging to parish in Amelia County); Ch. 65, 130 (Church plate and bells belonging to several parishes in Middlesex, Mathews, and Warwick Counties).s
[95] *Acts VA* (1805-1806), Ch. 74, 43-45.
[96] Inhabitants: Petition, Amelia County, October 17, 1814, LPDC, LVA.

The Amelia Overseers not only maintained that they had a legal right to all parish property, but that because the parish was not even actively or exclusively using its churches, these valuable resources ought to be repurposed to better serve the community. No matter the terms of the 1802 Glebe Act, the reality in Amelia was that there were too few Episcopalians for the number of churches. While the Act sought to prevent churches becoming public property, that is in effect what happened on the ground. The valuable pieces of church silver "for a considerable number of years have not been applied to any use at all."[97] The sale of these assets would "be of great relief to the inhabitants of this county if the proceeds thereof was to be applied toward lessening the county levy or poor rates."[98] In the absence of an active Episcopalian congregation, Amelia's Overseers of the Poor argued that the unused church plate ought to benefit the community. The legislature approved Amelia's petition, and the county advertised the silver in the Virginia Gazette.[99] The following year, the county Overseers established a poorhouse, partially paid for using the £119.18.6 raised from the sale of the parish silver.[100]

Overseers sought to claim reserved property even in counties where there were active Episcopalians congregations. The Berkley Parish Church in Spotsylvania had been sold by the vestry for $120 in an effort to raise funds in 1819. The buyer demolished the church and carted off "every part of it that was of any use."[101] County officials successfully petitioned the legislature to receive this money, and the parish had to turn over the proceeds from the sale of the church.[102] This activity certainly contravened the terms of the Glebe Act and fell outside the

[97] Ibid.
[98] Ibid.
[99] *Acts VA* (1814-1815), Ch. 78, "An Act Authorizing the sale of the Plate and other property belonging to the Several Churches in the County of Amelia,"137.
[100] Amelia County: Report: 1829, Box 1, Folder 7, OP Annual Reports, APA, LVA.
[101] School Commissioners: Petition, Spotsylvania County, 1819-12-31, LPDC, LVA.
[102] Ibid.

rationale of bestowing parish property on Overseers in the absence of an active vestry. The legislature's willingness to acquiesce to such a demand reflected the political weakness of the Episcopal Church and the popular belief that all parish property was public.



NOTICE.

WILL BE SOLD,

AGREEABLE TO LAW, AT NEXT OCTOBER AMELIA COURT. ALL THE

PLATE, BOOKS, &c.

THAT belonged to the different Episcopal Churches in the said County—Amongst which there is a number of

PURE SILVER VESSELS,

Very large and of considerable value.

TERMS made known on that day, (the 4th Thursday in the month,) by

The Overseers of the Poor for the said County.

September 2. w4w

Figure 6.4. An advertisement announcing the sale of Raleigh Parish plate, library, and bell by the Amelia County Overseers of the Poor in 1815. **Source:** September 9, 1815 *Virginia Argus* (Richmond, Virginia), America's Historical Newspapers.

One famous anecdote recalled the defiance of an elderly widow when the Overseers of the Poor sought to claim her parish's silver. Frances Burwell Page Nelson Berkeley was a "lady of dignity, firmness, and authority," and she moved the church plate to her home for safekeeping after the death of the minister in 1804. The silver had been a donation to the parish and bore an inscription from its benefactor; thus, it should have been reserved under the terms of the Glebe Act. The Hanover County Overseers of the Poor, apparently not wanting to confront Mrs. Berkley themselves, sent deputies to her home who instructed her to turn over the parish silver. The Old Lady of Hanover, as she was fondly called, flatly refused. Instead, she sent a note back to the Overseers with the messengers, which declared, "Tell the Gentlemen to come and take it." Her challenge went unmet. [103] This episode of resistance is not only a colorful story but also underscores that Overseers of the Poor often contravened the terms of the Glebe Act in seizing church assets. The Hanover Overseers disregarded the statute's reservation of the contents of

[103] Meade, 1:422.

churches to parishes and claims that this silver had been a private donation. On the ground, non-Anglicans seized far more property than was allowed by the original statute.

"The Transubstantiation of Brick and Mortar"

While the Episcopal Church had won the right to retain some of its property in 1802 – its churches, religious ornaments, and libraries – the denomination simply could not support or use all of its parish churches and chapels. As in Maryland, the multi-congregational system left Virginia's parishes saddled with too much property and inadequate funds to maintain it all. Not all parish property was formally seized and sold by county institutions. Some churches were abandoned while others were stripped for parts. Many parish churches were shared by multiple denominations in informal community agreements. The widespread dismantling of the established church's worship spaces reflected a popular understanding of disestablishment that went beyond the legal terms carved out by the legislature and the courts. Attitudes ranged from iconoclastic and negligent to acquisitive and contrite. The authority of the established church had been reinforced in its grand, elegant spaces. Popular destruction of, renovation of, or disregard for parish property expressed the establishment's fall from grace better than any single law or court decision.

Hungars Parish Church in coastal Northampton County lost its organ to fisherman who melted down its pipes into weights for fishing nets.[104] The gilded altar of the St. Thomas Parish Church was torn down and turned into furniture, and its gravestones were removed and used as mill grindstones.[105] In 1771, Wicomico Parish had built one of the largest colonial churches, with

[104] Writers Program of the WPA, comp., *Virginia: A Guide to the Old Dominion* (New York: Oxford University Pres, 1941), 382.
[105] Meade, 1:391.

four wings measuring 75 feet each. However, disuse and vandalism took their toll on the building. The church had been stripped for parts; its windows, communion table, doors, bricks, and marble were missing. Cattle had moved in amongst the "rubbish", and the building housed old farming equipment. The Bishop of Virginia had tried to hold a revival service for the congregation in the 1830s. While he was preaching, a large piece of plaster fell from the ceiling and hit him squarely on the head – a story that might seem like an overwrought bit of pathetic fallacy had it not actually happened.[106]



Figure 6.5. The overgrown Blandford Church depicted in 1880. Bristol Parish had built Blandford church in 1736, but the building was abandoned in 1806. **Source:** "Blandford Church, Virginia," (1880) The Miriam and Ira D. Wallach Division of Art, Prints and Photographs: Print Collection, New York Public Library Digital Collections, The New York Public Library, accessed Feb 22, 2020, http://digitalcollections.nypl.org/items/510d47da-fc3c-a3d9-e040-e00a18064a99.

[106]Meade, 2:133.

St. Margaret's Parish Church in Caroline County had been abandoned after the Revolution. Its doors had fallen off, and the old building stood exposed to the elements. It became rumored that the building was haunted by the Devil himself. After leaving a militia muster one night, two boys decided to confront Satan themselves and drive him out of the old church. Both drunk, they hatched a plan for one of them to stand guard by the entrance while the other entered the sanctuary brandishing a pole. After sneaking inside, the boys did in fact find a formidable horned beast. An old bull had taken residence in the building. Provoked by the inebriated intruders, he charged at the boys and carried the unlucky guard out of the door. From then on, the church was known as Old Bull Church. Parts of this account may be apocryphal but it reveals the complete and utter decay of abandoned parish property. This former hub of communal life and seat of local authority became best known as the home of a formidable wild animal. The rumor that the devil himself lived in the abandoned edifice also evokes the community's fears that their own fall from godliness was represented in their decaying houses of worship.

Some Virginians explicitly defended the material conversion of parish churches for other public purposes. Anyone who argued that a spatial conversion of churches would "violate their sanctity" fell into the "idolatrous" and "Popish" trap of "transforming our veneration from spirit to matter." Such a practice ought to "exploded in all Protestant countries." Treating old parish churches as sanctified spaces was akin to the "transubstantiation of brick and mortar into holiness." Repurposing these edifices which would otherwise fall into "decay…and become a receptacle for reptiles and insects," could hardly offend God. Rather than letting parish churches

be destroyed, using old parish buildings for new public uses was an act in the "service" of the public good. [107]

In some cases, other religious denominations would take over the old parish churches, with or without formal permission. The Tillotson Parish Church in Buckingham County, for example, was unoccupied after the Revolution A Baptist congregation began using the church "as their place of worship, from the date of the abandonment by the Episcopalians to the present time."[108] Likewise, Mattaponi Baptist Church in King and Queen County was originally the lower church of St. Stephen's parish in King and Queen County. Baptists from the Dover Association began using "the little brick church" in 1828 and eventually claimed ownership. In these cases, there was no formal transfer of deed or title; rather, squatter's rights eventually prevailed. Because these arrangements did not rely on an act of legislature, they sidestepped the legal question of appropriating parish property for religious purposes.

The material conversion of these parish spaces certainly reflected evangelical antipathy toward Episcopalian finery. Virginian Baptists compared Episcopalians converting to the Baptist faith as "votaries of Mammon and of Belial renounc[ing] their idols."[109] Baptists criticized the Anglican Church for its finery and pomp as an expression of covetousness. This disdain certainly inspired iconoclastic treatment of formerly Anglican spaces, as well. Evangelicals removed velvet, gilded altars, and other pieces of material finery. For example, the lower church of Christ Church parish in Middlesex County was taken over by Baptists, who removed the sounding

[107] Inhabitants of St. Mary's Parish: Petition*,* Caroline County, December 11, 1810, LPDC, LVA.
[108]Williams, "Survey Report: Buckingham Baptist Church: 1937 May 12," *Virginia Historical Inventory Project*, available online through the Library of Virginia, https://www.lva.virginia.gov/public/guides/opac/vhiabout.htm - rhp
[109] Semple, *Rise and Progress,* 179.

board, pulpit, and desk in an "[effort] to destroy every vestige of Episcopal taste and usage."[110] The removal of these objects sanctified the space in the eyes of its new occupants.



Figure 6.6. Mangohick Baptist Church in King William County was built as a chapel of ease around 1730 and became the parish church of St. David's Parish in 1774. Photograph by Alyssa Penick.

Numerous parish churches also became "free churches," which were used by multiple denominations.[111] This pattern fulfilled the initial hopes of Presbyterians and Baptists for parish churches to be opened to all faiths. However, these agreements were brokered between congregations, rather than imposed by state law, which signaled an important departure from the original proposals. For example, Mangohick Church, in King William County, had been built as

[110]Meade, 1:372.

[111] Dell Upton identified three formerly Anglican colonial churches taken over by Baptists following the Revolution: Mangohick Church, Stratton Major Parish Church, and Mattaponi Church. Upton, *Holy Things and Profane*, 235n5. For additional examples of parish churches which were used by other denominations in the nineteenth century, see Rosa G. Williams, "Survey Report: Buckingham Baptist Church: 1937 May 12," Dorothy Diffenderfer, "Survey Report, Denbigh Baptist Church: 1937 May 18," Louise Macon, "Survey report, Millifield Church: 1938 Apr. 1," *Virginia Historical Inventory Project,* LVA.

a chapel of ease around 1730. After the Revolution, Mangohick was abandoned and then became a "free church" for use by any denomination. [112] Later in the nineteenth century, a Baptist congregation began using the space, and the church remains an active site of worship today.

However, sometimes these arrangements sparked hostile conflict. In Westmoreland County, Methodists and Episcopalians battled over the Yeocomico Church decades after originally agreeing to share the space. Built by Cople Parish in 1706, the brick building boasted an octagonal marble font, large windows, and elegant brickwork.[113] The church was occupied by British forces as a barracks during the American Revolution and then suffered again during the War of 1812 when American troops camped there. The space had been used by Methodists and Episcopalians on and off since the Revolution, but during the 1840s, a revived Episcopalian congregation in the area sought to assert their title and prevent the Methodists from using the church any longer.

The ardent pleas from both sides resuscitated many of the arguments from generations earlier and revealed how Virginians in the mid-nineteenth century looked back on the post-Revolutionary conflict over the glebes. The Methodists begged "the interposition" of the General Assembly to secure their rights to the property.[114] They claimed that the public seizure of all parish churches was warranted by "the very reason that preempted the sale of the glebe lands" initially.[115] Forty years later, these non-Episcopalians were still convinced that all parish property ought to have been remanded by the state, not just the glebe lands. They pointed to the fundamental logic of the act and ignored the explicit reservation of churches, silver, and

[112] Upton, *Holy Things and Profane*, 235n5.
[113] "Yeocomico Church, Montross, Westmoreland, Virginia," in National Register of Historic Places, 69-11-35-0102, https://npgallery.nps.gov/NRHP/GetAsset/b89aeb80-67fb-4554-9c56-35af24826ae6.
[114] Ward, William Norvell: Petition, Westmoreland County, January 3, 1844, LPDC, LVA, 9
[115] Ward, William Norvell: Petition, Westmoreland County, January 3, 1844, LPDC, LVA, 11

churchyards to Episcopal parishes. The legislature must deliver "the greatest good to the greatest number," a democratizing argument that emphasized the public good over an appeal to private property rights.[116] They pleaded with the legislature to secure to them "the spot on which we have inte[r]red our Children, and our fathers" before it "may be sold by the Bishop."[117] The Episcopalians countered this petition with many of the arguments made by their forbearers. If the church became common property, "what tremendous consequences must result! Universal Confiscation must follow."[118] Not only the churches, but "the church yards (affording no just exception) [would] share a similar fate. Aye, the very vessels that contain the holiest symbols of the blessed Redeemer of Man, must be torn from the altar, and all, all commingled in the common desecration."[119] Episcopalians appealed to the fundamental law of private property and argued that seizure of their church would destabilize every legal claim of parishes – to their graveyards and even their liturgical objects. Such an act would violate their sanctuary and undermine their spiritual practice. The Methodists' petition was rejected but their great fear that the Episcopal congregation would sell the church did not come to pass. Sharing sacred spaces without a legal agreement made congregations vulnerable to displacement decades later. Methodists had used the parish church for more than sixty years as a free church, an arrangement brokered informally in the context of the struggling Episcopal Church, rather than on a formal legal basis.

St. Thomas Church, also known as the Brick Church, in Surry County had apparently been abandoned following the Revolution, and a black congregation in Surry County had begun

[116] Ward, William Norvell: Petition, Westmoreland County, January 3, 1844, LPDC, LVA, 11,
[117] Ward, William Norvell: Petition, Westmoreland County, January 3, 1844, LPDC, LVA, 9
[118] Both petitions are filed together in a single document. Ward, William Norvell: Petition, Westmoreland County, January 3, 1844, 7, Legislative Petitions of the General Assembly, 1776-1865, LPDC, LVA.
[119] Ibid.

interring members of their community in the old churchyard during the nineteenth century. A revived white Episcopalian community had begun worshipping in a newly built church before the Civil War, and in 1868, the reorganized congregation sought to prevent the black worshipers from using the nearby graveyard anymore. In response, the black congregation purportedly burned down the old parish church.[120] The struggle between an independent black congregation refusing to relinquish their claim to the churchyard and a white congregation attempting to banish them evokes the continued importance of parish churches as powerful sites of contested communal meaning. Indeed, later retellings of this story by white Virginians had all of the makings of Southern propaganda against the evils wrought by emancipation and Reconstruction.[121]

The disputes over Yeocomico Church and the graveyard of the Brick Church underscored that disestablishment remained an ongoing negotiation in the nineteenth century. The reappearance of the same ideological tensions in communities where parish churches had been shared by multiple congregations spoke to the contradictions running through the Glebe Acts. The ardent pleas from both sides resuscitated many of the arguments from generations earlier that pitted public good against private rights. These lingering disagreements highlighted the ideological inconsistency of confiscating glebes but not churches. As a compromise meant to resolve a protracted political fight, the legislation left the door open to multiple protests and debates decades later.

[120]George Carrington Mason, "The Colonial Churches of Surry and Sussex Counties, Virginia," *William and Mary Quarterly,* 2nd ser., 20 (1940), 285-305.
[121] Aurelius Wilson Bohannan, *Old Surry*: *Thumb-nail sketches of places of historic interest in Surry County, Virginia*, (Petersburg, VA: 1927), 59.

After the Glebe Act

The disestablishment of the Episcopal Church was as much a material process as an ideological process. In both Maryland and Virginia, the legally established church had been a wealthy institution that used compulsory taxation to accrue valuable assets, including glebe lands, enslaved people, churches, and silver. The dismantling of the legal relationship between church and state was not achieved just through the expansion of rights or the repeal of laws but wrought in the transfer and reappropriation of parish property. In Maryland, the 1776 Constitution had afforded an important protection to parishes by expressly granting them all parish property including glebes. Maryland's Episcopal Church retained their glebes and this property was a valuable nest egg that allowed parishes to continue employing ministers and organizing worship in the early nineteenth century. Still, the denomination had too much property once it lost its monopoly status and could neither compel taxes nor attendance. The cultural and legal rupture of disestablishment was evidenced as parishes abandoned numerous churches and sold off their glebes.

Virginia, on the other hand, empowered counties to confiscate glebe property in the early nineteenth century, which included tens of thousands of acres and scores of enslaved people. While the Glebe Act had not authorized the transfer of chapels and churches, these spaces were radically transformed by disestablishment. Some were remade by non-Anglican congregations while others were sold off by counties. Many churches were abandoned and left to ruin. Counties received legislative permission to sell silver, libraries, and churches far beyond the original terms of the law. This seizure of non-glebe property highlighted the ideological equivocation of the 1802 Glebe Act. There was no compelling rationale to justify why the state seized glebes but not churchyards, silver, and libraries. Rather, the legislature readily admitted this provision was a

compromise to settle the decades-long dispute.[122] The legislature acquiesced to the seizure of additional parish property in the absence of political controversy.

Throughout the political and legal wrestling over Virginia's glebe lands, petitioners had claimed the glebes were "common property" and their confiscation would benefit "the public." Their arguments invoked a universal "public," but the public good remained hotly contested in republican Virginia. Chapter 7 will explore the decisions made by counties about how to spend glebe funds and what their choices reveal about the priorities of nineteenth-century republicans. I look closely at efforts to poor relief, schools, and other public projects. Glebe funds were flashpoints that sparked discord and debate over who belonged to "the public" and who did not. Here, as in the case of efforts to monetize the enslaved "assets" of the parish for the benefit of poor white citizens, race would prove to be the ultimate arbiter of belonging. While white Virginians largely agreed on the exclusion of black Virginians from public institutions, issues of class proved divisive in debates over the glebe funds. Advocates for the seizure of the glebes had invoked the ideals of the common good and public benefit but turning these abstract ideas into public institutions brought class tensions to the surface. The question of public benefit lingered in the early decades of the nineteenth century as communities debated what kind of institutions would best serve the public and who counted as a part of that public.

[122] *Acts VA* (1801-1802), Ch. 5, "An Act concerning the Glebe Lands and Churches within this Commonwealth," 9.

CHAPTER 7

"To the Good Order of the Community": Repurposing Parish Property

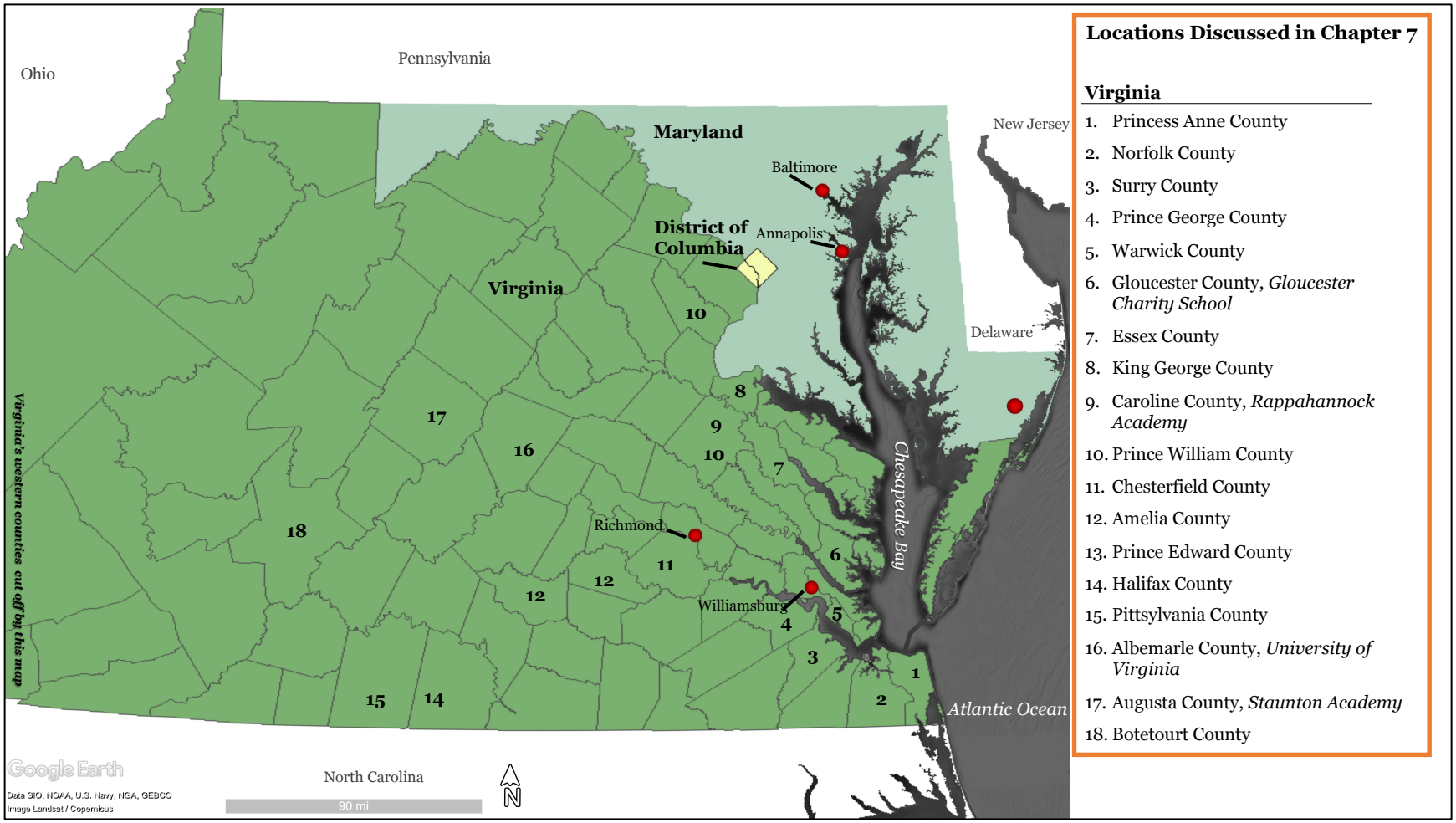


Figure 7.1. Map of locations discussed in Chapter 7. Map created by Alyssa Penick using data from the *Atlas of Historical County Boundaries*, The Newberry Library, last accessed May 15, 2020, https://publications.newberry.org/ahcbp/index.html.

In 1784, Ann Cary Nicholas wrote to offer some political advice to her son, Wilson Cary Nicholas, who recently had been elected to serve in Virginia's House of Delegates. Ann Nicholas may never have held public office, but she drew on a lifetime of political experience as the daughter and widow of high-ranking officials. She counselled her son never to give into popular demands, nor to make "promises to perform this or that job which the many-headed monster may think proper to chalk out for you." Ann Nicholas was wary of "the people" and warned that anyone who calls himself a "servant" of the people "indeed, is the slave – of the people." She further instructed her son not "to lend a last hand to pulling down the church, which, by some impertinent questions in the last paper, I suspect will be attempted. Never, my dear Wilson, let me hear that by that sacrilegious act you have furnished yourself with materials to erect a scaffold by which you may climb to the summit of popularity." She hoped that he would "not, to save a few pence to your constituents, discourage the progress of arts and sciences, [which] will throw us behind the other States in all valuable improvements, and chill like a frost, the spring of learning and spirit of enterprise."[1]

Ann Cary Nicholas spoke as a woman between worlds. The Nicholas family were vocal patriots, but her letter expressed trepidation about the popular fervor she witnessed in Virginia. As she watched the institutions of her childhood crumble, she looked with uncertainty and skepticism about what lay ahead for herself and her state.

Ann Nicholas did not speak of "disestablishment" but of "pulling down the church." Her use of a material metaphor reflected the popular understanding of disestablishment after the Revolution. Her words turned out not to be allegorical but prescient of events in the next 40

[1] Ann Cary Nicholas to Wilson Cary Nicholas, April (?) 12, 1784, Virginia Historical Society, Richmond. For more on the Nicholas family, see Anna K. Roberts and the Dictionary of Virginia Biography, "Wilson Cary Nicholas (1761–1820)," in *Encyclopedia Virginia,* Virginia Humanities, Last modified: May 14, 2018, https://www.encyclopediavirginia.org/Nicholas_Wilson_Cary_1761-1820.

years. She correctly predicted the material dismantling of the established church and the use of this property for popular projects. Moreover, Nicholas' missive linked the fate of Virginia's place in the new nation to the choices made in disestablishment. Men and women alike were debating how best to ensure the republic's future. Nicholas saw "the people" as greedily grasping for every cent without concern for public virtue, education, or morality. Nicholas' contemptuous description of the people and their motives revealed a stark divide in the wake of the Revolution about the future of public institutions and who ought to make decisions about public resources.

Disestablishment initiated a massive transfer of property in Virginia, as discussed in the previous chapter. Gone was the colonial parish, which had extracted and managed communal wealth. Counties seized glebes, enslaved men and women, silver, churches, and other property from parishes. After the dust settled, communities were empowered to repurpose former parish property in pursuit of public ends. What, then, did Virginians choose to do with this wealth once they received it?

The Glebe Act handed control over vacant glebe property to Overseers of the Poor in every county by default. However, the statute also empowered communities to elect to use the property for other public ends, as long as the proceeds funded "no religious purpose whatsoever."[2] There were three common ways that communities spent glebe funds. First was the *de facto* option – poor relief. Overseers of the Poor used glebe funds to offset the annual levy for the poor. This happened in communities where no public action was taken but also in some counties where citizens voted to direct the Overseers of the Poor to use the funds in support of a specific project, such as a workhouse. Second, glebe funds were put toward education. These institutions ranged widely in their purpose and whom they enrolled. Glebe funds endowed free

[2] *Acts VA* (1801-1802), Ch. 5: "An Act concerning the Glebe Lands and Churches within this Commonwealth," 9.

schools attached to poorhouses, fee-paying academies, and even the University of Virginia. Third, some counties elected to use their funds for other public projects, such as the construction of roads or courthouses. Debates over these projects forced the practical question of how much taxpayers were willing to spend on public institutions and whom they believed ought to benefit. As communities debated how to spend these funds, they grappled not only with how to serve the public good but who counted as the public.

This chapter begins by discussing the county administrators who oversaw the sale of glebes, the Overseers of the Poor. Then, it considers the decisions made about what to do with parish property in local communities. The varied choices made by Virginians reflected divergent impulses in republican thinking but also exposed the deep fault lines of class that divided white southerners.[3] Despite these differences, glebe funds by and large benefitted white male property holders and reinforced a definition of the "the public" that adhered to the boundaries of republican citizenship.

The Terms of the Glebe Act

The Glebe Act specified that once a county had seized parish property, the Overseers of the Poor "shall appropriate the money arising therefrom either to the poor of such parish or to any objects, which a majority of the freeholders and housekeepers therein may direct."[4] The glebe funds would support poor relief by default but could go toward another public initiative if a majority of the parish's freeholders elected to do so. The only restriction was that the funds could

[3] For the significant of class divisions among white Southerners in revolutionary and antebellum America. Michael A. McDonnell, "Class War? Class Struggles during the American Revolution in Virginia," *The William and Mary Quarterly,* Third Series, 63, (2006), pp. 305-344. Stephanie McCurry, *Masters of Small Worlds: Yeoman Households, Gender Relations, and the Political Culture of the Antebellum South Carolina Low Country* (New York: Oxford University Press, 1995).
[4] Ibid.

not support "an appropriation to any religious purpose whatsoever."[5] The terms of the act imposed a strict boundary between the flow of funds from state to church. Once parish property was declared to belong to the public, the money could not be used to support a religious project. This stipulation enshrined a radical definition of "establishment" into law by preventing public funds from supporting religious purposes. Many evangelicals had initially pressed for parish property to be distributed to all denominations. The Glebe Act, however, had erected an important bulwark between church and state by preventing the public funding of religious life.

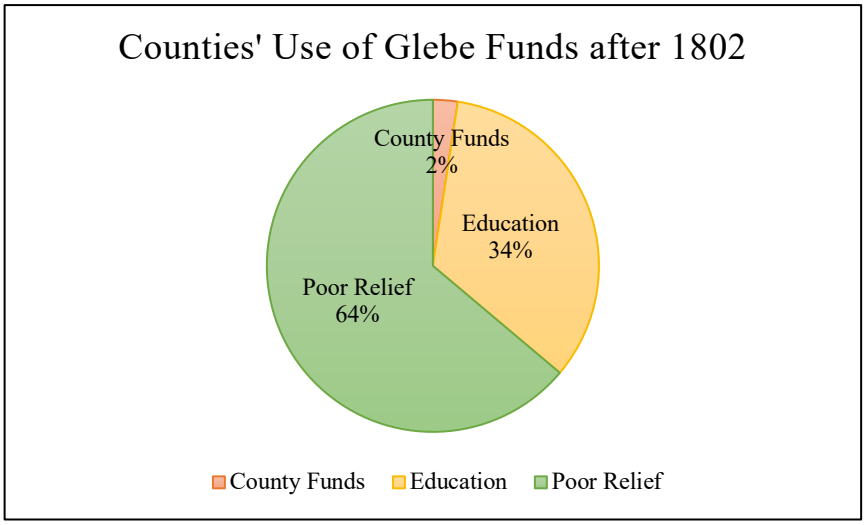


Figure 7.2: Counties' use of glebe funds after the 1802 Glebe Act by chosen category of expenditure. This chart does not include those parishes whose glebes were seized before the passage of the Glebe Act and the funds generally appropriated to use the County Court. **Source:** See Appendix B.

The broad terms of the 1802 statute gave the voters in every parish a significant amount of discretion over how to spend glebe funds. For a list of all glebe sales, the date of sale, and their use after disestablishment, see Appendix B. More than 60% of counties spent the funds on poor relief, either through funding the annual budget for the Overseers of the Poor or through the construction of poorhouses. After poor relief, the most common appropriation of glebe funds

[5] Ibid.

(34%) was to support for educational purposes. In a handful of counties, the glebe funds went to other county projects or investment funds. Warwick County used the funds to build a new county courthouse and jail in 1806. A group of citizens in Chesterfield County originally received permission from the legislature in 1813 to use the funds to repair roads and bridges and then use whatever funds were left over "to the benefit of the poor."[6] Some counties invested the funds and created longstanding endowments. As late as the 1960s, Mathews, Essex, and Lancaster Counties were still drawing from their century-old glebe funds to invest in schools and pay for other county projects.[7]

However, these figures alone tell only part of the story. These figures reflect the original decision about how to spend the money, though the glebe funds were sometimes redirected within a few years. Some of the original appropriations toward education or a poorhouse never came to fruition. Other projects folded after only a few years. It is essential to closely examine both poor relief and education to understand why these public projects were championed or faltered in republican Virginia.

Overseeing the Poor

In counties where the freeholders took no action to specify how the glebe funds ought to be spent, the money was left to the discretion of the Overseers of the Poor. Poor relief had long

[6] Freeholders, Housekeepers, & Inhabitants of King William Parish: Petition, Powhatan County, December 16, 1813, LVA; LPDC. See, *Acts VA* (1813-1814), Ch. 52, "An act authorising the sale of the Glebe and King William Parish in the counties of Chesterfield and Powhatan, and for other purposes there in mentioned," 113-115. However, the law was repealed the following year, and it is not clear whether any part of the transportation project was ever carried into effect. Freeholders & Inhabitants of King William Parish: Petition, Powhatan County, November 2, 1814, LVA, LPDC; *Acts VA* (1814-1815), Ch. 66, "An Act to repeal 'the act, "authorizing the sale of the Glebe and King William parish in the counties of Chesterfield in Powhatan." 131.

[7] For example, see "Essex Seeks Approval to Use Its Glebe Funds," January 10, 1962, Richmond Times-Dispatch (Richmond, Virginia); "Additional $30,000 School Loan is Okayed by Mathews Board," January 28, 1965, Daily Press (Newport News, Virginia); "Century-Old Fund Aids Schools in Lancaster," January 2, 1955 Richmond Times-Dispatch (Richmond, Virginia)**]**

expressed civic values in material form. Colonial vestries had been busy administrators of public services, as we saw in Part One. These civic-religious bodies reinforced social hierarchy while imposing personal bonds of reciprocity within a framework of legally established religion. Disestablishment threw into question the longstanding rationale for the parochial safety net, namely, that the religious establishment provided support because of its pious obligation to parishioners. If the poor were no longer "blessed," what were they? It was not clear how publicly funded social services would fare in republican Virginia, unanchored by the legal obligation of Christian charity.

The legislature created Boards of Overseers of the Poor in 1780, who were tasked with administering relief services on a county-wide basis.[8] Parishes continued to carry out poor relief sporadically but by 1786 Overseers of the Poor had taken up the reins in every county. Upon first glance, the records suggest a placid transition from church to secular administration of welfare. Many of the vestry books simply became Overseers of the Poor record books, sometimes without any acknowledgment of the institutional change.[9] For decades after disestablishment, the accounts signed by the Overseers of the Poor continued to refer to the parish as the corporate body responsible for and a recipient of poor relief, even though they were representatives of a county institution. For example, in an 1829 report about poor relief, the Surry County Overseers of the Poor referred to themselves as the "Agents of Southwark Parish."[10] The parish continued to hold deep resonance, particularly as the public body responsible for social welfare.

[8] Hening, 10:288.
[9] For example, see Vestry Book, Camden Parish, Pittsylvania County, Va., Accession 23597, Church Records Collection, LVA; Overseers of the Poor Accounts, Dettingen Parish, Prince William County, Va., Accession 30094, Church records collection, LVA.
[10] Surry County, Overseers of the Poor: Report, 1829, Box 13, Folder 9, OP Annual Reports, APA, LVA.

The state government took on a much greater role in overseeing local poor relief efforts in the nineteenth century. Starting in 1829, Virginia's legislature began requiring the Overseers of the Poor in every county to record their annual spending and submit their accounts to the assembly.[11] The push to standardize social services across the state reflected a departure from the older, parochial model, which had relied on personal bonds of reciprocity and deference between the vestry and parishioners.

Many counties took over parochial poorhouses or built new ones as part of the post-revolutionary system of relief. Despite the failure of their earlier poorhouse project, discussed in Chapter 2, Augusta County opened another poorhouse in 1820 using some of its glebe funds. In their report to the state, the Augusta Overseers concluded that the average annual cost per pauper rose after the construction of the poorhouse, from $63 to $68, but the total cost of poor relief fell from $1,718 to $1,502.[12] The officials happily reported that the project had saved them money because fewer people applied for relief knowing they would have to enter the poorhouse. Likewise, the Prince Edward County Overseers of the Poor related that the construction of the poorhouse had lowered the cost of public welfare by requiring anyone receiving public support "to go live at the poor or work house."[13] They acknowledged that the new system "excluded a number of worthy poor, who could with small aid from the public, make out very well from their own exertions on their little farms," but nonetheless chose to maintain the residency requirement. While vestries had been wary of the high cost of relief and sought to mitigate annual spending, they never imposed stringent residency requirements on parishioners who received relief.

[11] These records have been sorely underutilized by scholars as they contain a wealth of information about antebellum Virginia. This dissertation does not provide a comprehensive discussion of antebellum poor relief but the subject needs significantly more attention from historians.
[12] Augusta County: 1829 Report, Box 1, Folder 10, OP Annual Reports, 1829, APA, LVA.
[13] Prince Edward County: Report, 1829, Box 10, Folder 8, OP Annual Reports, 1829, APA, LVA.

Poorhouses in Augusta and Lynnhaven Parishes failed to lower costs during the colonial period precisely because vestries never forced parishioners to move there, and parishes continued to provide out of door relief to numerous recipients. Nineteenth-century Overseers of the Poor proved less lenient. By 1829, the metric of a successful welfare institution was how little it cost to run.

Overseers of the Poor complained that their work was met with public "apathy," in spite of "the great importance" which their role should "demand."[14] Many described the position as onerous and thankless and complained they often had to pay out of pocket to cover expenses.[15] Moreover, they expressed skepticism that poorhouses as institutions were effective. Gloucester County's Overseers defended their decision to close their charity school and poorhouse by stating they were not convinced "whether poor institutions really do good or harm? In our experience, we can by no means report favorably. We find it impossible to prevent a good deal of vice, whenever this description of people are congregated. We are persuaded, that it would contribute more to the improvement of their morals to separate them as far as possible from each other."[16] Another set of Overseers declared that the system only served "to increase pauperism generally, and to perpetuate it in families."[17] Many of these local administrators expressed skepticism that public welfare institutions benefitted the relief recipients themselves. From this perspective, the Overseers understood their responsibilities to lie first and foremost with taxpayers whose well-being they could improve by lowering the tax burden.

[14] Halifax County: Report, 1829, Box 5, Folder 7, OP Annual Reports, 1829, APA, LVA.
[15] Examples of Overseers of the Poor complaining about the burdens of their elected office can be found in their petitions to the Assembly and reports to the Auditor of Public Accounts. For example, see Overseers of the Poor: Petition, Norfolk County, December 23, 1807, LPDC, LVA; Halifax County, Overseers of the Poor, 1829, Box 5, Folder 7, OP Annual Reports and Checklists, APA, LVA.
[16] Gloucester County: 1829 report, Box 5, Folder 1, OP Annual Reports, APA, LVA.
[17] Halifax County: 1829 Report, Box 5, Folder 7, OP Annual Reports, APA, LVA.

Some Overseers of the Poor lamented their inability to punish moral crimes. The Botetourt County Overseers called attention to "drunkards… [who] are enemies to themselves and a pest to society. And from that class the poor are much increased. From drunkenness, the morals of society are much injured by deplorable habits… The law on the subject of drunkenness is never enforced."[18] Whereas enforcing Christian morality had been built into parochial relief systems, the republican overseers operated without this mandate. Some bemoaned the lack of public morality, but few seemed to believe they had any power to improve it. This sense of resignation from public officials signaled a significant departure from the relief system under the established church, which claimed its authority from its mandate to supervise morality, and used the fines from moral crimes to directly fund poor relief.[19]

The most striking point of continuity between colonial parish vestries and Overseers of the Poor was the desire to shame people out of taking poor relief and to reduce costs whenever possible. The residents of Norfolk complained in 1831 that the new poorhouse had a "too comfortable appearance."[20] They argued that a "respectable looking poorhouse is an evil," because it encouraged paupers "to indulge in idleness and laziness," whereas an "ungainly aspect, and forbidding exterior" would dissuade anyone from wanting to remain in the institution long, let alone enter it in the first place. These Virginians argued that poor relief should be made as humiliating and unpleasant as possible to dissuade men and women from seeking welfare.[21]

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[18] Botetourt County: 1829 report, Box 2, Folder 3, OP Annual Reports, APA, LVA.

[19] These attitudes lend credence to arguments made by scholars that disestablishment and the Second Great Awakening went hand in hand. As nineteenth century public administrators washed their hands of moral regulation, churches and benevolent institutions were energetically taking up the cause. For a discussion of the work of private institutions in the Second Great Awakening, see Robert H. Abzurg, *Cosmos Crumbling: American Reform and Religious Imagination* (Oxford: Oxford University Press, 2004; William G. McLoughlin, *Revivals, Awakening and Reform* (Chicago: The University of Chicago Press, 1978), 98-140.

[20] Citizens: Counter-Petition, Norfolk County, December 31, 1832. LPDC, LVA.

[21] The state did not track relief by gender, nor did any County overseers. However, there are many more specific female recipients mentioned in the Overseers of the Poor's reports to the state. Moreover, association between independence and masculinity likely discouraged poor men from seeking relief. Keri Leigh Merrit argued that in a

The legislature also began to pay particular attention to the racial make-up of poor relief recipients. When the state began requiring counties to submit their poor relief accounts annually, the legislature specifically asked for Overseers of the Poor to report the number of free white and free black recipients of public support. Poor relief had long been granted on a racial basis. Certainly, colonial vestries had granted poor relief less frequently to black and Native American petitioners. While colonial vestries often identified the race of relief recipients, they made no comprehensive effort to track the number of appropriations reliefs by race as a category. However, in the nineteenth century the state legislature formalized racial boundaries by requiring counties to begin reporting the number of relief recipients by race in 1829.

Well before the state began requesting data about the race of relief recipients, most counties already overwhelmingly granted poor relief to white recipients. [22] Between 1800 and 1811, Chesterfield County extended poor relief to 736 white persons and five free black persons.[23] In the following eleven years, 341 white persons received relief, while no black residents did. Pittsylvania reported 1,253 white recipients of relief and just 5 black recipients between 1800 and 1830.[24] Over the same decades, the Overseers of Norfolk County gave assistance to 1,764 white persons and no black residents.[25] As these miniscule numbers suggest, free people of color, who made up 7% of the state's residents in 1810, received poor relief

culture built on the logic of racial hierarchy and masculine honor, a white man seeking financial relief was not only shameful but dangerous. She wrote that "poor whites had long posed a threat to the maintenance of the peculiar institution" because of their "disconnectedness from slavery." Merrit, *Masterless Men: Poor Whites and Slavery in the Antebellum South* (New York: Cambridge University Press, 2017), 9, 125.

[22] Some counties did extend relief at higher rates to free black residents. In Botetourt County, for example, free people of color were nearly 10% of poor relief recipients between 1800-1830. See, Botetourt County, Overseers of the Poor: Report, 1829, Box 2, Folder 3, OP Annual Reports, APA, LVA. Jennifer Ann Gallagher likewise found that the Overseers of Montgomery County, VA frequently provided poor relief to black residents. See Jennifer Ann Gallagher, "Remove Him to the Poorhouse:" Poor-Relief in Montgomery County, VA, 1830-1880," (M.A. thesis, Virginia Polytechnic Institute and State University, 2019).

[23] Chesterfield County, Overseers of the Poor: Report, 1829, Box 3, Folder 4, OP Annual Reports, APA, LVA.

[24] Pittsylvania County, Overseers of the Poor: Report, 1829, Box 10, Folder 5, OP Annual Reports, APA, LVA.

[25] Norfolk County, Overseers of the Poor: Report, 1829, Box 9 Folder 1, OP Annual Reports, APA, LVA.

disproportionally less often than their white counterparts.[26] The records give no indication of whether black and white applicants for relief were rejected at the same rate, or whether the system discouraged black Virginians from requesting relief in the first place. By overwhelmingly excluding people of color from welfare services, counties denied these men and women the material advantages of civic community and reserved the privilege of the social safety net for white Virginians.

The state overhauled its slave code in 1806, and the new statute invested Overseers of the Poor with additional responsibilities over enslaved and free black Virginians. The updated legislation reflected the federal prohibition of the international slave trade and empowered Overseers to sell any persons illegally brought into their counties. The law amended the Oath of Office taken by all Overseers of the Poor to include the provision, "*I, A. B. do swear, that I will faithfully enforce the laws to prevent the importation of slaves."*[27] Moreover, the statute also prohibited any man or woman who was manumitted from staying in Virginia longer than twelve months. The legislators, wary of the increasing population of free people of color, hoped this policy would discourage manumission. After 1806, the number of manumissions did drop precipitously, and the measure certainly slowed the growth in the free black community.[28]The Overseers could sell any manumitted persons back into slavery if they remained in the state in violation of this provision.

The law was still at work even when Overseers of the Poor refrained from selling manumitted persons who remained in Virginia. By investing those in charge of poor relief with

[26] Eva Sheppard Wolf, *Race and Liberty in the New Nation: Emancipation in Virginia from the Revolution to Nat Turner's Rebellion* (Baton Rouge: LSU Press, 2006), 111.
[27] *Acts VA* (1805-1806), Ch. 63 "An Act to amend the several laws concerning slaves," 252.
[28] Eva Wolf Sheppard, *Race and Liberty in the New Nation: Emancipation in Virginia from the Revolution to Nat Turner's Rebellion* (Baton Rouge: LSU Press, 2006), 125.

the additional power to remove free black inhabitants from the state, the legislature effectively disincentivized black Virginians from seeking public support. Purportedly, numerous black Virginians chose to remain in the state in violation of the law, and their transgressions were often overlooked at the discretion of the Overseers.[29] The threat of sale against family members or neighbors was likely enough to discourage needy black inhabitants from applying for poor relief and catching the attention of the Overseers. As the legislature and counties focused on keeping costs down, they were successful at preventing free people of color from becoming a drain on the community's financial resources by investing the same administrators who distributed relief with the power to sell manumitted persons back into slavery.

It was not just the legislature who knit together the issues of race and poverty; popular appeals argued that the poverty of free black Virginians made them a greater threat to whites' safety and security. A petition sent from white inhabitants of Nansemond County in December of 1831, just a few months after Nat Turner's rebellion, urged the state to "remove" all free black Virginians. The petition declared "the mistaken humanity of the people of Virginia, and of your predecessors, has permitted to remain in this Commonwealth a class of persons who are neither Freeman nor slaves." Free black Virginians were caught in a liminal state, "by nature preclude[ed]… of privileges of the former: and the laws of the land do not hold them allowed to be reduced to the condition of the latter." There was no way for this "ill-fated class" to "have the respect and intercourse here which are essential to rational happiness, and social enjoyment and improvement" and thus they would always remain "of necessity, degraded, profligate, vicious, turbulent and discontented." The petitioners accused free black Virginians of "pursuing no

[29] Eva Sheppard Wolf includes additional examples of Overseers of the Poor selling manumitted persons. Wolf, *Almost Free: A Story about Family and Race in Antebellum Virginia* (Athens, GA: The University of Georgia Press, 2012), 53-77.

course of regular business, and negligent of everything like economy and husbandry" and included a wildly inflated statistic that free blacks were "more frequently than whites (probably in tenfold proportion) sustained by the charitable provisions of our poor laws."[30] These white citizens argued that the exclusion of free black Virginians' from the rights of freemen and the ranks of the enslaved made their segregation and dependence unavoidable. [31]

The supposed dependence of black Virginians not only made them "a burden on the community" but a threat to a slave society. According to the petitions, free black Virginians' reliance on public assistance and their very refusal to remain in "servitude to business" stoked "impracticable hopes in the minds of those who are even more ignorant and unthinking" and gave them a "dangerous agency" to encourage "schemes, wild and visionary." The supposed indolence of free black communities encouraged the same behavior among enslaved men and women; their freedom would lead enslaved people to revolt. Thus, the petitioners argued that peace, happiness, and safety of could of "society" only be secured by removing all free black persons from the state. The definition of society proffered in this petition rested on a bifurcated racial hierarchy that left no room for black men and women who were free. The only solution, in the minds of petitioners, was for free black Virginians to settle "in other lands [so that] they may become an orderly, sober, industrious, moral, enlightened and Christian community: and be the happy instruments of planting and dispersing these blessings over a barbarous and benighted continent." Poor relief and removal were closely interrelated in the popular anxieties of white Virginians.[32]

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[30] According to the records of Nansemond County's Overseers of the Poor, 25% of relief recipients between 1818 and 1830 were black. This statistic is far higher than in other Virginian counties but does not close to substantiating the petition's claim. See, Nansemond County: Report, 1829, Box 8, Folder 5, OP Annual Reports, APA, LVA.
[31] Citizens: Petition, Nansemond County, December 22, 1831, LPDC, LVA.
[32] Citizens: Petition, Nansemond County, December 22, 1831, LPDC, LVA.

The Overseers' increased powers over enslaved and free people of color underscored white southerners' preoccupation with the threat of free black communities to the stability of slavery. Efforts to prevent black inhabitants from receiving any sort of civic benefits was an effective means of preventing poor whites and free blacks forming any sort of class-based alliance, as well as making the life of free people of color as difficult as possible in the state.[33] For white Virginians, the very presence of free black residents destabilized the racial logic on which slavery rested. Envisioned as secular successors to the vestries, county Overseers of the Poor were meant to keep a close eye on their communities. However, the republican relief system operated on a larger, county-wide basis and moved away from relying on bonds of deferential reciprocity or divine duty. County overseers stopped enforcing Christian morality and oversaw a system that prioritized racial order and lowering costs above all else.

Poor Relief in Republican Virginia

Without a specific directive from the community to use the funds for another purpose, county Overseers typically used the proceeds from the sale of the glebes to offset the annual cost of poor relief. For example, as discussed in Chapter 6, the Overseers of the Poor of Amelia County sold the Raleigh Parish glebe in 1805 immediately after the Glebe Act was upheld in *Turpin v. Lockett* (1804).[34] Their glebe fund was worth roughly 225% of the annual poor relief budget. Their records indicated that it was "probable" that the annual levy for poor relief was reduced or suspended for at least "two or three years."[35] However, the Overseers had kept vague

[33] Timothy Lockley's excellent study of antebellum poverty argues that preventing poor, white southerners from becoming "disaffected with the status quo" was essential to the maintenance of racial slavery and ensuring "the solid south." Timothy Lockley, *Welfare and Charity in the Antebellum South* (Gainesville, FL: The University of Florida Press, 2007), 217.
[34] Amelia County: Report, 1829, Box 1, Folder 7, OP Annual Reports, APA, LVA.
[35] Ibid.

records of the funds, and by 1829, no one was sure when the glebe funds had been spent. When all was said and done, the payout from the sale of Amelia's only indemnified the community from paying for poor relief for a couple of years at most.

The choice of Overseers of the Poor to sell their vacant glebe properties was an act of asset liquidation and a decision to dissolve traditional communal institutions. In the colonial era, parish glebes had been envisioned as a durable investment meant to accrue value over time. Ann Cary Nicholas, whose words opened this chapter, disdained the popular desire to "save a few pence" at the expense of advancing in "learning and enterprise."[36] Her words were an elite indictment of the actions undertaken by Amelia's Overseers of the poor to sell off their glebe and distribute funds directly back to the people, rather than re-investing this property in communal institutions. Some scholars have seemingly followed Nicholas' line of reasoning by suggesting that glebe funds were "frittered away" and poorly managed.[37] This reproach, though, does acknowledge that the right to control this property was a hard-fought, ideological victory. The use of these funds as a form of tax abatement was a reimbursement for levies unwillingly paid each year to the established church and carried particular symbolic weight for non-Anglicans. The right to control private property reflected a definition of liberty that prioritized the control of private property. Moreover, the choices of communities to use their glebe funds not to build schools or poor houses but simply as a small form of tax relief was a political act in defiance of elites like Nicholas. We should not altogether dismiss the material significance of this money either. Then, as now, Americans loved a tax credit. For a small farmer, a reduction in the yearly tax may have made a significant difference to his finances.

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[36] Eckenrode, 152-153; Brydon, 2:500-1.
[37] Eckenrode, *Separation of Church and State in Virginia,* 153; Carl H. Esbeck, "Disestablishment in Virginia, 1776-1802," in Carl H. Esbeck and Jonathan Den Hartog, eds., *Disestablishment and Religious Dissent*: *Church-State Relations in the New American States* (Columbia, MO: University of Missouri Press, 2019), 170.

A decade after selling its glebe, Amelia County decided to open a poorhouse in an effort to lower costs. They auctioned off the parish library, silver, and church bell and raised an additional $400, which helped cover nearly a third of the cost of constructing the new institution. This property was clearly protected under the terms of the 1802 Act, but it was claimed by the county as a public asset in the absence of an active Episcopal congregation.[38] While the glebe funds had provided a direct form of tax relief in Amelia, the Overseers opted to sell additional parish property and use the proceeds to underwrite the cost of a new public institution. Amelia's Overseers of the Poor also instituted a new policy "not to contribute any thing for the support of such as refused to be removed to the poor house, and have adhered to that determination ever since except in a very few extreme cases."[39] Amelia's residents may not have supported the program of republican learning and enterprise envisioned by Ann Nicholas Cary but they did eventually use some of the parish's assets to fund communal welfare. However, the Overseers' discussion of the project was framed entirely in fiscal terms. There is no mention of a reforming impulse, Christian charity, or republican virtue.

In Amelia, as in other parts of early national Virginia, the eventual choice to reinvest in public institutions was motivated by a desire to lower the tax burden of poor relief, not explicitly to benefit the poor. The success of these projects was measured in their ability to save money over time. Thus, the distinction between an immediate distribution of glebe funds directly and investments in communal institutions like poorhouses is somewhat of a false dichotomy; in counties like Amelia, both types of expenditures reflected a popular desire to reduce public spending first and foremost.

[38] *Acts VA* (1805-1806), Ch. 75 "An act giving further Powers to the Overseers of the Poor in certain cases," 43.
[39] Amelia County: Report, 1829, Box 1, Folder 7, OP Annual Reports, APA, LVA.

Educating Citizens Fit for the Republic

Roughly a third of glebe funds were earmarked for the support of educational institutions. Education was a broad category, and the schools underwritten by the sale of glebes ranged from universities to free schools. This variety reflected ongoing debates about whom public schools ought to enroll and how best to serve the common good. The fundamental question of how a republican government ought to support education hung over these projects.

Despite widespread discussion of education as a bulwark of the republic, Virginians did a remarkably poor job supporting public education. Jefferson had pursued a state-wide public education twice, once in 1779 and once in 1817. He failed both times. Resistance to any form of direct taxation stymied efforts to organize any serious statewide schooling system. Many elite Virginians opposed using tax-payer funds to support public schooling invited republican rhetoric to defend their platform. The ample and abstract terms of republican rhetoric coming out of the Revolution left room for supporters of public schools and opponents to make their cases using republican rhetoric. For example, the wealthiest men in Virginia challenged proposals for a statewide system of public education. These gentlemen argued that they would have to pay steeper taxes for public education while still paying to educate their own children privately. Such a plan would be a form of double taxation and contravene the "essence of property."[40] The opposition to public education manifested the deep conservativism running through Virginian

[40] John Randolph of Roanoke quoted in Robert Orvis Woodburn, "An Historical Investigation of the Opposition to Jefferson's Educational Proposals in the Commonwealth of Virginia," (Ph.D. diss. American University, 1974), 117-119.

republicanism.[41] Moreover, it highlighted how deep fault lines of class cut through the state's white, male citizenry.[42]

The glebe funds promised an alluring way to establish schools without raising taxes. But even Virginians who supported public education could not agree on what type of schools ought to be opened using glebe funds. Communal divisions about how to spend the glebe funds and the problems that plagued many glebe schools were symptomatic of the Old Dominion's equivocation when it came to educating its white citizens.

Supporters of academies catering to middling and elite families framed these institutions as necessary to prepare future citizens. John Taylor of Caroline argued that "the Union and national happiness," depended on education. Students had to be molded into republican citizens, and schools could either promote "the freedom and happiness of our country," or "corrode" its republican ambitions.[43] In this view, the glebe funds could serve no higher public purpose than schools which educated young citizens and future leaders. Academies like the one Taylor would help establish charged their students tuition, which created a significant barrier to entry.

On the other hand, many county Overseers of the Poor voiced more modest hopes that free schools would benefit "poor children, who under such institutions, may become valuable

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[41] For a discussion of the ideological conservativism of southern republicanism, see Adam L. Tate, "Republicanism and Society: John Randolph of Roanoke, Joseph Glover Baldwin, and the Quest for Social Order," *The Virginia Magazine of History and Biography* ,2003, Vol. 111, No. 3 (2003), pp. 263-298. Even works that emphasize democratization of Virginia's politics admit that it was later in coming and more limited than in other states. See William G. Shade, *Democratizing the Old Dominion: Virginia and the Second Party System, 1824-1861* (Charlottesville: University Press of Virginia, 1996).

[42] Alan Taylor calls attention to how social class shaped educational proposals in republican Virginia. See Taylor, *Thomas Jefferson's Education* (New York: W.W. Norton, 2019), 3-4, 15, 82-84, 189-191, 217-222. Peter Onuf discusses the "class bias" of educational reform in the early republic. See Peter S. Onuf, "State Politics and Republican Virtue: Religion, Education, and Morality in Early American Federalism," in Paul Finklman and Stephen E. Gottleib, eds. *Toward a Usable Past: Liberty Under State Constitutions* (Athens, GA: The University of Georgia Press, 1991), 104. Harry Watson describes this pattern in the south more generally. See Harry L. Watson, "The Man with the Dirty Black Beard: Race, Class, and Schools in the Antebellum South" *Journal of the Early Republic*, 32, No. 1 (Spring 2012), 1-26.

[43] *Letters of Prominent Men Reprinted in Newspapers, 1794-1877*, Microform, Accession #3402, Special Collections, University of Virginia Library, Charlottesville, VA, 3.

and useful members of society."[44] Many counties proposed establishing free schools adjacent to larger poor-relief institutions such as workhouses and poorhouses. Petitioners in King George County voiced their ardent belief "that in a Republican Government, the greatest good will be obtained from the establishment of seminaries of learning, where the youthful mind may be early impressed with virtue and morality, and where the children of the poor as well as the rich may receive the benefits of Education."[45] By entrusting citizens to govern themselves, the republic relied on accessible education for its future success.

The petitioners from King George not only sought to prevent the formation of class hierarchy but maintained that all citizens ought to "know and appreciate their dearest rights, the right of free government, and not be obliged from want of opportunity to plod on in ignorance and stupidity, the precursors of slavery and despotism."[46] Equating slavery with ignorance was especially resonant in a slave society built on a bifurcated logic of racial difference.[47] Of course, the petitioners' recognition that illiteracy doomed the ignorant to slavery was also a direct reflection of Virginia's laws, which increasingly sought to prevent black Virginians from learning to read and write.[48] In a slave society, the laws sought to make race an unassailable fact that distinguished citizens from the enslaved; the invocation of slavery as a possible fate of

[44] Freeholders & House-Keepers: Petition, Gloucester County, December 16, 1813, LPDC, LVA.
[45] Inhabitants of St. Paul's Parish: Petition, King George County, December 15, 1811, LPDC, LVA.
[46] Inhabitants of St. Paul's Parish: Petition, King George County, December 15, 1811, LPDC, LVA.
[47] For a discussion of Virginians' ideal of a two-race system, see Eva Wolf Sheppard, *Race and Liberty in the New Nation: Emancipation in Virginia from the Revolution to Nat Turner's Rebellion* (Baton Rouge: LSU Press, 2006), 39, 47, 119-131, 158-161, 233.
[48] White Virginians sought to prevent both enslaved and free black Virginians from learning to read and write. See, Heather Andrea Williams, S*elf-Taught: African American Education in Slavery and Freedom* (Chapel Hill: University of North Carolina Press, 2005); Eva Sheppard Wolf, *Race and Liberty in the New Nation: Emancipation in Virginia from the Revolution to Nat Turner's Rebellion* (Baton Rouge: LSU Press, 2006), 120. Statutes restricting the teaching of free and enslaved black Virginians from reading include: *Acts VA* (1804-1805), Ch. 11, "An Act to reduce into one the several Acts concerning Slaves, Free Negroes and Mulattoes," 9; *Acts VA* (1804-1805), Ch. 39, "An Act to reduce into one the several Acts concerning Slaves, Free Negroes and Mulattoes," 107-8.

illiterate white men was not merely rhetorical but a stinging comparison that underscored the deep anxieties of white Virginians about the implications of an uneducated white populace.

Thomas Jefferson, always a bellwether of republican contradictions, recognized the importance of supporting public institutions to educate both the wealthy and the poor, but he framed their needs as separate projects. In his 1814 proposal for a state university, the retired president proclaimed that "the mass of our citizens may be divided into two classes, the laboring, & the learned." He argued that "it is highly interesting to our country, and it is the duty of it's [sic] functionaries to provide, that every citizen in it should recieve [sic] an education proportioned to the condition and pursuits of his life."[49] Jefferson expressed that the state had an obligation to educate all of its citizens through institutions tailored to their future stations in life. In this framework, the public prerogative of education was limited only to citizens, which framed the system of public education in direct relationship to political participation and implicitly restricted it by race and gender. The "laboring" included those destined for farming and artisan crafts, and they "should recieve [sic] three years instruction gratis, in reading, writing, arithmetic as far as fractions, the roots and ratios, and Geography."[50] However, those who were to become learned professionals or the "wealthy who possessing independent fortunes may aspire to share in conducting the affairs of the nation" would "require instruction in all the higher branches of science."[51] The decision of whether to use glebe funds to endow institutions for the laboring or the learned, as Jefferson termed these two distinct groups of Virginians, would become a growing source of tension in local communities in the coming decades.

[49] "Thomas Jefferson to Peter Carr, 7 September 1814," *Founders Online,* National Archives, https://founders.archives.gov/documents/Jefferson/03-07-02-0462.
[50] Ibid.
[51] Ibid.

There was a practical reason for using the glebe funds to endow schools. Parish ministers had often doubled as teachers, and they ran the few schools that existed in colonial Virginia.[52] Thomas Jefferson, like so many of Virginia's revolutionary leaders, had studied with the Rev. James Maury at the Fredericksville glebe under this older model of parochial education.[53] In addition to these exclusive arrangements, there were also a number of free schools endowed by charitable bequests, which were administered by parish vestries. The demise of the established church had left the state without its traditional means of schooling both the gentry and the poor, and many communities were eager to establish new schools using the glebe funds. Just as the use of glebe funds for poor relief reflected a longstanding association between parishes and welfare, directing the glebe funds to support education also reflected an important thread of continuity from establishment to disestablishment.

"This Holy institution of wisdom"

Perhaps the most famous example of the high-minded republican ideal of education was the University of Virginia, which grew out of two of Thomas Jefferson's defining passions – religious disestablishment and the promotion of public education. When Jefferson first wrote about disestablishment in 1776, he recommended that the state seize glebe lands as public property.[54] The thirty years of bitter legal and political fighting described in Chapters 4 and 5 finally implemented Jefferson's revolutionary proposal. After leaving national office and returning to Monticello, Jefferson seized the opportunity to fulfill this vision in his home county

[52] For more discussion of parochial education, see Guy Fred Wells, *Parish education in colonial Virginia* (New York: Teachers College, Columbia University, 1923).
[53] For more on Jefferson's education and the parochial model of education in colonial Virginia, see Alan Taylor, *Thomas Jefferson's Education* (New York: W.W. Norton, 2019), 14-22.
[54] "I. Rough Draft of Jefferson's Resolutions for Disestablishing the Church of England and for Repealing Laws Interfering with Freedom of Worship, [before 19 November 1776]," *Founders Online.*

when he and a group of fellow trustees co-opted a decade-old charter for a local academy and instead launched a state university. Jefferson used his political clout to transform the humble county school into the epitome of a secular college in the early republic. This project realized Jefferson's ambition to repurpose parish glebes for secular, public uses.

The eventual founding of the University of Virginia grew out of a much more modest project funded in part by the sale of two glebes. Before the Revolution, Albemarle County had been divided into two Anglican parishes, St. Anne's and Fredericksville. In 1802, St. Anne's Parish did not have an incumbent minister, and the county came into the proceeds from the sale of its glebe after the law was passed.[55] The following year, the legislature granted a charter to Albemarle Academy. [56] The project stalled, and the funds from the sale of St. Anne's glebe went unspent. [57] The rector of Fredericksville Parish, Matthew Maury, died in 1808, and the glebe was sold the following year.[58] By 1810, the county had a pool of funds from the sale of both glebes. In 1811, the Assembly granted permission for Albemarle's Overseers of the Poor to invest the glebe funds in the Bank of Virginia and use the interest to fund "public schools in the said county." [59] The bill specifically authorized using the funds for a school to educate "male and

[55] The St. Anne's parish glebe had been sold in 1780 and the churchwardens had held onto the funds. The residents of the parish petitioned the legislature for express permission to seize monies in the hands of the of the parish's former churchwardens. See Hening, 10:112-113; Inhabitants of St. Anne's Parish, Albemarle County, December 7, 1803, LPDC, LVA; Edgar Woods, *Albemarle County in Virginia: Giving Some Account of what it was by Nature, of what it was Made by Man, and of Some of the Men who Made it (*Charlottesville: 1901),127.
[56] *Acts VA* (1802-1803), Ch. 34, "An act to establish an Academy in the county of Albemarle, and for other purposes," 23-34.
[57]The law included no explicit mention of using glebe funds to support this school; however, records from the county's Overseers suggest that they never received the glebe funds. This fact, plus the similar timing of the sale and the law, suggest that the money had been earmarked for public education. See, Albemarle County, Report:1829, Box 1 Folder 3, OP Annual Reports, APA, LVA.
[58] Edgar Woods, *Albemarle County in Virginia: Giving Some Account of what it was by Nature, of what it was Made by Man, and of Some of the Men who Made it (*Charlottesville: 1901),127.
[59] *Acts VA,* (1810-1811), Ch. 23, "An Act to appropriate certain funds arising from the sale of the Glebe Lands, in Albemarle County to the establishment of Public Schools in the said County," 29-30.

female child[ren]" at a modest rate. But again, this project failed to get off the ground. The money remained in the bank, and Albemarle Academy never opened its doors.

The plan finally gained momentum after Thomas Jefferson joined the Board of Trustees in 1814.[60] Within a few months it became clear that Jefferson and his fellow trustees abandoned the earlier proposal for a local school for Albemarle's children and were now maneuvering to open a university comparable to the "best seminaries in other countries."[61] Jefferson hoped that the legislature would one day provide a "more promising" system of primary education in the state, but he declared that "our Institution… shall have nothing to do" with this "1st grade of education."[62] Educating the "laboring" class may have been important, but it was not his ambition in this project.[63] Instead, Jefferson wished to open an institution for advanced students "where every branch of science, deemed useful at this day, and in our country, should be taught in it's [sic] highest degree."[64] He admitted that he had "long entertained the hope" of such "an establishment," and offered his fellow board members a "revised" plan for the college in September of 1814.[65] Jefferson's college would enroll only those "advanced" students who had been able to receive adequate primary education. While he wrote of the importance of providing public education to all classes, the university he founded catered only to elite, white men. UVA reflected not only the most ambitious but also the most exclusive institution built from glebe funds in the state. In this respect, UVA's resisted the levelling, democratizing impulses of republicanism and clung to older notions of virtue.

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[60] "Minutes of the Albemarle Academy Board of Trustees, 25 March 1814," *Founders Online,* National Archives, https://founders.archives.gov/documents/Jefferson/03-07-02-0183-0002.
[61] "Thomas Jefferson to Peter Carr, 7 September 1814," *Founders Online,* National Archives, https://founders.archives.gov/documents/Jefferson/03-07-02-0462.
[62] Ibid.
[63] For a thorough discussion of Jefferson's views on public education, Alan Taylor, *Thomas Jefferson's Education* (New York: W.W. Norton, 2019), 161-191.
[64] Ibid.
[65] Ibid.

The trustees continued to discuss how to fund the school over the next several months. They proposed raising voluntary subscriptions, receiving a portion of the state's Literary Fund, and, of course, securing the use of Albemarle County's glebe funds.[66] Jefferson, ever suspicious of banks, feared the possible loss of the capital, which "would be the most lasting of… evils."[67] Jefferson and two of the other trustees, Peter Carr and Thomas Randolph, drew up a petition requesting that Albemarle's glebe funds be diverted to the academy. However, another trustee, Joseph C. Cabell reported to Jefferson in March of 1815 that their petition had not been presented to the Assembly that session.[68] There were apparently several possible objections to the plan, including protests from those who feared founding another university would eclipse the College of William and Mary's standing in the state. There were also concerns from closer to home, including from "some of the people of Albemarle" who "might not wish to appropriate the proceeds of the sales of the glebes to the establishment of an academy at Charlottesville."[69] Indeed, there seemed to be some lingering uncertainty about the new direction of Albemarle Academy. Jefferson complained of "the difficulty I find…to eradicate the idea that it is a local thing, a mere Albemarle academy. I endeavor to convince them it is a general seminary of the sciences meant for the use of the state."[70]

However, the following year, the Assembly assented to the proposal. They chartered a new entity, Central College, which received the rights and claims of Albemarle Academy, as

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[66] "Minutes of the Albemarle Academy Board of Trustees, 3 May 1814," *Founders Online,* National Archives, https://founders.archives.gov/documents/Jefferson/03-07-02-0248.
[67] "Thomas Jefferson to Joseph C. Cabell, 30 September 1814," *Founders Online,* National Archives, https://founders.archives.gov/documents/Jefferson/03-07-02-0505.
[68] "Joseph C. Cabell to Thomas Jefferson, 5 March 1815," *Founders Online,* National Archives, https://founders.archives.gov/documents/Jefferson/03-08-02-0249.
[69] Joseph C. Cabell to Thomas Jefferson, 5 March 1815," *Founders Online,* National Archives, https://founders.archives.gov/documents/Jefferson/03-08-02-0249.
[70] "Thomas Jefferson to Joseph C. Cabell, 10 September 1817," *Founders Online,* National Archives, https://founders.archives.gov/documents/Jefferson/03-12-02-0011.

chartered in 1803.[71] This statute gave Central College access to Albemarle County's glebe funds, which then amounted $3,195. [72] This sum was only a small fraction of the total budget needed to open the college. Indeed, it barely covered half of the projected cost of one of the ten academic pavilions Jefferson planned for the school.[73] Additional funds were drawn from the state's Literary Fund and raised through private donations. The proceeds from selling Albemarle's two glebes provided important seed money for the larger project. These funds allowed the trustees to purchase the first 183 acres for the University and covered the cost of publicizing their plan and soliciting donations.[74] The university's backers declared that using the money from the sale of the glebes to support the college was the best "application of those ancient acquisitions… more analogous to their original objects, and equally for the benefit of all interested in them."[75] This statement artfully reframed the glebe lands through a republican lens. These "ancient" endowments had, of course, been purchased to support Anglican ministers and provide parishes with additional income. Instead, the university's backers cast them as longstanding investments in the common good. Perhaps most analogous between this proposal and the original glebe system was the use of language of universal benefit in the face of stark exclusion on the basis of race, class, and gender.

In 1819, Central College became the University of Virginia.[76] In place of a chapel, Jefferson's university featured a library; it did not employ professors of divinity but professors of ethics. Jefferson wrote of the University in 1825, "we should Cherish this Holy institution of

[71] *Acts VA* (1815-1816), Ch. 75, "An act for establishing a College in the County of Albemarle," 191-194.
[72] January 6, 1818, *Journal of the House of Delegates of the Commonwealth of Virginia,* (Richmond: 1828), 117.
[73] January 6, 1818, *Journal of the House of Delegates of the Commonwealth of Virginia,* (Richmond: 1828), 118.
[74] Conveyance of Lands for Central College from John M. Perry and Frances T. Perry to Alexander Garrett, 23 June 1817," *Founders Online,* National Archives, https://founders.archives.gov/documents/Jefferson/03-11-02-0396.
[75] January 6, 1818, *Journal of the House of Delegates of the Commonwealth of Virginia,* (Richmond: 1828), 117.
[76] *Acts VA* (1818-1819), Ch. 19, "An act for establishing an University," 15-18.

wisdom, as we would our Union & liberties & as the best means of preserving both!"[77] Jefferson wrote in emphatic terms about the importance of education for the success of the new republic. "Kno[w]lege is power… kn[w]olege is safety, and… kno[w]lege is happiness," Jefferson proclaimed, and providing education was "the law of duty in every society of free agents, where every one has equal right to judge for himself."[78] The established church had imbued monarchy with divine authority and regulated society through religious doctrine. Now, there existed a republican university that equipped men to rule themselves and reinforced liberty as the watchword of good government. For Jefferson, the material dismantling of the established church secured Virginia's conversion from monarchy to republic.

Jefferson regarded the founding of UVA as one of his greatest accomplishments and hoped it would remain part of his enduring legacy. He left careful instructions for his tombstone and wanted his epitaph to read, "Author of the Declaration of American Independence of the Statute of Virginia for religious freedom & Father of the University of Virginia." In his words, these were to be "testimonials that I have lived" and by them "I wish most to be remembered."[79] Scholars have linked these achievements as an expression Jefferson's commitment to natural rights.[80] However, there was also a more practical connection between all three. Upon declaring independence, Jefferson envisioned repurposing the wealth of the former established church for

[77] "To Thomas Jefferson from Andrew Stevenson, 25 February 1825," *Founders Online,* National Archives, https://founders.archives.gov/documents/Jefferson/98-01-02-5001.
[78] "Thomas Jefferson to George Ticknor, 25 November 1817," *Founders Online,* National Archives, https://founders.archives.gov/documents/Jefferson/03-12-02-0170.
[79] "Thomas Jefferson: Design for Tombstone and Inscription, [before 4 July 1826, 4 July 1826]," *Founders Online,* National Archives, accessed September 29, 2019, https://founders.archives.gov/documents/Jefferson/98-01-02-6185.
[80] Michael P. Zuckert, "Thomas Jefferson and Natural Morality: Classical Theory, Moral Sense, and Rights" in Peter S. Onuf and Nichols P. Cole, eds., *Thomas Jefferson, the Classical World, and Early America* (Charlottesville, VA: The University of Virginia Press 2011), 56; Francis D. Cogliano, Thomas Jefferson: Reptuation and Legacy (Edinburgh: Edinburgh University Press, 2006), 137-169.

secular, public uses in the new republic; he eventually achieved that ambition in the University of Virginia.



Figure 7.3: Jefferson's gravestone at Monticello. **Source:** Photograph by Christopher Hollis for Wdwic Pictures, Wikimedia Commons.

From Parish Church to Public School

Like the University of Virginia, Rappahannock Academy, a boys' school in Caroline County, was endowed by glebe funds and became a republican, educational institution. However, it would also tacitly serve as a financial lifeline for a struggling parish. While Jefferson sought to remove any vestige of religious orthodoxy from his republican school, the founding of Rappahannock Academy reveals how glebe funds could benefit both church and state.

In 1804, inhabitants of St. Mary's Parish petitioned under the terms of the Glebe Act to sell their glebe. The petitioners included both "subscribers to the support of the Protestant Episcopal Church" and "others (residents of the parish)." The petition explained that St. Mary's lacked adequate funds to continue supporting its aged Episcopal minister, Abner Waugh, and feared that the total value of the glebe would "decrease" if rented out. The petitioners proposed that the parish sell its glebe and use the proceeds to maintain the church building and the minister until his death. This sale would be "directed" by Waugh, "and the County Court, Overseers of the Poor & special Trustees" chosen by the legislature After Waugh's death, per the terms of the 1802 Act, this money would revert to Caroline County. The legislature assented.[81]

Reverend Waugh died only two years later, which left the remaining funds from the sale of the glebe, more than $6,000 dollars in the hands of the Overseers of the Poor of Caroline County.[82] In 1808, the "Freeholders and House-keepers of St. Mary's Parish in Caroline County" sent another petition to Assembly to request permission to use the funds to found an academy.[83] In response to this proposal, the legislature incorporated the new institution as Rappahannock Academy and empowered its trustees to use the remaining glebe funds to open the school.[84] John Taylor of Caroline and four other local gentlemen were appointed by the legislature as trustees to oversee the project.[85] These men had all signed the 1804 and 1808 petitions from St. Mary's

[81] Inhabitants of St. Mary's Parish: Petition, Caroline County, December 8, 1804, LPDC, LVA.
[82] Nelson, *A Blessed Company,* 321; The Trustees' accounts list their total assets as £1455.1.10 46 in July of 1810, after the purchase of Rodham Kenner's land for over £400, as well as other expenditures. Rappahannock Academy, Record Book of the Trustees of Rappahannock Academy,1810-1822, 46, Accession 24654c, Organization records collection, LVA. The approximate value of £2,000 was $8,000, as the exchange rate between U.S. dollars and pounds sterling fluctuated around 4:1.
[83] Freeholders & Housekeepers of St. Mary's Parish: Petition, Caroline County, December 8, 1808.
[84] "An act to establish an academy in the County of Caroline," 64th sessions act, *A Collection of All Such Acts VA (l Assembly of Virginia*, Vo1. 2 (Richmond: 1808), 175.
[85] John Taylor used the identifier "of Caroline" to his name to distinguish himself from another delegate to the Assembly also named John Taylor.

Parish to the legislature, suggesting that they had been involved in the project for some time.[86] All of the trustees represented the political, social, and economic elite of Caroline county. [87]

Taylor was elected chief trustee at their first meeting. [88] A wealthy planter who had served in the Virginia Assembly and the US Senate, he was a natural choice for the appointment. Born in Caroline County, Taylor was raised in the household of his uncle, the former Chief Justice of the Virginia Supreme Court, Edmund Pendleton, whom we encountered in Chapter 5 as the original Chief Justice presiding over in *Turpin v. Lockett*.[89] Pendleton supported his nephew's education, and Taylor attended a private academy run by a parish minister in a nearby county before going on to the College of William and Mary.[90] Though he was slaveholder, Taylor expressed moral equivocation about slavery, calling it "an evil forced upon us against our will, by arbitrary power," an opinion which allowed him to sidestep his own complicity in the system. He soon overcome any qualms to embrace a paternalistic view that enslaved black Virginians were better off than free laborers in England or New England.[91]

Taylor's political philosophy has been called "liberal Republicanism" and "pastoral republicanism." [92] Taylor remained ideologically committed to a vision of the new American republic as a political community of educated, land-owning white men who exercised local control over their government. In this respect, he was a natural ally of Jefferson. Both men

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[86] Record Book of the Trustees of Rappahannock Academy,1810-1822, 2.
[87] "The Episcopal Church in Virginia, 1607-2007," 214. All of the original trustees signed the 1808 parish petition to the legislature. Freeholders & Housekeepers of St. Mary's Parish: Petition, December 8, 1808, Caroline County, LPDC, LVA; Inhabitants of St. Mary's Parish: Petition, Caroline County, December 11, 1810, LPDC, LVA.
[88] Record Book of the Trustees of Rappahannock Academy, 2.
[89] Edmund Pendleton, "The history of col. John Taylor," ca. 1794 in John Taylor of Caroline Papers, 1778-1794, Accession #2521, Small Special Collections, University of Virginia Library, Charlottesville, Va.
[90] Robert E. Shalhope, *John Taylor of Caroline* (Columbia, SC: The University of South Carolina Press, 1980), 14-20.
[91] *Letters of Prominent Men Reprinted in Newspapers, 1794-1877*, Microform, Accession #3402, 3, Small Special Collections, University of Virginia, Charlottesville, Va.
[92] Garrett Ward Sheldon and C. William Hill, Jr., *The Liberal Republicanism of John Taylor of Caroline* (Madison, WI: Fairleigh Dickinson University Press, 2008); Shalhope, *John Taylor of Caroline: Pastoral Republican*, 3-12, 152-180.

expressed fears of corporations and unbridled capitalism and articulated a desire for a political system built on virtue. Their vision of "the public" excluded women, African Americans, Native Americans, and the laboring poor. Using a pseudonym, Taylor published numerous political tracts that sharply criticized Federalist policies in the 1790s and the growth of federal power under Republicans in the first decades of the nineteenth century. His writings, which would later be picked up by Southern secessionists, expressed his view that the expanding federal government had undermined the future of the United States as an agrarian republic built on states' rights and lamented that "hierarchy" and "patronage" reigned supreme in Washington.[93]

Taylor also firmly opposed religious establishment. Though he was an Episcopalian, he strongly supported disestablishment in the 1780s and extolled its benefits in a letter from 1805, "our religious sects mingle and worship in harmony, and the State abounds with Christian ministers whose religion is not banished by intermeddling with Civil Government."[94] For Taylor, religious freedom purified spiritual practice by removing it from the corrupting influence of politics. In his published works, Taylor used established religion as an example of dangerous government overreach. For example, in an 1812 tract attacking the proposed national bank, Taylor argued that such a federal institution would "impoverish and swallow up all others," just as the established church had threatened dissenters.[95] Taylor's use of this metaphor almost three decades after disestablishment not only revealed his own hostility to establishment but underscored how potent the popular memory of Anglican oppression remained in Virginia.

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[93] See, Richard R. Beeman, *The Old Dominion and the New Nation, 1788 - 1801* (Lexington, KY: The University of Kentucky Press, 1972), 200-202; Andrew C. Lenner, "John Taylor and the Origins of American Federalism," *Journal of the Early Republic* 17 (1997), 399-423; Garrett Ward Sheldon and C. William Hill, Jr., *The Liberal Republicanism of John Taylor of Caroline* (Madison, WI: Fairleigh Dickinson University Press, 2008);
[94] *Letters of Prominent Men*, 3.
[95] Shalhope, *John Taylor of Caroline: Pastoral Republican*, 77.

Taylor believed that educational institutions, not established religion, could best mold public morality. He viewed education as essential to welfare of the new republic, and he remained a dedicated supporter of Rappahannock Academy as a vehicle for public improvement. He had considered sending his son to Yale and his correspondence with the President of the College, Timothy Dwight, about this prospect reveals the importance of education to Taylor. Dwight discouraged the elder Taylor from sending his boy to Yale writing, "The people of this state hold the Christian Religion in high estimation; the Virginia youths who have resided here… despised it entirely. The people of this State are universally industrious; these youths considered industry as the business of slaves and wretches only."[96]

Taylor's reply went beyond expressing offense at Dwight's regional biases and claimed that such bigotry endangered the future of the young county. Taylor argued that schools could help unify the new nation by "bringing the moral quality of the States nearer together, by an exchange of youths for the purpose of education." He implored, "Consider, sir, the consequences of academical institutions, which teach local prejudices, State enmities, and individual hatred. What will become of the Union and national happiness, if errors calculated to arm State against State, with the most deadly moral weapons, are inculcated by zeal, rendered doubly dangerous by credulity." Taylor's military metaphors of schools arming their students with the weaponry of knowledge and morals underscored the power he afforded to education. These institutions could fashion the nation's public life and political outlook both for good or for ill. Students were future citizens, and schools could either promote "the freedom and happiness of our country," or "corrode" those ambitions. Colonial Virginians like Pendleton had believed that public morality underwrote the political and social order and saw the established Anglican Church as the proper

[96] *Letters of Prominent Men*, 2.

public institution to inculcate these morals. Taylor still viewed morality as essential to the public good and to the political success of the American republic but argued that schools – not churches – would best shape these values.[97]

Taken together, Taylor's opinions evidence the deep contradictions running through republicanism. Though he condemned slavery as evil, he owned numerous enslaved people and defended the institution. He spoke in a universalizing political and social language, but his conception of who counted as part of the American public excluded women, property-less men, and all people of color.[98] Despite his attacks on hierarchy, his own success had depended on traditional forms of deference and social prestige. Historians of the early republic have long highlighted that the expansion of political and social rights for white men depended on the stricter exclusion of white women and African Americans.[99] Taylor's role in founding Rappahannock Academy reflects these well-known tensions. The school would serve young white men, the future citizenry, of Caroline County. This new vision, purportedly framed in terms of the revolutionary promises of equality, effaced the older notion of the parochial public. Moreover, Taylor's attacks on religious establishment were at odds with the story of the school's founding. In fact, a closer look at Rappahannock Academy highlights how Episcopal institutions

[97] *Letters of Prominent Men*, 3-4.
[98] Shalhope, *John Taylor of Caroline: Pastoral Republican*, 39.
[99] My discussion on race and republicanism draws on a rich body of scholarship. See John Salliant, *Black Puritan, Black Republican: The Life and Thought of Lemuel Haynes, 1753-1833* (New York: Oxford University Press, 2002), 47-82; Gary Nash, *Race and Revolution* (Oxford, UK: Rowman & Littlefield, 1990), 26-28; 75-81; Joanne Pope Melish, *Disowning Slavery: Gradual Emancipation and "Race" in New England 1780–1860* (Ithaca: Cornell University Press, 1998), 1-5, 50-79. Linda K. Kerber, "Making Republicanism Useful," *The Yale Law Journal*, 97 (1988): 1663-1672. Harry Watson's synthetic essay on republicanism provides a thoughtful overview of how racial exclusion functioned as a key logic of antebellum republicanism. See Harry Watson, *Liberty and Power* (New York: Hill and Wang, 2005), 2nd ed., 42-72. Another useful source is a collection of essays first published in the Journal of the Early Republic in 1999 and republished in Michael A. Morrison and James Brewer Stewart, eds., *Race and the Early Republic: Racial Consciousness and Nation-Building in the Early Republic* (Lanham, MD: Rowman & Littlefield Publishers, 2001).

still benefitted from their connections to state government and the elite status of supporters like Taylor.

With the 1808 Act, the Assembly had approved the parish's request to use the proceeds from the sale of the glebe to establish an academy in the county. The trustees met formally for the first time on January 2, 1810 and resolved to buy a site for the school using the "principal and interest" from the sale of the glebe, some $6,020.[100] At the same meeting, the trustees agreed on a proposal that Mount Church, which still belonged to St. Mary's Parish, be sold and used for the school. The building had apparently become completely dilapidated, but the parish had no money to repair it. Converting the parish church into a public school would require another petition from St. Mary's to the legislature. The academy's trustees first had to convince the community of their plan. They drafted and agreed to publish an announcement of their proposal to sell Mount Church and its glebe lands in order to establish the academy. At the end of the same meeting, they also discussed the need to find a purchaser for the church's valuable organ, which signaled their high level of confidence that the parish and the legislature would agree to the plan.[101]

The trustees addressed an appeal to "the people of St. Mary's parish," which aimed to convince the parish to petition the legislature and, second, to persuade landholders who owned property adjacent to the church to sell land to the institution. The trustees wrote that they "consider[ed] themselves as your agents, and [were] desirous of promoting your benefit." Under their proposal, the church "edifice may be saved from ruin and publick worship may be more effectually preserved" by founding the academy. Emphasizing that this plan would "save" the

[100] The value is listed as £1,400, which amounted to $6,020 in 1810 using the exchange rate of £1: $4.30. For data about the annual exchange rates between British pounds and US dollars, see Lawrence H. Officer, "Dollar-Pound Exchange Rate From 1791," MeasuringWorth, 2020, http://www.measuringworth.com/exchangepound/.
[101] Record Book of the Trustees of Rappahannock Academy,1, 3.

building and "preserve" Episcopal worship, the trustees used language that highlighted the precarious situation of Mount Church and offered a solution in the form of the glebe fund. The trustees employed the phrase "publick worship" to refer to Episcopal services, phrase that harkened back to establishmentarian laws and evoked the parish church's traditional role as a site of communal life. [102]

The trustees also carefully worded their announcement to exert pressure on local landholders to sell real estate to the school. The petition emphasized that for those "guided by pecuniary motives," compensation for their lands would make the proposal worthwhile. The address asked landholders only to sell "a small spot of land" to the institution, perhaps "20 acres." The trustees implied that the value of the lands adjacent to the school would rise because of their "neighbourhood to the academy." They aimed to sway hesitant landowners that even by selling a small amount of property to the school, the remainder of their lands would rise in value. Moreover, the academy was willing to pay above market value for the land to take into account its future value.[103]

Finally, the proposal ended with a subtle threat that the trustees could simply move the school to another location in the county if their proposal encountered any "obstacle." The trustees announced that they were, "taking the best measures they can devise for providing land elsewhere for the object." The petition pressured parishioners and landholders to rally around the plan quickly; otherwise, the trustees would pursue another site. This was no empty threat. The trustees' notes make clear that they had agreed to scout out alternatives in case the acquisition of Mount Church proved impossible.[104] The trustees directed that nine copies of their address

[102] Record Book of the Trustees of Rappahannock Academy, 2.
[103] Record Book of the Trustees of Rappahannock Academy, 2-3.
[104] Ibid.

should be "published at convenient publick places in the said parish," echoing the longstanding required practice of posting legal announcements and petitions in parishes.[105]

The trustees' public appeal proved successful and in December of 1810, the "Inhabitants of St. Mary's Parish" sent a petition to the legislature requesting that their 1808 act be amended to explicitly permit the sale of Mount Church for its conversion into the school. The petitioners went to great lengths to argue that repairing the church would not violate the Glebe Act's prohibition on using glebe funds for religious purposes. They admitted that this plan would save their church from complete "destruction." The parish had neither the financial means nor the legal standing to repair the "dilapidation" on its own. St. Mary's parishioners would continue worshiping on Sundays in the building once it became a school.[106]

However, they defended their decisions by arguing for its practicality above all else. The church was large in size and made of "durable… brick." The proceeds from selling the glebe alone would not cover the cost of a new building even "one third of the size" of the church whereas repairing the church would amount to "little cost" in comparison. Having a larger building would allow the school to enroll more students, which would in turn lower the tuition to a "moderate rate." In fact, they suggested that their willingness to renovate the old church underscored the extent to which they were not treating it as a sanctified space. It would be idolatrous to imbue mere "bricks and mortar" with divinity; the deity "takes no interest in the materials of which [churches] are composed." Instead, the petitioners argued that activity dictated sanctity. The space was made holy when congregants gathered for worship and prayer. There was nothing inherently sacred about the space or site itself. This view dismissed the

[105] Record Book of the Trustees of Rappahannock Academy, 3, 46.
[106]Record Book of the Trustees of Rappahannock Academy, 3; Inhabitants of St. Mary's Parish: Petition, Caroline County, December 11, 1810, LPDC, LVA.

material elements of faith and signaled a sharp a departure from traditional Anglican attitudes towards worship. To the school's trustees, professors, and pupils, the school would be just a school. Using the existing resources of the parish for this new purpose was thus "in the service of knowledge, virtue, and religion," in that order.

In spite of Taylor's dislike of religious establishment, he and the other trustees did not hesitate to highlight the benefits of their plan to both church and state in order to win support for their school. They appealed to the community in part by offering to save and restore the church. However, their petitions to the legislature distanced the school from any religious purpose and argued the old building was simply the most convenient and affordable site available. [107] Staking out these positions carefully, the trustees maneuvered their way through the thorny process of securing the glebe fund and the old sanctuary for their school.

Considering the acts of assembly, trustees' records, and parochial petitions together, it is clear that church and state did not operate as independent institutions, even decades after disestablishment. The terms of the Glebe Act may have formally prohibited the use of glebe funds for religious purposes, but local petitions like Caroline's found a way of benefiting religion and government in symbiotic relationship. Rappahannock Academy's trustees were appointed by the state government to set up a school using county resources. Locally, they expressed their role as sympathetic representatives who would protect the parish. The trustees expressed no concerns over their roles as both public administrators and parochial agents. They seemingly worked on behalf of the local community in a civic and religious capacity.[108]

The signatures on the parish's two legislative petitions about the academy offer a useful insight into the parish's operation in practical terms. The 1808 petition from St. Mary's Parish

[107] Inhabitants of St. Mary's Parish: Petition*,* Caroline County, December 11, 1810, LPDC, LVA.
[108] Nelson, *A Blessed Company,* 13.

listed 105 signatures, while the 1810 petition listed 58 signatures.[109] Out of all of the signatures listed, only one person, BW Coleman, was explicitly identified as "a freeholder in the parish," which might suggest that the other signers identified as Episcopalian parishioners. There was a noticeable decrease in the number of signatures on the second petition. Perhaps it was less widely circulated because it only requested an amendment of an existing act rather than a new piece of legislation. Another possibility is that the signature-gathers became complacent about canvassing for support, already confident of securing passage for their plan the second time around. It is also conceivable that while there had been widespread support for establishing an academy with the resources from the sale of the parish glebe, fewer people supported the trustees' plan to use Mount Church as the site for the academy.

The parish as a petitioning body clearly included women. Fourteen signers on the first petition and five signers on the second petition were women. Though outnumbered by male signatories, these women demonstrated their belonging within the parochial public and exercised power over its fate. Their support for the school was also reflected in the phrasing of the petitions, which spoke of not just of students who would attend the school but of the families would send them there.[110] The conversion of Mount Church into a public school relied on the support of the parochial public, which included both women and men. Its backers anticipated that the academy would benefit the well-being community at large by educating a select few.

The legislature would not convene again until December of 1810, so the trustees waited for several months to learn the outcome of their efforts. However, their activity throughout the year suggests that they were confident that they would win legislative approval for the plan. For

[109]Freeholders & Housekeepers of St. Mary's Parish: Petition, Caroline County, December 8, 1808, LPDC, LVA; Inhabitants of St. Mary's Parish: Petition, Caroline County, December 11, 1810, LPDC, LVA.
[110] Inhabitants of St. Mary's Parish: Petition, Caroline County, December 11, 1810, LPDC, LVA.

their proposal to succeed, they also had to purchase enough land near the school's intended site. To secure lands for the school, the trustees used their personal wealth and social clout to arrange deals with local landholders. In April of 1810, the trustees agreed to purchase "three hundred and fourteen acres of land" from Rodham Kenner. The trustees "had no money," so John Taylor agreed to "advance them 500 pounds" and "discount a debt due to him by the said Kenner of about $70." Taylor used his personal wealth to help the academy until it could secure the glebe funds. As a part of this deal, Taylor forgave Kenner's past debt, which may have enticed Kenner to agree to sell his lands in the first place. Taylor's wealth and local influence allowed him to forward the project. Taylor was later paid back the amount of his loan with interest.[111] The school held 400 acres by 1813.[112]

The acquisition of this much land also underscored that Rappahannock Academy would either lease its lands for additional income or directly cultivate the lands for its own support. References to "the servants" throughout the records – a phrase often used in Virginian sources to refer to enslaved persons – strongly indicates the latter possibility and suggests that the school owned or hired enslaved people who labored on its grounds.[113] The "public" welfare endowed by the glebe funds remained a white, free public supported by the enslavement of black men and women.

On January 4, 1811, the Assembly amended their original "Act to establish an academy in the County of Caroline" to approve the sale of Mount Church per the request of the second petition. Interestingly, the trustees' records from the next meeting do not even mention winning approval, suggesting that they had long expected this outcome. The trustees hired a local man,

[111] Record Book of the Trustees of Rappahannock Academy, 7.
[112] Trustees of the Rappahannock Academy: Petition, Caroline County, December 16, 1813, LPDC, LVA.
[113] Record Book of the Trustees of Rappahannock Academy, 17.

Ambrose Jones, to repair the church and the schoolmaster's house, as well as to construct a "kitchen shed." Moreover, they sold the church's organ, reputedly one of the finest in colonial America, for over £200 and used the proceeds to purchase books for the Academy's library.[114] Later that year, they began advertising the plan of the academy to the public in an apparent effort to attract students and faculty.

Legal uncertainty and financial difficulty accompanied this period of expansion. The process of building new facilities and repairing the older buildings apparently cost more than initially estimated. John Taylor and another trustee, Charles Taliaferro, loaned the institution enough money to complete its buildings. As the trustees oversaw the protracted completion of the academy's facilities, they petitioned the legislature one final time to solidify their exclusive legal control over their academy.[115]

Rappahannock Academy was not a public school in the modern understanding of the term. Virginia would not establish a statewide system of public schools that were free to attend and financially supported by the state until 1845.[116] Still, the academy was a public institution, created with a glebe fund at the behest of the voters and incorporated by the legislature. The school's trustees promised to open an accessible school where fees would be low enough that "no family need despair of being" turned away.[117] The trustees hoped to maintain this reasonable tuition rate by enrolling a large student body. In pitching accessibility and affordability, the trustees emphasized the public nature of the county-funded school. Their proposals linked the

[114] Record Book of the Trustees of Rappahannock Academy, 8; George Carrington Mason, "The Colonial Churches of Spotsylvania and Caroline Counties," *The Virginia Magazine of History and Biography* 58 (1950): 459.
[115] Trustees of the Rappahannock Academy: Petition, Caroline County December 16, 1813, LPDC, LVA.
[116] Richard Beeman, *The Old Dominion and the New Nation, 1788-1801* (Lexington: University of Kentucky Press, 1972), 241-2.
[117] Inhabitants of St. Mary's Parish: Petition, Caroline County, December 11, 1810, LPDC, LVA.

ideal of widely available education to the larger project of building a "fair and free government" in the new republic.[118]

However, the academy only served students who were white, male, and could afford to pay, reflecting an exclusive vision of the "public." For a year of lessons in writing, arithmetic and literature, pupils paid $21 plus extra fees for boarding and supplies. This tuition was high enough to have excluded the sons of skilled laborers and agricultural laborers, whose annual income was likely around $10/month.[119] Though founded on principles of educational accessibility, the school's policies exhibited a more limited notion of whom public institutions ought to serve.

In January of 1813, Rappahannock Academy opened. John Taylor served as the first President of the academy and oversaw the project of collecting books for the school's library. Strict rules about borrowing books from the library were established, and the trustees also banned students from drinking "ardent spirits." Later that year, the trustees decided to sell the church's communion "plate and velvet… together with the gold lace." They used these proceeds to purchase more books for the library, further transforming this former house of worship into a school for boys.[120] Though Episcopalians were allowed to continue worshiping in the space, Mount Church had lost many of the material objects central to Anglican worship. The spatial transformation of the building underscored its institutional conversion. The school was housed in the same space as the sanctuary, but the building had undergone a material transformation that illustrated its new purpose.

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[118] Inhabitants of St. Mary's Parish: Petition*,* Caroline County, December 11, 1810, LPDC, LVA.
[119] In Maryland and western Virginia, the income of agricultural laborers hovered around $10 between 1800-120. See Donald R. Adams, Jr., "Prices and Wages in Maryland, 1750-1850," *The Journal of Economic History* 46 (1986): 625-645; Adams, "Prices and Wages in Antebellum America: The West Virginia Experience," *The Journal of Economic History* 52 (1992): 206-216.
[120] Record Book of the Trustees of Rappahannock Academy, 19.

Backlash

Taylor and the other trustees' plans for a classical academy were met with objections from at least some of the residents of Caroline. There were three other parishes in the county – St. Margaret's, Drysdale, and St. Asaph's. Rappahannock's trustees and the parishioners of St. Mary's had been eager for all of Caroline's parishes to sign onto the plan and pool their glebe funds collectively to support the new academy.[121] Instead, the other parishes rejected the proposal and spent their glebe proceeds in other ways.

The residents in St. Margaret's Parish petitioned the legislature to use their glebe fund to establish a school in 1813 but they had a very different kind of institution in mind. Rather than endowing a classical, fee-paying academy like neighboring St. Mary's, St Margaret's sought to open a school "a free school or Academy in the said Parish on the Lancastrean plan."[122] Introduced in English poorhouses in the 1790s, the Lancasterian method of teaching promised a means of affordably educating numerous students at once.[123] This model reached the U.S. in the first decade of the nineteenth century and became popular in almshouses and free schools. The free school was an expensive proposition, and the parish requested permission from the state to hold a lottery to augment their glebe fund. While St. Mary's and St. Margaret's both used the glebe funds for education, the two proposals were worlds apart. No records survive from the project, and it seems unlikely the school lasted more a than few years, if it ever opened at all. By 1821, the residents of St. Margaret's petitioned to sell off two of the parish's decrepit churches.

[121] Inhabitants of St. Mary's Parish: Petition, Caroline County, December 11, 1810, LPDC, LVA.
[122] Inhabitants of St. Margaret's Parish: Petition, Caroline County, December 17, 1813, LPDC, LVA.
[123] Dell Upton, "Lancasterian Schools, Republican Citizenship, and the Spatial Imagination in Early Nineteenth-Century America," Journal of the Society of Architectural Historians, 55 (1996), 238-253.

But, this time, they asked for the Overseers of the Poor to use the proceeds for poor relief, which suggest the free school was no longer in operation.[124]



Figure 7.4: A Lancaster School opened in 1811 in Washington, DC. Two years later, the residents of St. Margaret's Parish, who lived 100 miles south of the nation's capital, proposed a similar free school. The Latin inscription over the entryway reads "Amor Signatur in Hac Domo," or "Love Lives in This House."

Caroline's other parishes, however, declined to support either educational project. In the absence of a specific appropriation, their glebe funds went to the Caroline County Overseers of the Poor and apparently covered the cost of poor relief over four years. The Overseers spent

[124] Freeholders & Housekeepers of St. Margaret's Parish: Petition, Caroline County, December 17, 1821, LPDC, LVA.

$16,857 between 1814-1817 to support between 140 and 245 people annually.[125] Caroline's taxpayers, meanwhile, avoided paying a poor levy during these four years. Immediate tax abatement clearly proved more attractive to many of Caroline's residents than investing in an academy or a free school. Caroline's residents were not alone in expressing disagreement over how to spend the proceeds from the sale of glebes. Across Virginia, communities hotly debated how to use these resources, and their differences revealed divergent priorities about what would benefit the public most.

In Augusta County, a local scandal erupted over how to spend the glebe fund. Augusta County had been majority Presbyterian well before the Revolution. Given the long-standing antipathy towards the established church in the western county, it came as no surprise that the county immediately sold the glebe lands after the passage of the Glebe Act in July of 1802. Apparently, the Overseers of Augusta did not even heed the injunction issued in *Turpin v. Lockett* and went ahead with selling the glebe lands before the Virginia Supreme Court reached a decision in 1804. [126] Controversy mounted over how to spend the funds from the sale of the glebe in the following decade.

A boys' school, Staunton Academy, had been incorporated in the county seat of Staunton in 1793, and the school's trustees lobbied to receive the funds from the sale of the glebe. Tensions reached a breaking point in 1812 when the President of the Overseers of the Poor, William Patrick, issued a public statement in response to claims that the Overseers had mishandled the glebe funds and used them for personal profit. Patrick's broadside denied that the Overseers had been privately "speculating" with the money. Instead, Patrick asserted that the

[125] Caroline County, Report: 1829, Box 2, Folder 7, OP Annual Reports, APA, LVA.
[126] William Patrick, "To the Citizens of Augusta County: the Undersigned Feels It a Duty ... as Overseers of the Poor... to Expose the Falsity of Some Reports ... Respecting the Money Arising from the Sale of the Glebe Lands," (Staunton, VA: Printed by L. Collett, at the Rep. Farmer Office, 1812), Broadsides Collections, LVA.

Glebe Lands had sold for £800, which "was loaned out, chiefly to three Gentlemen, at legal interest," and now amounted to £1200. Patrick suggested that boosters of Staunton Academy had circulated rumors of mismanagement to malign the Overseers and win greater support for their plan to divert the funds to the school.

After defending himself and his fellow Overseers against allegations of impropriety, Patrick weighed in on the issue of how the glebe funds ought to be spent, writing, "Some Gentlemen in and about Staunton, are of the opinion that… the money aforesaid would best be made to the use and benefit of the Staunton Academy. The Overseers and many other Citizens believe and contend, that an appropriation to the use and benefit of the Poor of the County and Corporation would be more equitable and beneficial[sic]."[127] The disagreements in Augusta revealed conflicting visions over how best to serve the common good – or rather, who constituted the "common" in the common good. Patrick suggested that donating the money to the academy would only benefit those who could to send their children to the school, which highlighted both rural-urban and class divisions over the proposal.

Patrick argued that it would be more "equitable" to appropriate the £1200 for poor relief, which amounted to nearly four times the Overseer's annual budget in 1815. Patrick's invocation of "equity" begs further examination. He might have suggested that giving the money to poor relief was equitable because the parish had traditionally overseen poor relief, and before 1802, the rent of the glebe lands had provided the Overseers with additional income each year.[128] Or, perhaps, he meant that Augusta's poorest citizens were those who most needed financial help, and therefore it ought to benefit them. Another reading of Patrick's words might suggest that using the money to poor relief would lower the annual tax used to fund poor relief, therefore

[127] Patrick, "To the Citizens of Augusta," LVA.
[128] Augusta County, Report:1829, Box 20, Folder 8, OP Annual Reports, APA, LVA.

distributing the benefits to the greatest number of citizens. Whatever Patrick's rationale, the community struck a compromise over the glebe fund. The Overseers of the Poor received used most of the money, which they continued to manage as a profitable investment. They used some of the funds to purchase land and construct a poor house in 1819. In their report to the legislature, the Overseers were eager to highlight that the tithe per person had fallen sharply after the construction of the poor house, from 65 cents on average to 30 cents. Among the records of the Overseers of the Poor, there was also a payment of $123.47 1/4 to Staunton Academy in 1815 "arising from the sale of Glebe Land."[129] Nearly forty years later, another large payout from Augusta's glebe fund, some $3,500, was invested in the school.[130]

Rappahannock Academy and Staunton Academy catered to white families who could afford the cost of tuition. These projects were not envisioned as free schools, which were charitable institutions for poor children. If academies represented a new, republican ambition, they also faced resistance from those who felt their benefits were confined to too few members of the community. In King George County, the Overseers sought to enroll rich and poor children alike in free schools, which would combat the rise of an aristocracy and diffuse knowledge upon all future citizens.[131] The Powhatan County Overseers of the Poor called on the state to create a relief system that combined poorhouses and free schools into central institutions across several counties. They declared that by centralizing these welfare services, "the poor would be better supported, educated, etc. & upon one fourth of the present expense."[132] These communities agreed that public institutions were important but pointedly argued that many local communities

[129] Ibid.
[130] Trustees of the Staunton Academy: Petition, Augusta County, December 10, 1853, LPDC, LVA.
[131] Inhabitants of St. Paul's Parish: Petition, King George County, December 15, 1811, LPDC, LVA.
[132] Powhatan County, Report: 1829, Box 10, Folder 6, OP Annual Report, 1829, APA, LVA.

could not afford to provide educational and other welfare services without greater support from the state.

While many glebe funds were initially devoted to supporting free schools, these projects were expensive. Once glebe funds were exhausted, many communities preferred to forego or close welfare institutions rather than raising taxes for their support. Such was the case with St. Margaret's Lancastrian school, which seemingly never got off the ground after the glebe fund proved insufficient for supporting the cost of the school. The Gloucester Charity School represented another abandoned glebe project. The Overseers of the Poor of Gloucester set out to open a free school and workhouse. An Act of Assembly incorporated the Gloucester Charity School in 1813 and gave the trustees control over the proceeds from the sale of three glebes and numerous enslaved persons, which amounted to $12,801.93. However, the school closed after only a couple of years. The Overseers grumbled that the cost of running a free school had been "very heavy" while the "fruits have been of very little value." The cost of supporting the institution had not been worth its value to the community from their view. They closed the school and poor house and "dispersed the poor" to private homes.[133]

The corporation continued to operate, though. The former school held a significant amount of property and acted as a profitable landlord and lending institution throughout the nineteenth century. Under the name of the Gloucester Charity School, the trustees pocket sums annually for their supervision of the fund.[134] An investigative report by a local newspaper seventy years later accused the corporation of corruption, asking "Where are the schoolhouses?

[133] Gloucester County, Report: 1829, Box 5, Folder 1, OP Annual Report, 1829, APA, LVA.
[134] The accounts of the corporation reveal it was profitable landholder and lender. There are no clear references to charitable projects. "Charity School Record of Debts Due the Trustees & Disbursements, 1826-1856," Gloucester County (Va.) Charity School Records, 1826-1922 (bulk 1826-1884), Gloucester County (Va.) Reel 80, Local government records collection, Gloucester County Court Records. LVA.

yes, where even is their poor house"?[135] Instead, the writer described the trustees of the Gloucester Charity School as a "bourbon ring," in reference to the notorious embezzlers in President Grant's administration who abused their offices for personal profit. These men diverted funds away from the "sacred purpose" of education and from the "helpless children" and "plundered paupers" to "benefit a favored few."[136] The scathing piece highlighted the popular memory of betrayal in Gloucester where residents felt the glebe funds had never benefitted the public at large. Contrasting the greed of a few with the plight of needy children was a rhetorical flourish to be sure, but it also effectively underscored the sense of communal betrayal.

Gloucester and Augusta were not alone in facing popular backlash concerning the way in which the Overseers of the Poor had spent the glebe funds. At least six other glebe-endowed schools were abandoned upon complaint from the community. [137] Academies funded by glebes encountered criticism for their exclusivity, while county free schools were targeted as too ineffective for their cost. In King George County, the inhabitants had quickly moved to use the funds from the sale of St. Paul Parish glebe to establish a free school in 1811. The residents received permission to convert the parish church into a schoolhouse and use the glebe fund to support the school. By turning the resources of their former parish to the project of public education, the community hoped to combat the entrenchment of a class system that threatened republican principles.

Only a few years later, the community struggled to fund the school. In 1815, they sent another petition to the legislature advocating for the state to provide more funding for free

[135]January 28, 1882, *The Liberal (*Gloucester, VA).
[136] Ibid.
[137] Schools in Essex, King George, Nansemond, and Prince George, which had originally received glebe funds, were closed after inhabitants petitioned the legislature. See Residents: Petition, Prince George County, December 2, 1806; Overseers of the Poor in the Lower Parish: Petition, Nansemond County, December 11, 1829; Inhabitants: Petition, King George County, January 2, 1829; Citizens: Polls, Essex County, December 12, 1842, LPDC, LVA.

schools. The King George petitioners asked the legislature for "the adoption of some system which will ensure the instruction of the ignorant…to educate the masses of the people, elevate their minds to a just appreciation of their rights, enable them to govern themselves and be worthy to be trusted with the government of others."[138] Without adequate support for public schooling, the community feared that their school was in danger, and by extension, the future of the republic at risk.

However, by 1829, the free school was deemed an irreparable failure. Residents in King George petitioned the legislature to dissolve the free school's charter. They reported that "the school fund has become almost entirely exhausted — the school has been for a long period discontinued and all hope of its survival is now utterly relinquished – the building is fast falling into decay and will soon become an unsightly heap of ruins."[139] Unable to support itself or secure greater funding from the state, the school had not survived long. The county's residents were divided about what should happened to the ruined property. One group of petitioners hoped to convert the school edifice back into a church and return it to the parish; others hoped that it would be sold, and the funds handed over to the Overseers of the Poor.[140] In either case, the project of free, public education had failed in King George.

The confiscation of the glebes had been championed on the grounds that common property ought to provide common benefit. Likewise, the founders of schools argued for the importance of educating citizens for the good of the whole republic. But, despite this universalizing language, the expense of these undertakings quickly higher than Virginians would tolerate. Thus, while 40% of glebe funds were earmarked for education, this number tells us only

[138] Citizens: Petition, King George County, December 11, 1815, LPDC, LVA.
[139] Inhabitants: Petition, King George County, December 9, 1829, LPDC, LVA.
[140] Inhabitants: Petition, King George County, January 2, 1829, LPDC, LVA; Inhabitants: Petition, King George County, December 9, 1829, LPDC, LVA.

part of the story about the success and longevity of these institutions. Many of the glebe schools that survived charged their pupils fees for enrollment. Free schools were more of a drain on local public resources than academies or universities because they sought to fund education without charging tuition. When glebe funds proved too meager to support county institutions, these projects were often abandoned. Communities chose to stop investing in public institutions when the cost of these projects shifted to taxpayers. While the parochial glebe system had been built on a system of long-term investment in community institutions, republican Virginians largely turned away from this model in favor of lower taxes and fewer publicly funded institutions. Ultimately, these choices would leave the welfare of the public in the hands of private efforts and set the stage for the Second Great Awakening's many benevolent institutions.

The Public Good?

Whether communities chose tax abatement, poorhouses, free schools, or academies, Virginians translated republican principles into practical policy as they repurposed parish wealth. Glebe funds were most often used to lower the annual tax burden. This choice expressed the view that the control of private property preserved citizens' liberty. Communities opened many kinds of educational institutions using their glebe funds, but the schools that survived catered to middle-class and elite men. Free schools, on the other hand, often struggled to last more than a few years. Reformers had championed the confiscation of glebes in universalizing terms but only a portion of the community was served by the institutions they built. Enslaved men and women who had belonged to parishes were either sold or remained in bondage and continued to serve the welfare of the white community. The deserving "poor" who received public assistance remained

overwhelmingly white. The state tasked Overseers of the Poor with surveilling free black communities and monitoring their reliance on public support.

The diversity of local decisions about how to spend glebe funds reflected the transformation of communal life after disestablishment. Racism was a constant, as was resistance to taxes, but there was no longer a single hierarchical framework of religious orthodoxy and civic conformity to structure local life. The capacious terms of republicanism left room for a wide variety of community actions under its banner. Lowering taxes, cutting public spending, opening poorhouses, and funding schools all reflected different priorities within republican thinking. The sale of the glebes, if anything, exposed unresolved tensions over the best way to implement republican principles in service of the public good.

CONCLUSION

The Meaning of Establishment

The First Amendment declares, "Congress shall make no law respecting an establishment of religion." The framers of this amendment invoked "establishment" without defining it. Nearly all of the men who drafted this bill and eventually voted to ratify it had lived under an established church. Catholic Marylander, Daniel Carroll, had been unable to vote, worship publicly, or be married by a priest of his own faith before the Revolution because the Anglican establishment forbade it. James Madison, whose father was a vestryman and who received his schooling from the parish minister, grew up in the shadow of Virginia's established church and witnessed persecution of neighboring dissenters firsthand. Raised under the legally established Anglican Church, these two men partnered to prevent an "establishment of religion" from ever taking root in federal law. Religious establishment was not an abstraction for this generation but a system of entrenched favoritism that afforded legal rights, civic powers, and public property to the state-sponsored church. By proscribing, "an establishment of religion," they preserved a powerful memory of the established church in the Bill of Rights.

By the time the First Amendment was ratified in 1791, Maryland and Virginia had enacted radically different definitions of "establishment" in their state laws. A shared commitment to dismantling the Anglican Church did not necessarily lead Americans to embrace the same practical policies. At the outset of the Revolution, reformers in both states began overturning the powers of the Anglican Church one by one. Virginia and Maryland both rejected any form of religious assessment. Marylanders fought to secure incorporation for all Christian churches, whereas Virginians disparaged any religious incorporation as a form of legislative overreach. Virginia confiscated and sold parish property, including glebes, churches, enslaved

people, and silver. The legislature prohibited counties from using the proceeds to support "any religious purpose whatsoever." Maryland, like most states during this period, never went as far as seizing property. These distinct policies reflected ideological fissures about what constituted an "establishment."

More than two hundred and forty years after the Revolution, Americans are still questioning the boundaries of "an establishment." In recent legal cases debating the use of public vouchers for religious schools or the construction of church playgrounds, American citizens and the Courts are grappling with the same material questions as generations of Americans before them and debating what defines an "establishment of religion."[1] Scholars of early America can contribute to a better understanding of "establishment" by revising their approach to church and state in several key ways, as I have sought to do in this dissertation.

First, we need to move away from "separation" as the central paradigm to assess the church-state relationship and consider the evolving meaning of "establishment." Eighteenth-century reformers articulated their promises of religious freedom by inverting the then-familiar concept of an "establishment." In direct attempts to prohibit establishment, as in the First Amendment, as well as in calls for "establishing religious freedom," the framework of establishment itself served as a blueprint for religious freedom in the new republic. Whatever establishment was, establishing religious freedom required dismantling it. Their use of the phrase "establishment" harkened back to the Henrician Reformation and drew on the deep resonance of "establishment" in centuries of Anglo-American law. Republican reformers in the Chesapeake

[1] Two recent establishment clause cases concern the permissibility of using state funds for religious institutions. See *Espinoza v. Department of Revenue*, 393 Mont. 446 (2018); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. ___ (2017).

aimed to establish religious freedom in law, just as the Crown had established Anglican orthodoxy.

Second, the scope of the story needs to be expanded in several dimensions: thematically, chronically, and geographically. First, religion should not be siloed from law and government in narratives of the colonial Chesapeake; doing so misrepresents the power of the establishment as an arm of the state. Moreover, scholarship on colonial Anglicanism and accounts of revolutionary disestablishment have much to say to one another; we can find greater nuance by applying the insights of both fields to the entire sweep of time. Material culture and localism, two of the defining themes in studies of colonial Anglicanism, are missing from most accounts of disestablishment. The literature on disestablishment carefully describes the protracted legal struggle to remove the church from its position of public authority, but most accounts of the established church say little about how or why the church exercised so much legal power. And we should seek to integrate our state-by-state narratives of disestablishment. Though states enacted different policies, we can only explain why they diverged through a comparative lens. The choices made in Maryland and Virginia reflected longstanding distinctions between the two colonies' establishmentarian laws and the discordant priorities of their non-Anglican communities. Scholars have written at length about the glebe controversy in Virginia, but we can only make sense of Virginia's divergent path by looking closely at why Marylanders dismissed property confiscation and focused on winning general incorporation. The comparison enriches both stories.

Third, we can no longer frame the fight over religious freedom primarily as an individual rights narrative. The movement for religious freedom remains one of the last bastions of whiggish history in early America. Celebratory accounts feature heroic founders and oppressed

religious minorities championing individual rights. Unlike most of early American history, this basic premise has not undergone serious scrutiny or revision. To be sure, Marylanders and Virginians secured fundamental rights during the Revolution by declaring that the state did not have the power to moderate, influence, or interfere in the relationship between God and man and carving out guarantees of personal liberties. Winning these protections was a momentous accomplishment and a radical break from the past.

But scholars should not stop there if we want to see how disestablishment remade American life. Disestablishment transformed communities. The Anglican faith had been stitched into the social, legal, and political fabric of the Chesapeake, and disestablishment tore up this customary arrangement. Social welfare, civic participation, and law enforcement changed as secular administrators replaced parishes. Virginia's counties sold off parish glebes, and Maryland's parishes also unloaded property to make ends meet. Parishes in both states lost the power to enforce morality as dictated by a state-sponsored church, and no clear public successor replaced the church's traditional duty to police morals. This departure from colonial custom cannot be captured in an individual rights narrative. A whiggish retelling of disestablishment also misses that the revolutionary reformation of church and state did not expand all individuals' rights equally. Maryland retained provisions that barred non-Christian citizens from full civic participation. Disestablishment also left black men and women in bondage to serve the white community's welfare. Indeed, a desire to win control of property, including enslaved people, animated bitter fights over parish property in Virginia and the push for incorporation in Maryland. Revolutionary debates over religious freedom were not a clear-cut vindication of individual liberty on every front.

Fourth, we must contextualize the debates over religious freedom within the broader framework of early national republicanism. Removing the church from its customary and statutory position of power raised troubling legal questions about common law, corporations, the absolute right to property, and the government's duty to oversee its citizens. As Americans debated how to enact republican values into law, they often turned to the bywords of liberty and property. Yet claims to liberty and property often contradicted one another. Disestablishment, like racial slavery, suffrage, debtor's relief, and corporate law, forced Americans to consider what liberty and property meant in practice. Even today, the contradictions embodied in liberty and property haunt American legal, social, and political life.

Finally, we need to foreground the material dimensions of religious freedom. Disputes over parish property reveal the extent to which disestablishmentarian policies rested on calculations about material gain. Colonial Anglicanism was fundamentally a material faith in which space and objects expressed divinity and authority. Religious establishment underpinned this materiality by granting legal, civic, and financial benefits to the Anglican church, while denying these advantages to all other faiths. Despite their pecuniary motives, revolutionary Americans framed their arguments over incorporation and parish property in abstracted, ideological terms. They dematerialized their narratives, and scholars have followed suit. But this tendency obscures the fundamental materiality to laws governing religious freedom. Churches exist in the real world; they hold property, hire and fire, and write contracts. By dematerializing our narratives of religious freedom, we also made them less useful for navigating contemporary disputes. Americans have received an ideological narrative of religious freedom written in the abstract language of rights, but religious freedom is not and has never been abstract. It is only by

including the material in our stories about religious freedom that we can truly understand church and state today.

APPENDIX A

Sample Parish Levies, 1761

Lynnhaven Parish Levy of 1761 (Princess Anne County, Virginia)

The Parish of Lynhnaven [is] Dr:	Neet Tobo:
To the Reverend Mr. Robert Dickson Minister Convenant[sic]	16000
To 4 per Ct: for Shrinkage on Ditto	640
To 4 per Ct. for Cask on Ditto	640
To Mr. Richard Collinson Clerk of the Brick Church	1200
To Charles Gasking Clerk [of] Eastern Shore Chappel	1200
To Mr. Cason Moore Clerk [of] upper Chappel	1200
To James Garton for Cleaning brick Church & making up the graves	240
To Capt. William Keeling for Cleaning Eastern shore Chappel	180
To William Dyer for Cleaning upper Chappie	120
To Mary Broughton Towards her Relief	195
To Tully Williamson for keeping Ruth Smith	600
To Ann Williamson Towards her Relief	200
To Alexander Keeling for keeping William Hatton son [of] Roger	375
To Andrew Small for keeping John Hatton son [of] Roger	375
To Sarah Edmonds Towards her Relief	300
To John Mearanorf?] for keeping Alexander Jamison	555
To Edward Caps for Keeping Milbur[n] Brions Child	200
To Thomas Easter for keeping Henry Holme's Child	180
to Elizabeth Olderson towards her reliefe	180
To Josiah Dough for keeping Elizabeth Brands 5 months	420
To William Fentriss for keeping ditto 1 month @ 15/	90
To Samuel Boush for keeping Francis Spratt	240
To Anthony McKeel per account 5/6	33
To Col. Anthony Walke per account 9:5:3.5	1112
To Willaims Mosely per account 11/	66
To Robert Huggins per account 2:6:9	280.5

To William Garton per account 13:8:6	1611
To Willaim Godfrey per account 1:0:0	120
To Josiah Morris SR. for keeping Eloner Burk 6 months	112.5
To William Fentriss of Blackwater for keeping Eloner Burk 6 months	112.5
TO Elizabeth Harvery widow of Francis Towards her Relief	300
To George Oldner, he being constable last year & not allow'd for it 8/ 1.5	48.75
To Doctor Lewis Prices for tending the Parishioners	2400
To the Estate of Major Thoams Walke	143
To Sarah Cason widow of James for keeping William Turton	480
To William Dyer for keeping Elizabeth Eaton	720
To Anthony Williamson for Making Cloaths for Joshua Pasley	18
To Cap. James Kempe for finding the Elements at Brick Church	240
To Capt. William Keeling for ditto at Eastern Shore Chapel	240
To Mr. John Bonney for Ditto at Upper Chappel	240
To Charles Gasking Clerk of vestry for recording processions and copying acts of assembly	860
To the Church wardens of the support of the parishioners of the ensuring years	10000
To Col. Nathaniel Newton per account	585
To 6 per cent on account on 45052.25	2703
	47755.25
By 1793 tithables at 24 per pole	47352.25
Fraction carryed to county levy	403
	47755.25

Source: George Carrington Mason, ed., *The Colonial Vestry Book of Lynnhaven Parish, Princess Anne County, Virginia, 1723-1786* (Newport News: VA, 1949), 67-68.

St. James Parish (Anne Arundel County, MD), Levy of 1761

Contra				
By our order to Caleb Conner	200	2	12	0
By do to George Taylor	750			
By Do to Benjamin Lane	750			
By DO to Sarah Hill		0	20	0
By Do to Stephen West	8000			
By inslvents	960			
By certs [to G Taylor]	1000			
BY 5 pr cent cumm.on on 10230	510	0	5	?
By balance due the vestry	33			?
Capt. Kinsey Johns, Sheriff Dr.				
To your old Ballance		1	03	00
To the ass[ess]m[ent] on 1219 taxables @ 10 pr poll	12190	6	5	0

Source: Edith Stansbury Dallam, ed., *St. James' Parish, old Herring Creeke Parish: A history, including copies of the original records of the Parish, Vestry minutes and register of births, baptisms, marriages, and burials* (Lothian, Md: Vestry and Library Committee, 1976), 385.

APPENDIX B

A Note on the Sources

Virginia 1802 Glebe Act left the confiscation process in the hands of local county administrators. Virginia's legislature did not comprehensively track the sales or usage of the glebes. However, it is possible to cobble together the story of what happened in almost every parish using a wide variety of records: local histories, deed books, newspaper ads, acts of legislation, court cases, institutional records, Overseers of the Poor accounts, and architectural studies. It can be difficult to differentiate between the date when the parish minister died, when the glebe property and its profits came into the hands of the Overseers of the Poor, or when any or all of the property was sold. For example, in Albemarle County, the rector of St. Anne's parish died in 1808, the glebe lands were sold in 1809, and an act of the legislature was passed to appropriate the funds for a school in 1811, but the proceeds were simply invested. In 1817, these funds were transferred to Central College, which later become the University of Virginia. In St. Anne's, the institutional records provide a clear trail for historians. However, in some counties, only one of these pieces of information might be available, and in a handful of counties, there are no clear records at all.

In the following table, I have listed the date of confiscation and the use of the property after disestablishment, as well as the source(s) of this information. This project is ongoing, and I would appreciate any additional information about Virginia's glebes after disestablishment.

Virginia's Parish Glebes: Their Date of Confiscation and Use after Disestablishment

Locality	Parish	Date	Use After Disestablishment	Source(s)
Accomack County	St. George	1804	Margaret Academy	Nora Miller Turman, *The Eastern Shore of Virginia, 1603-1964* (Onancock, Va., Eastern Shore News, 1964), 161.
Accomack County	Accomack	1805	Margaret Academy	Nora Miller Turman, *The Eastern Shore of Virginia, 1603-1964* (Onancock, Va., Eastern Shore News, 1964), 161.
Albemarle County	St. Anne's	1780	University of Virginia	Hening, 10:112-113; Inhabitants of St. Anne's Parish, Albemarle County, December 7, 1803, LPDC, LVA; Edgar Woods, Albemarle County in Virginia:(Charlottesville: 1901),127; *Acts VA* (1810-1811), Ch. 23, 29-30.
Albemarle County	Fredericksville	1809	University of Virginia	*Acts VA* (1810-1811), Ch. 23, 29-30.

Locality	Parish	Date	Use After Disestablishment	Source(s)
Amelia County	Raleigh	1805	Overseers of the Poor	Amelia County: Report, 1829, Box 1, Folder 7, Overseers of the Poor Annual Reports and Checklists, 1800-1909, Auditor of Public Accounts (1776-1928), Accession 739, State government records collection, LVA [Hereafter OP Annual Reports, APA, LVA].
Amherst County	Amherst	1778	County Court	Hening, 9:567-568; Virginia Department of Historic Resources, "The Glebe: Amherst County, VA," National Register of Historic Places Nomination Form (Washington, DC: U.S. Department of the Interior, National Park Service, 2008), Section 7.
Amherst County	Lexington	1778	County Court	Hening, 9:567-568.
Augusta County	Augusta	1802	Overseers of the Poor; Later Staunton Academy	William Patrick, "To the Citizens of Augusta County : the Undersigned Feels It a Duty ... as Overseers of the Poor ... to Expose the Falsity of Some Reports ... Respecting the Money Arising from the Sale of the Glebe Lands," (Staunton, VA: Printed by L. Collett, at the Rep. Farmer Office, 1812), Broadsides Collections, LVA.
Bedford County	Russell	1779	County Court	Hening, 10: 109-110.
Berkeley (Jefferson) County	Norborne	1807	Overseers of the Poor	*Acts VA* (1807-1808), Ch. 98, 81.
Botetourt County	Botetourt	1777	Liberty Hall, Botetourt Seminary, and Wythe Academy	*Acts VA* (1793-1794) Ch. 70. p. 47.
Brunswick County	Meherrin	1818	Poorhouse and Workhouse	*Acts VA* (1817-1818), Ch. 227, 222-223.
Brunswick County	St. Andrew's	1818	Poorhouse and Workhouse	*Acts VA* (1817-1818), Ch. 227 p. 222-223.
Buckingham County	Tillotson	1794	Overseers of the Poor	*Acts VA* (1794-5) Ch. 31, 19.
Caroline County	St. Mary's	1805	Rappahannock Academy	Inhabitants of St. Mary's Parish: Petition, 1804-12-08, Caroline County, LPDC, LVA; Acts VA (1804-1805), Ch. 32, 31; Rappahannock Academy, Record Book of the Trustees of Rappahannock Academy, 1810-1822, 2, Accession 24654c. Organization records collection, LVA.
Caroline County	St. Margaret's	1813	Free School or Academy	Inhabitants of St. Margaret's Parish: Petition, Caroline County, December 17, 1813, LPDC, LVA.
Caroline County	St. Asaph's	c. 1808	Overseers of the Poor	Caroline County, Report: 1829, Box 2, Folder 7, OP Annual Reports, APA LVA.
Caroline County and King and Queen County	Drysdale	c. 1808	Overseers of the Poor	Caroline County, Report: 1829, Box 2, Folder 7, OP Annual Reports, APA, LVA; Freeholders & Citizens: Petition, King and Queen County, December 13, 1808, LPDC, LVA.

Locality	Parish	Date	Use After Disestablishment	Source(s)
Charles City County	Westover	1807	Charles City Charity School (School and Poorhouse)	George Carrington Mason, *Colonial Churches of Tidewater Virginia* (Richmond: Whittet and Shepperson, 1945), 127; *Acts VA* (1809-1810), Ch. 87, p 76.
Charlotte County	Cornwall	1802	Overseers of the Poor	Charlotte County: Report, 1829, Box 3, Folder 2, OP Annual Reports, APA, LVA.
Chesterfield County	Manchester	1804	Overseers of the Poor	Turpin v. Locket, 6 Call 113 (1804).
Chesterfield County		1826	Overseers of the Poor	*The Intelligencer & Petersburg Commercial Advertiser* July 21, 1826, page 3, (available on Mircofilm 51, LVA).
Chesterfield and Powhatan Counties	King William	1813	Overseers of the Poor	Freeholders & Inhabitants of King William Parish: Petition, Powhatan County, November 2, 1814; *Acts VA*, Ch. 66, 131.
Culpeper County	St. Mark's	After 1834	Overseers of the Poor	Philip Slaughter, *A History of St. Mark's Parish, Culpeper County, Virginia* (Baltimore: Innes & Company, 1877), 60-61
Cumberland and Powhatan Counties	Littleton	1826	Overseers of the Poor	Powhatan County, Deed Book 9, 279.
Dinwiddie County	Bath	1803	Overseers of the Poor	Dinwiddie Land Book, 1803b, 7.
Elizabeth City County	Elizabeth City	1806	Overseers of the Poor; Hampton Academy	Jacob Hellelfinger, *Kecoughtan old and new, or, Three hundred years of Elizabeth City Parish* (Hampton, VA: 1910), 28.
Essex County	St. Anne's	1822	County glebe fund	Freeholders of St. Anne's Parish: Petition, Essex County, December 6, 1821, LPDC, LVA; *Acts VA* (1821-1822), Ch. 69, 54-55.
Essex County	South Farnham	before 1842	Poorhouse	*Acts VA* (1843-1844), Ch 105, 79-80.
Fauquier County	Hamilton	1806	Overseers of the Poor	Fauquier County Deed Book 16, 654-656; *Acts VA* (1807-1808), Ch. 98, 81.
Frederick County	Frederick	1821	Overseers of the Poor	*Acts VA* (1820-1821), Ch. 76, 61.
Gloucester County	Abingdon	1813	Gloucester Charity School	Freeholders & House-Keepers: Petition, Gloucester County, December 16, 1813; *Acts VA* (1813-1814), Ch. 56,118-120.
Gloucester County	Petsworth	1813	Gloucester Charity School	Freeholders & House-Keepers: Petition, Gloucester County, December 16, 1813; *Acts VA* (1813-1814), Ch. 56, p. 118-20.
Gloucester County	Ware	1813	Gloucester Charity School	Freeholders & House-Keepers: Petition, Gloucester County, December 16, 1813; *Acts VA* (1813-1814), Ch. 56, p.118-120; George Carrington Mason, *Colonial Churches of Tidewater Virginia* (Richmond, Va: Whitt and Shepperson, 1945), 127.

Locality	Parish	Date	Use After Disestablishment	Source(s)
Goochland County	St. James' Northam	1811	Overseers of the Poor	Goochland County, Deed Book 21, 205.
Halifax County	Antrim	1820	Overseers of the Poor	Halifax County: 1829 Report, Box 5, Folder 7, OP Annual Reports, APA, LVA.
Hanover County	St. Paul's	1778	Overseers of the Poor	Hening: 9, 442.
Hanover County	St. Martin's	1804	Overseers of the Poor	"Advertisement." *Virginia Argus* (Richmond, Virginia) XII, no. 1193, October 6, 1804: 2.
Hardy County	Hardy	1800	Overseers of the Poor	*Acts VA* (1799-1800), Ch. 12, 8.
Hardy and Hampshire Counties	Hampshire	1790	County Court	Hening, 13:189-191.
Henrico County	Henrico	1831	Overseers of the Poor	*Overseers of the Poor v. Hart (1831)* in *Cases Decided in the Supreme Court of Appeals of Virginia,* Volume 30, 2nd edition (Richmond: 1857), 1-4; Lewis William Burton, *Annals of Henrico Parish* (Richmond:1904), 36; *Enquirer* (Richmond, Virginia) June 24, 1831, 4.
Isle of Wight County	Newport	1802	Poorhouse	Overseers of the Poor: Petition, Isle of Wight County, December 15, 1819; *Acts VA* (1819-1820), Ch. 90, 78-79.
James City (York) County	Bruton	1821	Alderman of Williamsburg	*Acts VA* (1813-1814), Ch. 54, p. 116; *Acts VA* (1819-1820), Ch. 95, 82-83; *Acts VA* (1841-1842), Ch. 129, 91; Enquirer (Richmond, VA) June 19, 1821, 1.
James City County	James City	1816	Poorhouse and School	*Acts VA* (1816-1817), Ch. 79, 147-148.
King and Queen County	St. Stephen's	c. 1811	Overseers of the Poor	Overseers of the Poor: Petition, King and Queen County, December 7, 1812.
King and Queen County	Stratton Major	c. 1811	Overseers of the Poor	Overseers of the Poor: Petition, King and Queen County, December 7, 1812; Freeholders of the Parish of Stratton Major: Petition, King and Queen County, December 21, 1815.
King George County	Hanover	1807	The Free School of Hanover Parish	*Acts VA* (1807-1808), Ch. 39, 41; Freeholders of Hanover Parish: Petition, King George County, December 11, 1807; Norfolk Gazette and Publick Ledger (Norfolk, Virginia), March 30, 1807, 4.
King George County	St. Paul's	1811	Free School or Schools of St. Paul's Parish	Inhabitants of St. Paul's Parish: Petition, King George County, December 15, 1811; *Acts VA* (1811-1812), Ch. 67, 101-104; *Acts VA* (1812-1813), Ch. 67, 89.
King William County	St. David's	1814	King William Asyulm for the Poor; later Overseers of the Poor	*Acts VA* (1814-1815)l Ch. 54, 115; *Acts VA* (1827-1828), Ch. 86, 55.

Locality	Parish	Date	Use After Disestablishment	Source(s)
King William County	St. John's	1814	King William Asyulm for the Poor; later Overseers of the Poor	*Acts VA* (1814-1815) Ch. 54, 115; *Acts VA* (1827-1828), Ch. 86, 55.
Lancaster County	Christ Church	1815	Overseers of the Poor; Lancaster Glebe Fund	*Acts VA* (1846-47), Ch. 168, 156-158; Heath J. Rawley, "The Glebe Lands on Carter's Creek Lancaster Co, VA," *Northern Neck Historical Magazine*, v. 15 (1965): 1358-1363.
Loudoun and Fairfax Counties	Cameron	1804	Overseers of the Poor	Turpin v. Locket, 6 Call 113 (1804); *Alexandria Advertiser and Commercial Intelligencer* (Alexandria, Virginia) Augusta 30 1802, 1; Inhabitants of Cameron Parish: Petition, Fairfax County, 1820-12-13, LPDC, LVA.
Loudoun County	Shelburne	1840	Overseers of the Poor	Virginia Historic Landmarks Commission Staff (November 1974), "National Register of Historic Places Inventory - Nomination Form: Glebe of Shelburne Parish" (PDF). National Park Service.
Louisa County	Trinity	1806	Overseers of the Poor	*Enquirer* (Richmond, Virginia) June 17, 1806, 4; Louisa County: Report, 1829, Box 11, Folder 5, OP Annual Reports, APA, LVA.
Lunenburg County	Cumberland	c. 1821	Overseers of the Poor	"Legislative Acts/Legal Proceedings." *Enquirer* (Richmond, Virginia) XVIII, no. 68, December 22, 1821: [3].
Madison and Culpeper Counties	Bromfield	1804	Overseer of the Poor	Inhabitants of Bromfield Parish: Petition, Madison County, December 8, 1804, LPDC, LVA.
Mathews County	Kingston	1809	Overseers of the Poor	*Acts VA* (1809-1810), Ch. 69, 59-60.
Mecklenburg County	St. James'	1803	Overseers of the Poor	James Stanley et al. to Howell Taylor, Indenture, April 16, 1803, Mecklenburg County, Deed Book 11, Microfilm Reel 6, 374-376, LVA. P.
Middlesex County	Christ Church	c.1807 -1813	Overseers of the Poor	*Norfolk Gazette and Publick Ledger* (Norfolk, Virginia), January 19, 1807; *Acts VA* (1809-1810), Ch. 29, 32.
Nansemond County	Upper Parish	c. 1818	Glebe sold; funds managed by the Overseers of the Poor	Nansemond County: Report, 1829, Box 8, Folder 5, OP Annual Reports, APA, LVA.; D.J. Bragg, *The History of Nansemond County, Virginia* (Suffolk, VA: 1909), 47.
New Kent and James City Counties	Blisland	1807	Workhouse and School; later primary school	*Acts VA* (1807-1808), Ch. 90, 76-78; Freeholders & Housekeepers of Blisland Parish: Petition, James City County, December 15, 1824, LPDC, LVA.
New Kent County	St. Peter's	1807	Workhouse and School	*Acts VA* (1807-1808), Ch. 90, 76-78

Locality	Parish	Date	Use After Disestablishment	Source(s)
Norfolk	St. Bride's	c. 1802	Overseers of the Poor	G. MacLaren Brydon, "A List of Clergy of the Protestant Episcopal Church Ordained After the American Revolution, who Served in Virginia Between 1785 and 1814, and a List of Virginia Parishes and Their Rectors for the Same Period," The William and Mary Quarterly, 2nd Series, 19 (1939), 397-434.
Norfolk County	Elizabeth River	1806	Norfolk Academy	Alfred James Morrison, *The Beginnings of Public Education in Virginia, 1776-1860: Study of Secondary Schools in Relation to the State Literary Fund*, Volume 187 (Richmond, VA:1917), 140; *Norfolk Gazette and Publick Ledger* (Norfolk, Virginia), February 13, 1807, 3.
Norfolk County	Portsmouth	1816	Overseers of the Poor; Academy	*Norfolk Gazette and Publick Ledger* (Norfolk, VA), January 16, 1809, 4; Norfolk County: Report, 1829, Box 9, Folder 1, OP Annual Reports, APA, LVA.
Northampton County	Hungars	1859	Overseers of the Poor	Sarah Barringer Gordon, "The Landscape of Faith: Religious Property and Confiscation in the Early Republic," in *Making Legal History: Essays in Honor of William E. Nelson,* ed by Daniel J. Huselbosch and R.B. Bernstein (New York: NYU Pres, 2013).
Northumberland County	St. Stephen's	before 1818	Northumberland Academy	*Acts VA* (1817-1818), Ch. 100, 147-148; Alfred James Morrison, *The Beginnings of Public Education in Virginia, 1776-1860: Study of Secondary Schools in Relation to the State Literary Fund*, Volume 187 (Richmond, VA:1917), 152-153.
Northumberland County	Wicomico	before 1818	Northumberland Academy	*Acts VA* (1817-1818), Ch. 100, 147-148;Alfred James Morrison, *The Beginnings of Public Education in Virginia, 1776-1860: Study of Secondary Schools in Relation to the State Literary Fund*, Volume 187 (Richmond, VA:1917), 152-153.
Nottoway County (before 1776 Amelia)	Nottoway	1799	Overseers of the Poor	*Acts VA* (1798-1799), Ch. 32, 17.
Orange County	St. Thomas'	1810	Orange County Humane Society	*Acts VA* (1810-1811), Ch. 61, 81-83.
Pittsylvania County	Camden	1779	County Court	Hening, 9:567-568.
Powhatan County	Southam	1807	Overseers of the Poor	*Acts VA* (1807-1808), Ch. 65, 58-59; Virginia Gazette, and General Advertiser (Richmond, Virginia) April 12, 1808, 1.
Prince Edward County	St. Patrick's	1777	County Court after 1792	Hening, 13:555-556.
Prince George County	Martin's Brandon	1806	Overseers of the Poor	*Acts VA* (1806-1807), Ch. 40, 20; Louisa County, Report, 1829, Box 7, Folder 3, OP Annual Reports, APA, LVA.
Prince George County	Bristol	1816	Overseers of the Poor	*Acts VA* (1805-1806), Ch. XIII, 10]; *Acts VA* (1815-1816), Ch. 82, 200.

Locality	Parish	Date	Use After Disestablishment	Source(s)
Prince William County	Dettigen	1800	Overseers of the Poor	Prince William County: Report, 1829, Box 11, Folder 3, OP Annual Reports, APA, LVA.
Princess Anne County	Lynnhaven	1802	Overseers of the Poor	Princess Anne County: Report, 1829, Box 11, Folder 5, Overseers of the Poor Annual Reports and Checklists, 1800-1909, Auditor of Public Accounts (1776-1928), Accession APA 739, State government records collection, LVA
Richmond County	Lunenberg	c. 1805	Lunenberg and Farnham Charity School	*Acts VA* (1808-1809), Ch. 80, 73-74; Citizens of Lunenburg Parish: Petition, Richmond County, December 3, 1812, LPDC, LVA.
Richmond County	North Farnham	c. 1805	Lunenberg and Farnham Charity School	*Acts VA* (1808-1809), Ch. 80, 73-74; Citizens of North Farnham Parish: Petition, Richmond County, December 3, 1812, LPDC, LVA.
Shenandoah County	Beckford	1799	Shenandoah County Almshouse	*Acts VA* (1798-1799), Ch. 32, 17; Fred P. Painter, *The Alms House of Shenandoah County: A brief history* (Stephens City, Va.: Commercial Press, 1979).
Spotsylvania County	Berkeley	1829	Overseers of the Poor	Spotsylvania County, Deed Book CC, 146-148.
Stafford County	Overwharton	1810	Free School (Potomac Academy)	Inhabitants: Petition, Stafford County, December 12, 1810; *Acts VA* (1810-1811), Ch. 51, 85-86.
Stafford County	Brunswick	1810	Free School (Potomac Academy)	Inhabitants: Petition, Stafford County, December 12, 1810; *Acts VA* (1810-1811), Ch. 51, 85-86.
Surry County	Southwark	1804	Overseers of the Poor	Surry County: Report, 1829, Box 13, Folder 9, OP Annual Reports, APA, LVA.
Warwick County	Warwick	1806	Construction of county buildings	George Carrington Mason, *Colonial churches of Tidewater Virginia* (Richmond, Va: Whittet and Shepperson, 1945), 259.
Westmoreland County	Cople	1812	Westmoreland Poor School	*Acts VA* (1812-1813), Ch. 56, 86-89.
Westmoreland County	Washington	1812	Westmoreland Poor School	*Acts VA* (1812-1813), Ch. 56, 86-89.
York County	Yorkhampton	1806	Free Schools	Trustees of Yorktown: Petition, York County, December 15, 1807, LPDC, LVA.
York County	Charles	1819	Overseers of the Poor	*Acts VA* (1819-1820), Ch. 92, 79-80.
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Nansemond	Suffolk (Lower)	n/a	n/a	Joseph Bragg Dunn, *The History of Nansemond County* (1907), 47.
No Glebe at the Time of the Revolution				

Locality	Parish	Date	Use After Disestablishment	Source(s)
Fairfax County	Truro	n/a	n/a	Philip Slaughter, T*he History of Truro Parish in Virginia,* Edward L. Goodwin, ed., (Philadelphia: 1908), 90.
Unknown				
Locality	**Parish**	**Estimated date based on rector's death/departure**		**Source**
Fauquier County	Leeds	c. 1812?	n/a	G. MacLaren Brydon, "A List of Clergy of the Protestant Episcopal Church Ordained After the American Revolution," *The William and Mary Quarterly*, Second Series, Vol. 19, No. 4 (Oct., 1939), 427.
Norfolk County	St. Bride's	c. 1804?	n/a	G. MacLaren Brydon, "A List of Clergy of the Protestant Episcopal Church Ordained After the American Revolution," *The William and Mary Quarterly*, Second Series, Vol. 19, No. 4 (Oct., 1939), 431.
Southampton (Isle of Wight before 1785)	Nottoway	c. 1802	n/a	G. MacLaren Brydon, "A List of Clergy of the Protestant Episcopal Church Ordained After the American Revolution," *The William and Mary Quarterly*, Second Series, Vol. 19, No. 4 (Oct., 1939), 433.
Southampton	St. Luke's	c. 1802	n/a	G. MacLaren Brydon, "A List of Clergy of the Protestant Episcopal Church Ordained After the American Revolution," *The William and Mary Quarterly*, Second Series, Vol. 19, No. 4 (Oct., 1939), 433.

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- Gloucester County Court Records
- New Kent County Court Records
- Norfolk County Court Records
- Princess Anne County Records
- Prince George County Court Records

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