Keeping the Faith: The Catholic Context and Content of Justus Engelhardt Kühn's Portrait of Eleanor Darnall, ca. 1710
by Elisabeth L. Roark

James Madison, the War of 1812, and the Paradox of a Republican Presidency
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Research Notes & Maryland Miscellany
Old Defenders: The Intermediate Men, by James H. Neill and Oleg Panczenko

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Friends of the Press of the Maryland Historical Society

The Maryland Historical Society continues its commitment to publish the finest new work in Maryland history. Next year, 2015, marks ten years since the Publications Committee, with the advice and support of the development staff, launched the Friends of the Press, an effort dedicated to raising money to be used solely for bringing new titles into print. The society is particularly grateful to H. Thomas Howell, past committee chair, for his unwavering support of our work and for his exemplary generosity. The committee is pleased to announce two new titles funded through the Friends of the Press.

Rebecca Seib and Helen C. Rountree’s forthcoming *Indians of Southern Maryland*, offers a highly readable account of the culture and history of Maryland’s native people, from prehistory to the early twenty-first century. The authors, both cultural anthropologists with training in history, have written an objective, reliable source for the general public, modern Maryland Indians, schoolteachers, and scholars.

Appearing next spring, Milt Diggins’s compelling story of slave catcher Thomas McCreary examines the physical and legal battles that followed the passing of the Fugitive Slave Act of 1850. Was seizing escaped slaves the legal capture of fugitives—or an act of kidnapping? Residing in Cecil County, midway between Philadelphia and Baltimore, and conducting his “business” in an area already inflamed by clashes like the violent Christiana riots, McCreary drew the ire of abolitionists. Frederick Douglass referred to him as “the notorious Elkton kidnapper.”

These are the seventh and eighth Friends of the Press titles, continuing the mission first set forth in 1844. We invite you to become a supporter and help us fill in the unknown pages of Maryland history. If you would like to make a tax-deductible gift to the Friends of the Press, please direct your donation to Development, Maryland Historical Society, 201 West Monument Street, Baltimore, MD 21201. For additional information on MdHS publications, contact Patricia Dockman Anderson, Director of Publications and Library Services, 410-685-3750 x317 or panderson@mdhs.org.
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Cover

Justus Engelhardt Kühn, Eleanor Darnall, ca. 1710. With this issue we make an exception to our longtime practice of presenting the cover image as a freestanding piece of the magazine, one that is not connected to any of the articles. (Placing an image from an article on the cover can give that work prominence over the others, something that as a rule we prefer to avoid.) But this portrait of Eleanor Darnall is the centerpiece of Elizabeth Roark’s article, an intriguing work of art history in which she discusses its Catholic iconography in great depth, and we considered its full-color presentation necessary to convey the full import of that piece.
In Memoriam

H. Thomas Howell (1937–2014)

We often hear, and believe, that the right people are placed in our lives at just the right time. Such was the case with Tom Howell, MdHS trustee and chairman of the Publications Committee. Retired from a successful legal career, Tom joined the board in 2005 and, in search of an assignment, agreed to help with publications. He loved genealogical research, particularly researching and writing his family’s history, but knew very little about the actual submission, review, or production process. Regardless, he wholeheartedly embraced the challenge and learned quickly.

As chairman of the committee, Tom presided over quarterly meetings with assurance and wisdom, keeping discussions on topic, defusing sometimes overly spirited debates, and guiding others toward a collegial consensus. As a trustee, he was also our liaison to the board and spoke eloquently, logically, and sometimes forcefully on our behalf. In hindsight, those moments offered
a glimpse of the highly lauded trial lawyer whose colleagues remembered him as “extraordinarily talented, . . . a superlative lawyer,” and one who “wrote wonderfully [and] had a strong sense of right and wrong.”*

Perhaps his greatest contribution to the printed word was his dedication to the Friends of the Press, a restricted fund used only for the production costs associated with new books. Each meeting included a financial report on book sales and the state of the FOP and ended with a reminder to contribute, in which he led by generous example. Several years ago Tom reviewed the MdHS bylaws, realized he had stayed too long, and resigned from the board and as chair—but stayed on the committee. That was a blessing for us, and for the Maryland Historical Society.

PDA

Keeping the Faith: The Catholic Context and Content of Justus Engelhardt Kühn’s Portrait of Eleanor Darnall, ca. 1710

ELISABETH L. ROARK

Justus Engelhardt Kühn’s portrait of eight-year-old Henry Darnall III and his slave, owned by the Maryland Historical Society, is among the best-known images of colonial American art (fig. 1). Included in nearly every recent American art history survey text, it is important as the earliest extant image of an African in American painting and as one of the first oil paintings created in the southern British colonies. Most interpret the portrait as evidence of the Darnall family’s aristocratic pretensions, clear not only in the slave’s inclusion but also in Henry’s expensive clothing, the carved balustrade, and the manor houses and garden—the latter three complete fiction, for nothing approaching this grandeur existed in Maryland in 1710.¹ Yet, a critical aspect of the portrait is often overlooked: its pendant, of Henry’s six-year-old sister Eleanor, also at the Maryland Historical Society, backed by a similar but not contiguous landscape and balustrade (fig. 2). When examined closely and appropriately contextualized, Eleanor’s portrait contains a level of meaning heretofore unrecognized: the Darnalls’ commitment to their Catholic faith.

The lack of scholarly attention devoted to Eleanor’s portrait, along with the emphasis on race and class in Henry’s, has obscured the religious intent manifest in its rich iconography. Kühn painted the portraits at a time when the colony was undergoing rapid Anglicization and persecution of Catholics heightened. Kühn, who was probably working closely with the family and its Jesuit advisors, affirmed the Darnalls’ religious identity with symbols recognizable to Maryland’s tightly knit Anglo-Irish Catholic community. The pendants also exemplify the broader functions of colonial portraiture, which were to define status and accentuate the significance of family. The purpose here is to consider how these objectives coexist with a new reading of Eleanor’s portrait that reclaims its religious agency.

Catholic visual culture hinges on symbolic imagery. Catholic emblem books combine images and texts that reinforce one another and clarify the images’ meanings. One emblem book that is useful for understanding Eleanor’s portrait is English

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Jesuit Henry Hawkins’s *Partheneia Sacra* (1633), a devotional text honoring the Virgin Mary that elaborates symbols such as the garden, the fountain, the house, the rose, and the tulip, all prominent in Eleanor’s portrait. Although these symbols are also identifiable as conventions common to portraits made during the period, they and the portrait’s more unusual contents—a garden statue, the conspicuous grotesque mask, and roses flanking the vase that appear to defy gravity—perform additional symbolic work. A religious reading gives coherence to the seemingly random assortment of objects in Eleanor’s portrait, yielding greater insight into the pendants and the distinctive context from which they emerged. An examination of Eleanor’s portrait in precise detail, the Darnalls’ position as high-ranking Catholics, and culturally specific iconography indicate that the pendants present a complex narrative beyond their capacity as status symbols and visual documentation of racism.

**The Catholic Context**

The history of Maryland’s unique origins, as the first American colony founded by an English Catholic, is well established. In 1632, King Charles I granted a proprietorship to Cecilius Calvert, second Lord Baltimore. Calvert named it Maryland to honor Charles’s wife, the controversial Catholic queen Henrietta Maria, an advocate for England’s Catholics. Although he never lived in Maryland, Calvert ruled as proprietor, with two interruptions due to political instability and Protestant aggression, until 1675.²

From the reign of Queen Elizabeth, Catholicism was considered a foreign faith, threatening religious conformity and, perhaps more importantly, political loyalty. To be English was to be Protestant. Penal codes punished Catholics for not attending Anglican services, harboring priests, hearing mass, and sending their children to foreign schools, and could include land forfeiture—a clear threat to the Catholic gentry. Anti-Catholic literature presented lurid stories of priests seducing innocent women in the confessional, and of Catholics planning to assassinate non-Catholic monarchs, masterminding the Gunpowder Plot, and aiding Spanish invasions and Irish rebellions. Understandably seventeenth-century English Catholic practice changed dramatically. Parish churches, for nearly a millennium the focus of collective spiritual aspiration, were abandoned for private chapels and outlaw priests who traveled between them.³

Calvert envisioned a colony where Catholics and other Trinitarian Christians could live free from persecution. In 1633 two ships, the *Ark* and the *Dove*, left England carrying around sixteen Catholic gentlemen and their families, three or four Jesuit clergy, and about 120 Protestants to a Potomac River island. They established a settlement between the Potomac and the Chesapeake Bay, and called it St. Mary’s City after the Virgin Mary. The names “Maryland” and “St. Mary’s City” evince English Catholic reverence for the Virgin Mary and Henrietta Maria. Protestant critics suspicious of Mariolatry and the historical association of the name Mary
with female Catholic rule often conflated the two, using similar rhetoric to attack the Virgin and Henrietta Maria.4

In addition to the queen, English Catholics were indebted to the Society of Jesus, or Jesuits, missionaries who helped establish and maintain the “domestic chaplaincy” that preserved English Catholicism. Calvert invited Jesuits, who were viewed as intellectually superior to other priests and recognized for their American
missionary work, to lead his co-religionists and established the order as the dominant Catholic voice in the colony for 140 years. Despite early disagreement about their primary role of converting Native Americans or tending Catholic settlers, after 1650 the Jesuits and the gentry realized that only a unique lay-clerical partnership could sustain Maryland Catholicism. Thus the Jesuits were of vital importance to the colony’s Catholics.\(^5\)

For Calvert, the Thirty Years’ War, the English Civil Wars, the beheading of Charles I, and attacks on Maryland by Virginia Protestants underscored the need to keep religion out of politics. The Maryland Assembly passed An Act Concerning Religion in 1649, a landmark statute intended to safeguard all Trinitarian Christians’ rights. It reads, “noe person or persons whatsoever within this Province . . . professing to beleive 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.” In separating church and state, Calvert, who has been described as a social visionary, followed only Roger Williams of Rhode Island.\(^6\)

The Calverts’ motive was not strictly religious. Lord Baltimore promised gentlemen settlers extensive land, initially one or two thousand acres if they brought five able men with them to the colony. Land and wealth in Maryland were soon concentrated in a few rich families, predominantly Catholic. Since the Calverts hoped to profit from their colonial venture they appointed associates, including Henry Darnall I, Eleanor’s grandfather, to mind their interests. Born in 1645, Henry Darnall I was the son of London lawyer Philip Darnall, who converted to Catholicism in 1624. Henry was related by marriage to Charles Calvert, the third Lord Baltimore. Henry emigrated to Maryland between 1664 and 1672, established a successful plantation and lumberyard, and held numerous government positions, including a place on the Governor’s Council from 1679 to 1689, Chancellor of Maryland from 1683 to 1689, His Lordship’s Agent and Receiver General from 1684 to 1711, and a colonelcy in the militia. Before 1689, Catholics dominated Maryland’s politics and economy despite the influx of Protestants who far outnumbered them. Darnall was one of the most powerful Catholics in the colony.\(^7\)

Rumors circulated in March 1689 that Darnall and another member of the Governor’s Council rejected William and Mary’s rule despite the Glorious Revolution and were plotting with Indians to massacre Protestants. The rumors were soon proven to be untrue, but the tension, augmented by frustration with Charles Calvert’s land policies and the fact that the Assembly was dominated by Catholics, culminated in July with the Protestant Revolution. According to Darnall, after seven hundred Protestants had laid siege to the Catholic base at Mattapany House, “Wee being in this condition and noe hopes left of quieting or repelling the People thus enraged, to prevent effusion of blood, capitulated and surrendered.” Maryland thereafter became a royal colony, abandoned religious tolerance, and put in place penal codes that effectively outlawed Catholicism.\(^8\)
Darnall lost his appointments except those managing Baltimore's wealth. The new government purged the Assembly of Catholics. In 1692 the Crown appointed a royal governor and in 1702 Anglicanism became Maryland's official religion. In 1694–95 the capital moved from Catholic stronghold St. Mary’s City to Annapolis, named after the Protestant Princess Anne. Despite these setbacks, as Harry Clyde Smith wrote in his Darnall family genealogy:

Henry Darnall was both affluent and influential. He owned much land and many slaves. At his death [in 1711], he bequeathed some thirty thousand acres of land. . . . A devout Roman Catholic, he sent his sons to Jesuit schools in Europe—one of the inciting factors of the “Protestant Revolution”; following which, Henry maintained secret quarters in his home, with all equipment necessary for observing the rites of his religion.

The 1704 Act to prevent the Growth of Popery within this Province compelled as much by closing all public chapels, forbidding Catholic baptisms, and limiting mass to private homes (where the gentry hosted neighboring Catholics in their chapels). Darnall signed a petition for relief, describing the act as counter to Maryland's history of toleration. By 1708, Catholics comprised less than ten percent of Maryland's population, yet persecution helped many form a stronger, more coherent religious and political identity.9

Sometime before 1700, Darnall built the Woodyard, the family estate, which included the chapel Smith described. Around 1710 it appears Darnall commissioned from Kühn the elaborate portraits of his grandchildren and smaller waist-length portraits with unadorned dark backgrounds of himself and other adult family members. Why Kühn painted the portraits at this time is uncertain. Generally eighteenth-century portraits commemorated transitions of status such as marriage, the birth of an heir, or receipt of an inheritance. The commission might have marked the Woodyard's transfer to Henry Darnall II. While not official until Henry Darnall I's death in 1711, the larger house was more appropriate for a growing family and Henry Darnall I was living in Anne Arundel County, at or near Portland Manor, a smaller family home, when he died and where he is buried. This would explain the commission's emphasis on Henry Darnall III and Eleanor, the family’s oldest boy and girl. As large pendants likely intended to hang in the Woodyard’s public area, they were no doubt the centerpiece of any installation of family portraits and a focal point for guests and the faithful who worshipped in Darnall’s chapel. Between 1710 and 1717, Kühn also painted plain waist-length portraits of adults in the Digges and Carroll families (Darnall relatives), plus full-length portraits of several other children: Ignatius Digges, aged two and a half, an unidentified girl, and Charles Carroll of Annapolis.10 Although Eleanor’s portrait is our focus, Kühn’s other children's portraits appear ripe for examination through a religious lens, about which more later.
Kühn was in effect the “court painter” to Maryland’s Catholic elite. They were probably close; Kühn selected Charles Carroll the Settler, Henry Darnall I’s son-in-law, as his will’s executor before his 1717 death. Eleanor’s portrait clearly visualizes family wealth and hierarchy but also underscores their religion. As art historian Margaretta M. Lovell noted, eighteenth-century American portraits are “the aestheticization of that deemed essential.” Despite their wealth and land, Maryland’s Catholic gentry were outsiders because of their religion. According to historian Ronald Hoffman, life remained insecure because they lived from 1689 “until the eve of the American Revolution with the very real possibility that their lands would be taken.” Termed the Penal Period, as historian Maura Jane Farrelly wrote, “Catholic rights were trampled upon by paranoid Protestant lawmakers,” who restricted their “civil, military, educational, economic and even parental rights.” Regardless, most adhered tenaciously to their faith and chose to remain Catholic despite the harsh environment. Living as they were on the cusp of the Enlightenment and increasing secularization, religion still dominated the worldview of Maryland’s Catholics in ways that are difficult for us to envision. Their circumstances as Catholics should be considered when studying Kühn’s work.

Justus Engelhardt Kühn and Contemporaneous Portraiture

Justus Engelhardt Kühn is the first recorded professional painter in the southern colonies, producing his earliest extant works around 1710. His application for naturalization in December 1708 first documents his residence in Maryland. We know little of his earlier life in Europe. The naturalization papers describe him as a painter, a German, and a Protestant. Scholars speculate that Kühn was a refugee from the Rhine Valley, or Palatine, where religious wars caused mass emigration to America in the early eighteenth century. Kühn also produced heraldry, suggesting a familiarity with emblematics. At death he left a cultured man’s estate with a flute, many books, and fine clothing, consistent with other colonial portraitists who presented themselves as social equals to their clientele.

Although written evidence is lacking, Kühn’s portraits of Henry and Eleanor reveal much about his art. Represented full length, they are the earliest extant American paintings to employ Baroque grand manner portrait conventions codified in seventeenth-century Europe. These include accentuating fine fabric and jewelry, apparent in Henry’s coat, silver buttons, and jeweled shoe buckles. Rich color, seen in the juxtaposition of Henry’s golden jacket and green mantle with the red-orange tones of the curtain and the slave’s jacket, is characteristic. The colors in Eleanor’s portrait are more muted, dominated by pink and white tones in her dress, apron, stomacher, flowers, and checkerboard floor. Gender distinction, standard in grand manner portraiture (and male/female pendant portraits), is clear in the portraits’ colors and content: Henry appears with the trappings of the hunt, Eleanor with flowers, petting a dog. Also evident are Baroque aggrandizing elements: columns,
swags of drapery, gardens, and impressive architectural settings. Eleanor appears more serious than Henry, who smiles slightly; both regard the viewer with intense gray-black eyes. Their doll-like faces suggest resemblance was less a priority than defining identity through clothing and surroundings. Dressed as little adults, the children appear stiff, though this may indicate that they are “upright” morally and virtuous, in keeping with current attitudes about childhood.14

The Darnall children’s portraits are not mainstream but regional Baroque. They lack the fluid brushwork and palpable personality of portraits by better known seventeenth-century painters. But in 1710 they were unprecedented among colonial American portraits—at least those still extant. No seventeenth- or early eighteenth-century American portraits have comparable settings. The most analogous to Eleanor’s portrait is William Williams’s portrait of Deborah Hall, painted in Philadelphia more than fifty years later (fig. 3). It depicts objects similar to Eleanor’s that are also intended to be read symbolically. Hall, wearing an elaborate pink gown and holding a rose, stands in a formal garden with sculptures and trimmed trees. The portrait demonstrates the family’s wealth and Hall’s availability for marriage by using secular

emblems such as the rose to symbolize love and beauty and the unattached vine to indicate her need for a supportive spouse. Although both portraits use established codes for gender definition, advertising marriageability would be inappropriate for a six-year-old’s portrait. This begs the question: Why are Kühn’s paintings so distinct for this time (ca. 1710) and place (colonial America)?

While recognizing their primacy it is important to acknowledge that the pendants also conform to what scholars identify as the two dominant functions of eighteenth-century American portraits and the European works they emulated. One is asserting status (a priority for wealthy Catholics as second-class subjects with limited rights) and constructing an elite identity by depicting objects that reflected the expanding trade in imported goods. The second is defining and maintaining lineage, particularly by accentuating patriarchy. Although most portraits analyzed by leading eighteenth-century portrait scholars Paul Staiti, T. H. Breen, Marcia Pointon, and Margaretta Lovell post-date Kühn’s work by several decades and are English or northeastern in origin, some of their conclusions apply to the Darnall pendants. Like them, Kühn’s portraits accentuate status. The mantles both children wear mark them as elite, and Eleanor’s lace and Henry’s brocade jacket were probably imported, indicating the Darnalls’ buying power. The balustrades, gardens, and manor houses, though fictive, approximate grand spaces and structures then found only in Europe. Defining lineage and asserting family is explicit as Kühn created multiple unremarkable images of the Darnall-Digges-Carroll adults but lavished attention on the children, demonstrating their significance as the families’ future. As Lovell wrote, colonial American portraiture “is about the family line; its job is to fix and stabilize the idea of family in its diachronic dimension.” Kühn’s work reinforces patriarchy, as Henry was heir to the Darnall estate. Eleanor is almost equal to her brother in size though less visually assertive—her pastel colors are subdued next to Henry’s jewel tones—but her portrait also fulfills a function besides status symbol and lineage clarification, one equally important to the family’s future. Portraiture is a flexible genre able to satisfy multiple needs, and children’s portraits in particular, fashioned by the artist and the family’s adults, become bearers of its values. Henry Darnall I, of the last generation of colonial Maryland Catholics to fully experience religious freedom, surely directed Kühn to create a portrait of his granddaughter that affirmed the significance of their faith—past, present, and future—at a time of considerable change and difficulty when such a message was most necessary.

The Catholic Content
It is the Darnalls’ unusual context that distinguishes Eleanor’s portrait and encourages investigation of Catholic iconography. Catholic imagery moved fluidly between various forms of media—prayer books, emblem books, and books of hours, as well as painting and sculpture. Of these, emblem books were the most accessible in early eighteenth-century America, the most applicable to Eleanor’s portrait’s imagery,
and the most revealing of its intimations, offering a visual code familiar to educated Catholics that can help us understand the religious interests, values, and cultural knowledge of the portrait’s original viewers. An Italian Renaissance creation, Andreas Alciati’s *Emblematum Liber* (1531) introduced the form. In England secular and religious emblem books flourished between 1600 and 1750. Prevalent in the colonies as well, emblems appear not only in portraits but also on silver, gravestones, and in embroidery.17

Enormously popular among seventeenth-century English Catholics, religious emblem books probably came to Maryland with its Catholic settlers and Jesuits. The Jesuits published more than 1,700 emblem books from 1600 to 1740 to teach Catholic doctrine and values and encourage devotional exercises. Religious emblem books were paramount during times of persecution. As emblem scholar Karl Josef Höltgen noted, Henry Hawkins’s *Partheneia Sacra* “must have been of great help to suppressed English Catholics, harassed by fines and persecutions, cut off from the normal life of their own church, and in danger of cultural and intellectual isolation.” Although it is impossible to determine the Darnalls’ exposure to specific emblem books, Maryland’s Jesuits had lending libraries of devotional literature and wealthy families had small collections of books, primarily religious. Jesuits instructed Maryland’s faithful to hold family devotions, including “frequenting ye Sacraments, constant publik prays & pious Reading.” Henry Darnall II and III, many male members of the Carroll family, and Charles Calvert, third Lord Baltimore, attended the Jesuit English College at Saint-Omer in Flanders, a hotbed of emblem book production.18 The Darnalls’ wealth, schooling, dedication to their faith, and inability to worship publically strongly suggests they had access to devotional books.

The emblem books’ pairing of texts and images that elaborated upon and reinforced each other was congenial with Jesuit practice. Emblems encouraged identification with religious ideas and figures, similar to *The Spiritual Exercises* (1522–24), the fundamental Jesuit text by founder Ignatius Loyola (1491–1556). *The Spiritual Exercises* instructs readers to use visualization to draw the soul closer to Jesus and Mary. Jesuit Henry Hawkins (1577–1646) published *Partheneia Sacra* (*Holy Virginity*), considered the most important English Catholic emblem book, in 1633. It is more complex than most emblem books, which follow the three-part structure—motto, picture, text—Alciato introduced. The emblems of *Partheneia Sacra* are presented in nine-part sequences.19

The book’s complexity is apparent in its frontispiece, titled “The Plat-forme of the Garden,” which depicts the twenty-four emblems later elaborated, showing a garden surrounded by a wall with walkways and geometric parterres organized around a fountain, house, and towers (fig. 4). *Partheneia Sacra* aided meditation on Mary. It was written for the Parthenes, an English sodality of Jesuit-led lay Catholics dedicated to the Immaculate Conception. England outlawed sodalities; Hawkins noted that they were “yet greeved and groaning with the burden of [their] pressures” though he
celebrated their emergence “throughout al Europe first, and then through America, the new world . . . under the soveraine and most blessed name of MARIE.” Hawkins assumed a wider readership than a single sodality; another preface addresses a “Gentle Reader,” presumably educated English Catholics.20

Mary was controversial at this time. Most Protestants denied her significance, believing Catholic veneration of Mary had become extreme and extra-biblical. Despite this (or more likely because of it), Mary continued as the focus of Catholic theological and artistic attention often stressing aspects Protestants most disputed, including her Immaculate Conception—not Christ’s conception but Mary’s. Catholics believed she was conceived sinlessly to create a pure vessel to carry God’s son. Protestants dismissed this because Mary’s exemption from sin had no biblical justification (even Anglicans had no doctrine regarding the Immaculate Conception; historically most discounted it). Although not proclaimed Catholic dogma until 1854, for centuries the Jesuits actively supported it; this was regarded as deliberately and provocatively anti-Protestant. Frances E. Dolan described Mariolatry as “a central practice in English Catholicism” and “a paradigmatic example of where Catholics invested power and directed adoration.” Unlike Protestants, Catholics attributed efficacy to Mary and “emphasize the operation of Mary’s will and the extent of her powers rather than her humility.” In Maryland, the 1649 Act Concerning Religion
stated that those who “utter any reproachfull words or Speeches concerning the blessed Virgin Mary” could be whipped, jailed, and fined.21

In Partheneia Sacra the garden as a whole and its contents separately symbolize Mary’s Immaculate Conception. The nine parts of each emblem include two images, “The Devise,” a straightforward representation of the object, and “The Embleme,” depicting the object with additional symbols. The Immaculate Conception was a challenging subject for artists, who had to visualize an abstract concept—the absence of original sin. By 1500, manuscripts show “Immaculatas” surrounded by labeled emblems based primarily on the Song of Songs and Marian litanies like the Litany of Loreto, one of few rituals that early Maryland Catholics are known to have performed (fig. 5). In the seventeenth century the theme had a strong presence in Spanish art to pressure the popes to elevate the doctrine to dogma. The canonical image combined
earlier Immaculatas with the Apocalyptic Woman “clothed with the sun” (Revelation 12:1), standing on a crescent moon, her head ringed with stars (fig. 6). The same emblems appear but are represented more naturalistically, placed discreetly in the landscape (like many of Eleanor’s emblems) or held by cherubs, unlabeled. In 1708, a few years before Kühn painted Eleanor, Pope Clement XI declared December 8, the Feast of the Immaculate Conception, a Holy Day of Obligation.22 In addition to asserting Catholic identity, Eleanor’s objects might reflect Jesuit support for the doctrine and a desire to acknowledge its new standing.

Although Eleanor’s orderly garden may have several implications, including the Darnalls’ aristocratic aspirations and control of nature as plantation and lumberyard owners, it is also the portrait’s most obvious Marian symbol. The enclosed garden,
here completely surrounded by a conspicuous white balustrade, embodies Mary's inviolate state from the Song of Songs 4:12, “My sister, my spouse, is a garden enclosed, a garden enclosed, a fountain sealed up.” The garden is Hawkins’s first emblem “so known by the name of HORTUS CONCLUSUS,” and appears in earlier Immaculatas (lower right in figs. 5, 6). Bernard of Clairvaux (1090–1153) interpreted the Song of Songs as an elaborate allegory of the bride’s love for the church, or Jesus, with Mary as the bride. Theologians scrutinized it for Marian symbols, identifying enclosed gardens, evergreens, fountains, and other objects found in Partheneia Sacra, earlier Immaculatas, and Eleanor’s portrait.23 None of the portrait’s elements duplicate Hawkins or any other known visual sources directly. Kühn’s challenge seems to have been to create a formally coherent portrait consistent with conventional grand manner portraiture, adapting recognizable imagery to acknowledge the family’s religious commitment.

On the balustrade, small trees in round containers and taller trees behind provide the garden with additional protection. Both are evergreens, resembling trimmed cedar or cypress, reminiscent of the tapered trees in “The Devise” of the garden (fig. 7). Associated with immortality because they remain green all year, evergreens are Immaculate Conception attributes appearing in Marian art as early as the fifteenth century (center left, fig. 5). The Song of Songs mentions both trees, verses 1:14, “a cluster of cypress my love is to me,” and 5:15, “His form as of Libenus [Lebanon], excellent as the cedars” (considered a reference to Christ). Hawkins wrote “whatsoever is delightful in a Garden, was abundantly found in Her: there being the Cedar of high Contemplation, the Cypres of odoriferous fame and sanctitie of life.” Both trees are native to Maryland with cypresses “80 feet” in
height and cedars “equalling those which Libanus boasts of” in “An Account of the Colony of the Lord Baron of Baltimore,” 1633, written by Jesuit Andrew White to encourage settlement. The portrait’s cultivated trees further secure the *hortus conclusus*, demonstrate the evergreens’ significance in Marian iconography, and befit a Maryland portrait.

The Song of Songs 4:15 describes “The fountain of gardens: the well of living waters.” Water is a primary Marian symbol because its transparency embodies her purity. Both fountains and wells appear in earlier Immaculatas (center left and right in fig. 5, bottom center in fig. 6). Hawkins wrote of the fountain as “the most pure *Virgin Mother* of GOD, according to that of the *Canticles: The fountain of gardens, the well of living waters.*” Eleanor’s fountain has a square pool decorated with grotesque faces spitting water (fig. 8). In *Partheneia Sacra* “The Devise” of the fountain has three faces that likewise spit water (fig. 9). Surmounting Eleanor’s fountain is what appears to be a figure, holding above its head a round vessel from which water teems. Eleanor’s fountain is a suitable ornament for the portrait’s grand gardens, but
for Catholic viewers it would also connote Mary’s purity and perhaps Eleanor’s, as it is so directly juxtaposed with her body.

Scholars usually interpret Eleanor’s manor house as evidence of the Darnalls’ aristocratic expectations and suggest Kühn based it on engravings of European estates. Yet no print source has emerged, reinforcing the idea that the setting instead functions symbolically. In Parthenia Sacra “The Embleme” of the house depicts the archangel Gabriel knocking on a two-story stone house’s door, a reference to the Annunciation and Mary’s shuttered existence (fig. 10). Hawkins wrote of Mary as “eternally ordain’d to be a House and habitation of the Divine Word Incarnate.”

While they differ in appearance, Hawkins’s house and Eleanor’s manor share several features: both have two stories; tall, closely spaced rectangular windows; corners accented by quoins; and roofs framed by short parapets with corbels (fig. 8).

Another detail of Eleanor’s house may also suggest Immaculata imagery. Unlike the pitched roof of Hawkins’s house, Eleanor’s has a flat roof with a round structure encircled by columns topped by a cone, a peculiar feature for a manor house. Similar round columned structures, though shown as separate buildings with domes, appear in many Baroque Immaculatas. Ribera’s building closely resembles Bramante’s Tempietto (little temple), of Rome, 1502, in proportion and details, including alternating rectangular and shell niches (center left, fig. 6). Ferdinand and Isabella of Spain commissioned the Tempietto for a convent of Spanish Franciscans, another order devoted to the Immaculate Conception. Emblematically representing the “Temple of God,” the round columned building signifies Mary’s time as a temple virgin. House 9. Jacob van Langeren, The Devise of the Fountain, from Henry Hawkins, Partheneia Sacra ([Rouen]: John Cousturier, 1633), 210. Engraving, 3½ x 3¼ in. The Latin inscription reads “eternal and unfailing.”
and temple emblems, then, like the hortus conclusus and the fountain, emphasize Mary’s virginity, relevant for Eleanor at age six and Catholics who considered virginity a spiritually superior state.

Another peculiar, barely noticeable background feature is a sculpture in the garden on a pedestal where two balustrades converge. Painted monochrome gray, it depicts a man in profile striding toward the garden wearing a brimmed hat and carrying a shoulder bag and walking stick (fig. 12). No humans appear in Partheneia Sacra, although Hawkins mentioned that in the garden “Heer lastly are statues.” Sculpture is common in Baroque portraiture; usually it depicts classical figures. With his hat, bag, and stick and the striding pose, however, Eleanor’s statue resembles images of pilgrims from the Middle Ages through the seventeenth century in painting, sculpture, stained glass, books of hours, and emblem books. Pilgrims in a 1512 French
book of hours at Stonyhurst College (the English successor to Saint-Omer) wear tunics, leggings, and brimmed hats and carry sticks and bags similar to Eleanor’s figure, accouterments described as “instantly recognizable attributes of the pilgrim” (fig. 11). Although sketchy, the figure’s hat appears to have a rolled brim, typical of pilgrims’ hats.28

Why would Eleanor’s portrait include such an unusual detail? Pilgrims and pilgrimages both literal and spiritual are at the foundation of Jesuit practice. Ignatius’s autobiography describes his life as a pilgrimage, and he wore pilgrim’s garb early in his vocation until the Inquisition forced its removal. He made a pilgrimage to Jerusalem in 1522, intending to stay, but the dangerous political situation compelled his return. Jesuit educational and devotional material, including The Spiritual Exercises, views
life as a journey and Ignatius often employed the pilgrim as the believer’s surrogate. Pilgrimage must have resonated with Henry Darnall I and other Maryland Catholics ("pilgrim" literally means “stranger”), who crossed the Atlantic seeking religious refuge. The Darnalls were perhaps especially attuned to local Jesuits when Kühn painted Eleanor. Robert Brooke, Henry Darnall I’s stepson and the first Maryland-born Jesuit priest, was superior of Maryland’s Jesuit mission from 1708 to 1712.29

Marian emblems appear not only in the portrait’s background, where they could be easily overlooked, but also in the foreground. The flowers—carefully delineated life-size blooms filling the upper right corner—while normative in female portraiture are also centuries-old symbols of the Virgin (fig. 13). Flower culture diminished in early Christianity because of its pagan associations. It was revived by 1200 when arrays of carved flowers decorated Gothic cathedrals. Newly imported flowers from the East, including carnations and tulips, paralleled an increase in hortus conclusus imagery, associating Mary with flowers. Believers understood that flowers carried religious meanings, and their symbolism became elaborate in Marian devotion. Plants assumed Marian names; foxglove was called “Our Lady’s gloves,” and wild orchids “Our Lady’s tresses.” Decorating paintings of Mary with real garlands and wreaths led to late seventeenth-century artists such as Daniel Seghers, a Jesuit lay brother, surrounding images of Mary with painted wreaths and garlands. The Jesuits believed flowers (and nature in general) revealed profound religious truths and used them in deliberately didactic ways. Strict Protestants banished flowers as a distraction from the Word. English flower culture re-emerged after the 1660 Restoration, which placed Charles II, Henrietta Maria’s son and a Catholic sympathizer, on the throne.30

In Eleanor’s portrait, roses appear in the bouquet’s center and are the only flowers outside of the vase at either side, seemingly floating above the balustrade and plinth, an atypically unrealistic presentation for Kühn that may underscore their symbolic intent (figs. 2, 13). Roses signify youth and beauty and are common in eighteenth-century women’s portraits, such as Deborah Hall, evidence of the visual construction.
of femininity (fig. 3). Roses are also the flowers most associated with Mary, regarded as “a rose without thorns” or sinless as a result of her Immaculate Conception (center right in fig. 5, labeled “Platatio”; center left in fig. 6). Hawkins lavished attention on roses as the second emblem in *Partheneia Sacra*, described as “the Imperial Queene of Flowers” (fig. 14). The portrait’s roses could also signify Jesuit emphasis on the rosary (from the Latin *rosarium*, or rose garden)—note the proximity of the pilgrim
statue and the largest rose (fig. 12). The rosary is a devotional tool like Ignatius’s *Spiritual Exercises* and *Partheneia Sacra* that involves concentration on Mary’s and Jesus’s acts, promoted as a substitute for mass and regular instruction that offered solidarity with other Catholics. Protestants rejected the rosary, but for Catholics after the Council of Trent (1545–65) it “took on the aspect of a crusade.”

The bouquet also features large tulips. Related to the consumer marketplace as an expensive and prestigious flower, the tulip is not one of Hawkins’s twenty-four emblems but he wrote of “those faire and beautiful Tulips” as “a singular ornament to this Garden.” Another seventeenth-century emblem book claimed tulips die without sunlight and therefore symbolized the search for divine love and Mary. Hawkins also included carnations in Mary’s garden. In Eleanor’s portrait they appear at the bouquet’s left and upper right, identified by their spiky leaves, pointed buds and ruffled petals. In Christian custom, carnations sprang from the ground where Mary’s tears fell during Christ’s Passion. Their name relates to the Latin word *carne*, flesh or meat, and therefore to incarnation—Christ’s embodiment in human flesh—a consequence of the Immaculate Conception. The branch with shiny, almond-shaped symmetrical green leaves at the bouquet’s center is generalized but resembles an olive branch. The olive tree is an attribute of the *hortus conclusus* and an emblem in *Partheneia Sacra* and earlier Immaculatas (lower right in fig. 4, center left in figs. 5, 6). Ecclesiasticus, a book in Catholic but not most Protestant Bibles, 24:17–24 reads, “I was exalted like a cedar in Libanus, and as a cypress tree on Mt. Sion... as a rose plant in Jerricho: as a fair olive tree in the plains... As a vine I have brought forth pleasant odours; and my flowers are the fruit of honour and riches. I am the mother of fair love,” a passage used in the masses of the Blessed Virgin. Other flowers in Eleanor’s bouquet also relate to traditional Marian symbolism. The white flowers in the lower center with six rounded petals resemble jasmine, whose sweet scent and color symbolize Mary’s purity and innocence. To the right the white flowers with six pointed petals are probably star-of-Bethlehem. The small white flowers at the lower right resemble sweet alyssum, named “Mary’s Little Cross.” Each identifiable flower was cultivated in colonial America, evidence of Kühn’s skill in grounding symbolism in reality. Eleanor’s diverse bouquet signals the Darnalls’ wealth, implying they could afford a multitude of expensive blooms, but could also illustrate Hawkins’s statement that Mary’s “soule was a Garden of al flowers.” Where most would see standard accouterments of contemporary female portraiture, Catholics would recognize the flowers as a celebration of Mary and apply their connotations to Eleanor.

As the passage from Ecclesiasticus suggests, the prominent vine wrapping the column also has Christian implications. While they are found in portraits of non-Catholic colonial women such as Deborah Hall (although Eleanor’s vine has the three-lobed leaves of the grapevine and her column supports the vine, unlike Hall’s unattached honeysuckle vine), Hawkins mentioned that in Mary’s garden “heer likewise are Vines of spiritual gladnes.” Vines, like evergreens, signify immortality
because many remain green all year. Vines also symbolize Jesus, who said, “I AM the true vine” (John 15:1) and the grapevine represents the Eucharist. A grapevine surrounds one of Hawkins’s emblems, the pearl (fig. 15). The pearl is a metaphor for Mary, the “Mother-pearl” and Jesus, “the precious Pearl, Christ Jesus in her womb.” Eleanor wears a pearl necklace. Though common in women’s portraits—all of Kühn’s female sitters wear pearls—and therefore not meaningful in isolation, juxtaposed with other Catholic imagery Eleanor’s pearls resonate with religious intent, again investing a status object with added meaning. Highlighted with flecks of white paint, the round tree containers and the curves of the balusters flanking Eleanor visually echo her pearls.

Two conspicuous foreground forms reinforce the portrait’s Catholic orientation. As was typical of pendant portraits, Eleanor and Henry turn slightly toward each other and also toward the dog, which Eleanor emphasizes by touching its head and pointing at it. Children controlling animals are common in colonial portraiture; the trained animal denotes the sitter’s skill and character (fig. 3). But Eleanor’s accentuation of the dog, its calm pose, watchfulness, and attention to its mistress (a different characterization than most colonial portraits’ dogs) suggest enduring interpretations of dogs as symbols of fidelity. The Latin word for fidelity is fides, the root of the popular dog name Fido. Fides is also the Latin word for faith. The dog’s prominence could indicate that the portrait’s narrative emphasis is faith.

No one has securely identified the dog’s breed. It is described as spaniel-like, as a retrieving beagle, and, intriguingly, as a King Charles spaniel, a breed favored by King Charles I, Baltimore’s sponsor. Anthony van Dyck painted several portraits

15. Jacob van Langeren, The Devise of the Pearl, from Henry Hawkins, Parthenelia Sacra (Rouen: John Cousturier, 1633), 187. Engraving, 3 1/2 x 3 1/4 in. The Latin inscription reads “precious and heavenly.”
of Charles’s family with King Charles spaniels, which were actually named after Charles II, who insisted spaniels be allowed in Parliament (and who is believed to have converted to Catholicism on his deathbed). In America, King Charles spaniels were status symbols since they were imported and had aristocratic associations, another nod to consumerism. But in Eleanor’s portrait the dog’s conspicuousness suggests it carries symbolic weight.

Eleanor’s dog resembles the King Charles spaniel with its variegated brown patches on white fur and its feathered ear, tail, and legs. Compared to today’s King Charles spaniels it has a longer pointed nose and a flatter head, unlike the squashed noses and rounded foreheads of current “Charlies.” Yet in 1710 they more resembled Eleanor’s dog; nineteenth-century breeders who favored smaller, rounder heads altered them. If a King Charles spaniel, it could have political as well as religious implications, indicating the Darnalls’ affiliation with the Jacobites, supporters of the Stuart line who wanted to restore Catholic James II (Jacobus is Latin for James), Charles II’s brother, to the throne he lost to Protestants William and Mary in 1688. English Catholics strongly supported James’s return in the hope that he would end discriminatory laws. Many joined Jacobite organizations including Henry Darnall I, described as “one of the recognized leaders of the Jacobite Party” in Maryland. Given Protestant reaction to Darnall’s supposed rejection of William and Mary in 1689, suggesting a Stuart allegiance would be safer done symbolically.

The dog’s gaze directs the eye to another foreground detail, the grotesque mask on the plinth, highlighted by its deep gold color and spandrels and reinforced by the smaller mask on the vase above. Why is it so oddly assertive, competing with Eleanor for attention? It has strangely human eyes, with whites, dark brown irises, and black pupils, as if a real human face is behind it. Masks often function decoratively in Baroque art, but here its prominence and intense gaze suggest it contributes to the portrait’s narrative. In secular and religious iconography masks are disguises, indications of deceit, or something hidden. The portrait’s mask could convey that all is not as it appears, hence the probing gaze that invites the viewer to scrutinize the portrait more closely and ponder the contents’ meanings. Drawn in and challenged by two forceful gazes—Eleanor’s and the mask’s—Catholics, used to thinking emblematically, would then recognize the symbols and their implications, situating the portrait in a traditional Catholic language of emblem and metaphor.

We cannot know how often Protestants saw Eleanor’s portrait or how conversant they were with such symbolism, but Maryland Protestants and Catholics did interact frequently. Farrelly describes intermarriage and social and business contacts with Protestants as common given Maryland’s relatively small Catholic population. Yet the religious practices of Maryland’s Catholics were kept quiet from the colony’s beginning. In 1633, Lord Baltimore instructed them to perform religious rituals “as privately as they may be” to ensure “no scandal nor offense” was “given to any of
the Protestants.” Although they were free to live openly as Catholics until 1689, they continued their English ancestors’ circumspection. After 1689 they had to be discreet because of the prohibition against the open profession of their faith and other penal laws. Historian Tricia T. Pyne describes the gentry’s chapels as “kept plain intentionally to accommodate the tastes of the larger Protestant society, which had great disdain for Catholic religious art and architecture,” noting that a crucifix and “fresh cut flowers” were “usually the only religious symbols” (reinforcing the suggestion that the portrait’s flowers should be read symbolically). Fear of or sensitivity to Maryland’s Protestants may explain the dual implications—social and religious—of many of the portrait’s details.

Viewed through a religious lens, Eleanor’s portrait’s standard and more unusual features present a related series of symbols; they are not just random decorative details. Limiting them to grand manner portrait convention is unsatisfying, given the established codes for communication available to educated Catholics. The portrait accentuates the Darnalls’ prosperity and family line but also their commitment to their faith and particularly to Mary of the Immaculate Conception, implying her metaphorical relationship to Eleanor. The portrait’s imagery includes emblems found in Marian literature like Partheneia Sacra (enclosed garden, fountain, house, rose, olive branch, pearl) or forms described or depicted in it (evergreens, tulips, carnations, vines). Other forms are also traditionally Marian or Catholic (jasmine, star-of-Bethlehem, alyssum, temple form, dog, pilgrim statue). Eleanor points at the dog, signifying faith, placed in the foreground and directing our gaze to the carved mask, which suggests there may be more than one level of meaning. Above hover two roses, the paramount floral signifier of Mary, the largest directly juxtaposed with the statue of a pilgrim, a figure with strong Jesuit associations. Although different in overall appearance, the similarities between Eleanor’s garden and that of Partheneia Sacra (fig. 4)—with its enclosure, formally trimmed trees, house, and geometric beds arranged around a fountain—suggest Kühn did not copy an undiscovered engraving but most likely at the Darnalls’ direction composed the setting to underscore their Catholic identity. Given the traditional function of emblems, the portrait may be devotional as well, a vehicle for contemplating Mary. This, too, would trouble Protestants wary of pictures as aids to devotion.

The abundance of Marian symbols undoubtedly has a gendered implication. In colonial America “the survival of Catholicism,” wrote historian Jay P. Dolan, “depended upon the women, who maintained the rhythms of Catholic life in the home.” Some claim Catholic women enjoyed higher status than Protestant women because of the Catholic veneration of Mary. Frances E. Dolan demonstrated that fear of powerful women is less evident in English Catholic apologist discourse, which “celebrated women’s authority and influence.” Women of the Catholic gentry directed religious instruction, hosted chapel services, even led devotions when priests were unavailable, and “made sure that the children were raised Roman Catholic even
when their husbands conformed to the Church of England.” This was not uncom-
mon. Henry Darnall III would convert to advance his political career. Yet he was
often under fire because his six children and wife Anne Talbot, the niece and ward
of “that strange and devout nobleman, Gilbert Talbot, 13th Earl of Shrewsbury, a
Jesuit priest,” did not convert. Protestant Assembly members questioned Henry’s
commitment particularly after he sent his son to Saint-Omer and was rumored to
allow mass said in his home. While Henry’s portrait as a boy documents his role
as heir, Eleanor’s portrait emphasizes an equally important role also connected to
lineage. Eleanor stands firmly, steadying the dog, her hand on its head, and assumes
the role of future caretaker of the faith. God created Mary as a pure vessel to hold
his son; perhaps Eleanor was considered a vessel to carry her family’s faith forward, explaining why she was given prominence almost equal to Henry.

Henry’s portrait shares details with Eleanor’s that may reinforce a religious level of meaning: the formal garden, evergreens, and fountain with manor houses in the distance, although here the garden balustrade is not as prominent as Eleanor’s and it is not completely enclosed—an open gate appears at the right. The enclosed garden metaphor is less relevant in a boy’s portrait than a girl’s given female purity’s greater value. However, Henry’s garden paths, rendered in perspective, form a pronounced Latin cross accentuated by the curtain’s large tassel. Henry’s fountain has a round base with grotesque faces surmounted by a griffin with the body of a lion and head and wings of an eagle, its head back, water issuing upward in a stream from its beak. In a Christian context, the griffin’s unification of the eagle (symbolizing divinity) and the lion (symbolizing humanity) represented Jesus as the guardian of good and protector of the faithful from sin (fig. 16).40

Henry’s trappings of the hunt denote a masculine pastime, emulating numerous Baroque portraits of male aristocrats. Roland Fleischer interpreted the bow, arrows, and the winged head on the plinth as references to Cupid, based on secular emblem books, but Catholic emblem books transformed Cupid into Amor Divinus, an allegory of Divine Love, or Jesus (fig. 17). Arrows are Amor Divinus’s attribute and are viewed as spiritual weapons signifying the dedication of one’s life to God. In this context the plinth’s winged head is more likely a cherub than the pagan Cupid.41

Establishing the slave’s intent in a religious reading of the pendants proves difficult. He reflects reality, since Henry Darnall I owned over one hundred slaves in 1711. Africans had many implications in contemporaneous visual culture, both secular and religious. Kühn emphasized Henry’s status through the African’s subordination, consistent with the Baroque trope of including (and contrasting) an African servant with his or her white master. Henry’s slave’s standing is underscored by his placement below Henry, literally separated by the balustrade, and the implicit comparison between him and Eleanor’s dog. Like a dog he is Henry’s companion, like a dog he has retrieved a dead bird, and like a dog he appears devoted to his master. The most disturbing aspect of the portrait—the metal collar that suggests both cruelty and commodification—is similar to period dog collars. It is also identical to the collar around a deer’s neck in Kühn’s portrait of Charles Carroll of Annapolis; both are clear signs of control. Catholics had a different perspective on slavery than their Protestant contemporaries. In the eighteenth century Protestants often hesitated to convert slaves fearing they might compare their plight with ancient Egypt’s Jews, fostering rebellion. Catholics converted many slaves believing it was their duty to save an “inferior” race. Farrelly recognized this as another way Maryland Catholics asserted their religious identity.42

The Darnalls’ position in Maryland’s Catholic hierarchy and their circumstances in the early eighteenth century encourages consideration of Kühn’s portrait of Elea-
nor from a religious perspective. After 1689, Maryland Catholics were persecuted, their rights considerably restricted. They feared confiscation of their land and had to worship surreptitiously. Their situation worsened with the 1704 Act to prevent the Growth of Popery and declined further after 1710. In 1718 the Maryland Assembly voted to disenfranchise Catholics completely. A 1756 petition for relief noted that “by these Laws we are almost reduced to a Levell with our Negros not having even the privilege of Voting . . . in short they deprive us of all the Advantages promised our Ancestors on Coming to this Province.” Given this predicament, overt references to the faith might be risky in a portrait that probably hung in the Woodyard’s public area. At a glance viewers would note the portrait’s consistency with grand manner portraiture, allowing the Darnalls to discreetly acknowledge an essential part of their identity but not offend non-Catholics. As Lovell commented, it is important to ask not only whom portraits were for but also whose eyes were “equipped to perceive and understand their nuanced readings.”

Does suggesting the pendants have a religious intent invalidate their function as
signifiers of status and lineage and carefully constructed elite identity? No, instead it indicates how multi-layered and varied in function colonial portraits can be. At one level they are clear status symbols stressing the social and economic with fine clothing, elaborate settings, and an obsequious slave. At a second level they confirm lineage and the parent's expectations for the children. But at a third level Eleanor's portrait was intended for a specific, educated interpretive community who would understand its basis in Catholic iconography. For Catholics the portrait was didactic and perhaps devotional, an avowal of loyalty to a persecuted faith, associating Eleanor with the Virgin Mary and anticipating her role as caretaker of the faith. Together, the pendants adroitly incorporate numerous concerns: status, affirmation of lineage, commentary on race and class, a symbolically realized religious affiliation and perhaps a political alliance, resulting in portraits that are compelling and complicated, the most complex extant portraits created in America to that date.

There is other explicit evidence of the Darnalls' commitment to their faith. The family coat of arms bears the motto “Vigilance, Love, the Cross.” Henry Darnall III and Eleanor both went to Catholic schools in Flanders—at considerable expense—Henry to Saint-Omer and Eleanor to a convent school of English Sepulchrine nuns at Liège. This, too, replicated English Catholic practice, undertaken despite harsh legal restrictions. Although Henry converted to Anglicanism, Eleanor married Daniel Carroll in 1727 and had two sons significant to American history. One was Daniel Carroll Jr., a signer of the Constitution. The other was John Carroll, also educated at Saint-Omer, who stayed abroad working actively as a Jesuit until Pope Clement XIV suppressed the order in 1773. Carroll returned to America and lived with his mother. In 1776 he traveled to Canada with Benjamin Franklin to encourage the French to support the American Revolution, for which Maryland Catholics strongly advocated, hoping freedom from England would end anti-Catholic discrimination. Carroll later became the first Roman Catholic bishop and then archbishop of the United States, determining American Catholicism's direction after the Revolution. Perhaps influenced by his mother and certainly his order, Carroll demonstrated the continued centrality of Mariolatry. He was consecrated as Bishop of Baltimore on August 15, 1790, the Feast of the Assumption of the Virgin. He commissioned Benjamin Latrobe to design a cathedral for Baltimore dedicated to the Virgin of the Assumption. He placed his diocese under Mary's protection and named the Virgin of the Immaculate Conception patroness of the United States.

Kühn's other surviving children's portraits suggest that considering their Catholic context could also produce deeper readings. Ignatius Digges, the subject of Kühn's only fully signed and dated work, was named after the Jesuit founder—naming children Ignatius, Xavier, or Henrietta Maria was another way Maryland Catholics acknowledged their religious identity. The son of Protestant William Digges (who married Charles Calvert's Catholic stepdaughter and was the only Protestant member of the Governor's Council in 1689), Ignatius, who was raised Catholic, holds a cherry
stem and before him a parrot eats cherries. In Christian iconography cherries are a fruit of Paradise and symbolize eternal life. Considered prophets of Mary’s coming and therefore heralds of the Immaculate Conception, parrots also relate to Christ’s conception because as talking birds humans experience them aurally; Catholics believed Mary was impregnated by the words Gabriel spoke to her. Parrots are also known to repeat Gabriel’s first word, “Ave.” Ignatius’s gesture directs us to a fountain where water spills from grotesque masks and a half-shell, a symbol of pilgrimage (see fig. 11) and of Venus (like roses and gardens) that early Christian artists adapted to Mary. As in the portraits of his cousins, behind Ignatius is a manor house with tapered trees. Kühn’s Portrait of a Young Girl shows her reaching for a large bowl of cherries with a spaniel at her feet, roses to the right, before the round, columned Temple of God. Further investigation of these images awaits future study.

Kühn’s representation of the slave in Henry’s portrait, while the pendants’ most interesting aspect to many today, has caused viewers to overlook the portrait of his sister and unique visual evidence of Catholic identity. In fact, Eleanor’s portrait’s elaborate iconography makes little sense if it is not Catholic. When a religious motivation is considered, the portrait’s imagery has all of the subtlety of a billboard advertisement, especially if we imagine it in situ, near Kühn’s bland portraits of the elder Darnalls. We must keep in mind when studying works of art of such iconographic complexity from what context they emerged and what the patrons who commissioned them valued. In the case of Kühn’s portrait of Eleanor Darnall the context was a decidedly Catholic one.

NOTES


11. Lovell, Art in a Season of Revolution, 6, 117; Ronald Hoffman, Princes of Ireland, Planters of Maryland: A Carroll Saga, 1500–1782, in collaboration with Sally D. Mason (Chapel Hill: University of North Carolina, 2000), xx; and Farrelly, Papist Patriots, 14, 136.


13. Flemish artists Peter Paul Rubens and Anthony Van Dyck defined Baroque grand manner portraiture, but if Kühn was from the Palatine, perhaps examples closer to home influenced him. Palatine Elector Johann Wilhelm II (ruled 1690–1716), a leading art collector, invited Flemish and Dutch artists to serve as court painters. See Thomas W. Gaehhtgens and Louis Marchesano, Display and Art History: The Düsseldorf Gallery and Its Catalogue (Los Angeles: Getty Research Institute, 2011). Dutch artist Jan Weenix created for him a portrait of Elisabeth Charlotte von der Pfalz, 1697, a Palatine princess married to the Duc d’Orleans, that particularly parallels Kühn’s content, including grand architecture by a garden with tapered trees, a fountain, flowers, statues, architectural sculpture, and, notably, a black servant. See http://commons.wikimedia.org/wiki/File:Elisabeth_Charlotte_d%27Orleans_Jan_Weenix_1697.jpg. Johann Wilhelm, Elisabeth Charlotte, and Jan Weenix all were Catholic. Pleasants, Kühn, 12, described Kühn’s settings as having “architectural and scenic backgrounds [that] show the Italian influence which pervaded all of Europe in the seventeenth century.” Weenix’s father was one of the “Utrecht Italianates,” see Sheila D. Miller, ed., Dutch Art: An Encyclopedia (New York: Routledge, 2011), 401–2.


31. Hawkins, Partheneia Sacra, 17. On Mary and rose symbolism, see Joelle Mellon, The Virgin Mary in the Perceptions of Women: Mother, Protector and Queen Since the Middle Ages (Jefferson, N.C.: McFarland, 2008), 60–64; Franca Falletti and Magnolia Scudieri, Around the David: The Great Art of Michelangelo’s Century (Florence: Museale Fiorentino, 2003), 101–2; Sill, Symbols in Christian Art, 52–53; Cuneen, In Search of Mary, 208, 211–13; and Pyne,
“Maryland Catholic Community,” 69. For Jesuits and the rosary, see Raguin, Catholic Collecting, 16–17; and Goody, Culture of Flowers, 203, the source of the second quote.


33. Hawkins, Partheneia Sacra, 121, 192, 194, 198.


39. J. Dolan, American Catholic Experience, 83. The second and third quotes are from F. Dolan, Whores of Babylon, 97, 102, 109–10, 137–45, who indicates that English penal codes particularly punished Catholic mothers because of their influence on their children’s religion.
Although ten attempts, the latest in 1677, to pass laws allowing the removal of Catholic children from their homes failed, laws that permitted seizure if a Catholic mother’s Protestant spouse died did exist. Other sources on Catholic women include Corthell, introduction to Catholic Culture, 5–6; Hardy, “Women and the Catholic Church,” 397–403; Michael Graham, “Meetinghouse and Chapel: Religion and Community in Seventeenth-Century Maryland,” in Colonial Chesapeake Society, Lois Carr, ed. (Chapel Hill: University of North Carolina Press, 1985), 271; and Pyne, “Ritual and Practice,” 30–31, 38. Pleasants, Kühn, 27, commented on Anne Talbot’s uncle. On Darnell III’s later life see John Walton, “‘His Lordship’s Kindness’ and Its First Owner, Henry Darnall III,” February 16, 1968, typescript, Maryland Historical Society, Baltimore, although Walton dated the home incorrectly (it was built in the 1780s and not by Henry Darnall III); Ronald Hoffman, Sally D. Mason, and Eleanor S. Darcy, eds., Dear Papa, Dear Charley: The Peregrinations of a Revolutionary Aristocrat, as told by Charles Carroll of Carrollton and His Father, Charles Carroll of Annapolis, with Sundry Observations on Bastardy, Child-Rearing, Romance, Matrimony, Commerce, Tobacco, Slavery, and the Politics of Revolution in America (3 vols.; Chapel Hill: University of North Carolina, 2001), 1:44 n.6, 179–80, 181 n.6, 181–82, 194–95, 210–12, 212 n.5 and n.6, 214, 219, 222, 230; and Newton W. Mereness, Maryland as a Proprietary Province (London: MacMillan, 1901), 326–28. Henry Darnall III held several important government positions, including attorney general from 1744 to 1756 and naval officer for the Patuxent from 1755 to 1761, a job from which he embezzled over £2,000 sterling. Apparently his character flaws were recognized early. See Walton, “‘His Lordship’s Kindness’,” 4, 20; Scott McDermott, Charles Carroll of Carrollton: Faithful Revolutionary (New York: Scepter Publishers, 2001), 85; and Hoffman, Dear Papa, Dear Charley, 229.

40. Ferguson, Christian Art, 7; Hall, Symbols in Art, 143; Sill, Symbols in Christian Art, 21.
Justus Engelhardt Kühn’s Portrait of Eleanor Darnall


43. The first quote is from J. Dolan, American Catholic Experience, 85. See also Hardy, “Papists,” 162–67, and Fogerty, “Property and Religious Liberty,” 75–81. The second quote is from Lovell, Season of Revolution, 268, 321 n. 1.


James Madison, 1751–1836. (Library of Congress.)
James Madison, the War of 1812, and the Paradox of a Republican Presidency

JEFF BROADWATER

As a member of the Virginia House of Delegates, James Madison steered to passage Thomas Jefferson’s landmark Bill for Religious Freedom. His invaluable service at the federal Constitutional Convention of 1787 earned him the sobriquet, “the Father of the Constitution.” He co-authored The Federalist, the classic statement of American political thought; introduced in the first federal Congress a package of amendments that became the Bill of Rights; and, with Jefferson, co-founded the Democratic-Republican Party. Undoubtedly, Madison ranks among the most influential of the American Founders.1

As president from 1809 to 1817, though, Madison has long seemed much less impressive. One older textbook described President Madison as “stubborn to the point of stupidity.” In nine surveys of presidential effectiveness taken between 1980 and 2006, he stood, on average, fifteenth among his fellow presidents. In 2009, a C-Span poll of sixty-five historians rated him twentieth among forty-two presidents, just behind John Quincy Adams and just ahead of Grover Cleveland. In 2011, Siena College published a survey of 238 “presidential scholars” who ranked Madison a surprising sixth, but generally he has not fared so well.2

The War of 1812 dominated Madison’s administration, and the lackluster performance of the United States under a seemingly hapless chief executive in an inconclusive conflict explains why he is so often rated in the middle of the presidential pack. Donald Hickey, perhaps our leading authority on the War of 1812, argues that Madison “probably deserves to be ranked no higher than 25th.” Yet Madison’s stature with most voters survived the war intact. Madison, John Adams thought, “notwithstanding a thousand faults and blunders, has acquired more glory, and established more union; than all his three predecessors . . . put together.”3

Madison’s wartime experiences raise at least two related questions. Why was such a revered Founder such an ineffectual commander-in-chief, and why did most of his contemporaries forgive his shortcomings? Might it be that what modern historians dismiss as utter incompetence, his supporters, if they were so inclined, could praise as fidelity to republican principles?

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Madison sent his war message to Congress on June 1, 1812. He began with an attack on impressment—the British practice of seizing British subjects, or alleged British subjects—from American ships and impressing them into service in a Royal Navy depleted of manpower after its long war against Napoleon. Madison concluded a recitation of American grievances by suggesting, but not quite saying, that the British were responsible for what he called “the warfare just renewed by the savages on one of our extensive frontiers.”

Madison, though, spent most of the document complaining about British restrictions on American trade with France and its allies. A combination of American diplomacy and economic sanctions had brought no relief. On June 4, a divided House passed a declaration of war. On June 13, an equally divided Senate concurred. On June 18, Madison signed the official declaration. He did not know that two days earlier the British government had decided to suspend its restrictions on American commerce. The British, who had been suffering through a recession, had concluded that the restoration of normal trade with the United States might help revive their economy. Madison said later he would not have gone to war if he had known about the change in British policy, but impressment, a general animosity toward the British, and the slow pace of early nineteenth-century diplomacy kept the war going for two and a half years.

The war went badly from the start. A series of American misadventures culminated in the burning of the White House and the Capitol by British troops in August 1814. That particular disaster began with a strained relationship between Madison and his secretary of war, a cantankerous New Yorker named John Armstrong. Armstrong had presidential ambitions, as did James Monroe, who was then secretary of state. Madison obviously hoped to be succeeded by his fellow Virginian, a fact Armstrong resented. Political rivalry encouraged insubordination. The British had raided coastal towns in the Chesapeake during the summer of 1813, when Madison first received reports of a likely attack on Washington and of the inadequacy of the local militia. New Jersey’s Jonathan Dayton wrote Madison a letter in August 1813 that proved prophetic: he predicted the British would threaten Baltimore and Annapolis and could march through Bladensburg to Washington in a couple of days with “little or no opposition.”

The capital survived that summer, but Monroe warned Madison in December that Armstrong, “if continued in office, will ruin not you and the admn. only, but the whole republican party and cause.” In May 1814, anticipating new attacks as the weather improved, Madison told Armstrong to strengthen Washington’s defenses. Armstrong ignored the order.

At a Cabinet meeting on July 1, Madison predicted the British would attack Washington. Armstrong disagreed. He thought that Baltimore or Annapolis presented more likely targets. Armstrong’s opinion made some sense—Baltimore and Annapolis were larger cities of much greater commercial significance—but cynics suspected
Armstrong had an ulterior motive. If the British were to destroy Washington, it would create an opportunity to move the capital to the North.\(^8\)

Under pressure from the president, the War Department created the Tenth Military District to defend Washington. Armstrong wanted to give the command to Gen. Moses Porter, a distinguished veteran of the Revolutionary War and an old Indian fighter. Madison overruled him and made a political appointment, a Baltimore lawyer named William Winder. Winder’s military experience was limited. He had been captured at the Battle of Stony Creek near Niagara, New York, in June 1813, and later released to negotiate issues regarding the treatment of prisoners of war. Madison had reasons for preferring Winder. The defense of Washington would depend heavily on the support of the Maryland militia—the regular army had only a few hundred soldiers in the area—and the governor of Maryland, Levin Winder, was General Winder’s uncle. Madison hoped the family connection would ensure Maryland’s cooperation.\(^9\)

Winder spent most of his time inspecting terrain without really accomplishing anything. A cartographer in the War Department had already predicted that Washington’s defense could hinge on the little Maryland town of Bladensburg, on the eastern branch of the Potomac River. There was a bridge at Bladensburg, and the river there was shallow enough to ford. One road from Bladensburg led to Georgetown, another to Washington. Winder had no real strategy to defend the city. Armstrong, for his part, did not want to pay for a general mobilization of the militia if he could avoid it, but on July 12 Winder received authority to call up 6,000 Maryland militia.\(^10\)

To complicate matters, in mid-August, Madison and Armstrong had an ugly confrontation over Armstrong’s practice of reorganizing regiments, issuing military regulations, and promoting officers without consulting the president, as might normally be done. After being rebuked, Armstrong apparently decided he would do nothing without specific orders from Madison. Armstrong gave Winder no more support beyond assigning an adjutant and a chaplain to his staff. Despite the secretary of war’s shortcomings, the president retained him. Madison disliked firing people, Armstrong had served as an officer in the Continental Army, and he was well
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connected in New York political circles, having married the sister of the influential Robert R. Livingston.11

On August 15, British transports carrying about 4,500 troops commanded by Gen. Robert Ross passed through the Virginia Capes to meet British warships led by Admiral George Cockburn. On August 18, Madison received news of the approach of the British fleet. Madison ordered that roadblocks be placed on the local roads, and again his orders were ignored. Militia units marched and drilled around Washington, but with no real leadership, they accomplished virtually nothing. The next day—August 19—Ross and Cockburn disembarked troops at Benedict, Maryland.12

On meeting no opposition, the British began marching north on August 21. Madison ordered a general mobilization of the militia the next day, and he told Dolley Madison to prepare to evacuate the White House. By then, the British were at Marlboro, thirty miles from Baltimore.13

The Americans remained uncertain of British intentions, and in fact Ross and Cockburn apparently did not make the final decision to attack the capital until August 23. Washington could be approached most directly from the south across two bridges over the Anacostia River, but the British assumed those bridges would be heavily defended or destroyed. Indeed, the Americans eventually blew them up. Winder had half his troops nearby at the Washington Navy Yard about a mile from the U.S. Capitol. It was an odd and unfortunate disposition, along the broadest part of the river in a stretch already defended by naval guns, and the British prudently decided to bypass it. Ross and Cockburn elected to take a longer route. The army would cross the Anacostia at Bladensburg and approach Washington from the northeast.14

On the morning of August 24, at a meeting at the Navy Yard, Madison learned that the British were moving on Bladensburg. American militia had already begun to assemble there, and Winder rushed to reinforce them with a motley group of cavalry, sailors, marines, army regulars, and more militia from Maryland and the District of Columbia. Despite the improvised nature of the American effort, Madison had reasons to be confident. The Americans would outnumber the British. They also had the advantage in cavalry and artillery, and they would be defending the higher ground.

Madison, Armstrong, and Winder arrived in Bladensburg shortly before the battle began. None provided any strategic direction, although Winder told one artillery sergeant, “When you retreat, take note you must retreat by the Georgetown road.”15

When the British crossed the bridge, they took heavy casualties before the first line of American defenders fell back. Except for a group of naval gunners and U.S. Marines commanded by Joshua Barney, the American troops scattered quickly. They might have reformed around Barney’s men, who fought until they were overrun and Barney was wounded. He said later he was “cruelly disappointed” that other Americans had not rallied around them. By 2:00 p.m., Madison, who had ridden on
horseback to the rear of the American lines, received news that the battle was lost. Ross and Cockburn entered Washington later that day.16

The American defeat had not been inevitable. With proper leadership, American soldiers won other battles in the War of 1812. Andrew Jackson’s victory at the Battle of New Orleans a little over four months later is the obvious example, but another American success, with another American general, makes an even starker contrast.

Samuel Smith was a sixty-two-year-old veteran of the American Revolution, a United States senator, and a major general in the Maryland militia who had been given command of Baltimore’s defenses in the spring of 1813. The war there began inauspiciously when a Republican mob destroyed the offices of an anti-administration newspaper, the *Federal Republican*; killed one Federalist, Brigadier General James N. Lingan, a veteran of the Revolutionary War; and injured eleven others, including Alexander Contee Hanson, one of the paper’s editors, and General Henry “Light Horse Harry” Lee, both of whom suffered injuries from which they never recovered. The mayhem further alienated Federalists, helped them win control of the Maryland House of Delegates, and fanned opposition to the war.17

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*Secretary of War John Armstrong (1758–1843) ignored Madison’s orders following a vehement argument, leaving the capital unprepared for the British attack and both men targets of ridicule in the London press. (“The Fall of Washington—or Maddy in Full Flight” [London: S.W. Fores, 1814] Library of Congress.)*
Nevertheless, Baltimore was well situated to defend itself. With a population of 47,000, it was the nation’s third largest city, and the only big city dominated by Democratic-Republicans. Foreign trade had brought wealth to Baltimore, and it enjoyed strong local leadership and a tradition of popular political participation. British raids in the Chesapeake, though, created jitters and calls for help from federal authorities. In April 1813, Governor Winder complained to Madison that many parts of Maryland were “unprotected and defenceless” and reminded the president that “by the Constitution of the United States, the common defense is committed to the National Government.” A Georgetown newspaper reported the British had burned $1.5 million worth of tobacco along the Patuxent, and, one correspondent told Madison, had “received a considerable number of negroes.”

Yet, most federal resources had been diverted to the northern theater to support operations in Canada, and the city’s residents were soon convinced that they would have to defend themselves. Only one of the navy’s 106 serviceable gunboats, for example, had been stationed in Baltimore. As early as May 1813, a local commander could report to Madison that the city had acquired “heavy guns,” and with the help of “drafted militia” had made “considerable preparations” to defend itself. In early August, the British seized nearby Kent Island in anticipation of attacks on Baltimore and Annapolis. Later in the month, however, the British commander,
Admiral Sir John Borlase Warren, impressed with the cities’ defenses, ordered the island abandoned. A rumor from a British sympathizer “that Baltimore is to be burnt by the British ‘within a very few weeks’” reached Madison in mid-June 1814, but when William Winder, from the regular army, attempted to assume command, Smith rebuffed him. Baltimore’s inner basin was guarded by Fort McHenry, and Smith positioned additional batteries outside the fort and constructed smaller forts and redoubts around the city. He put gunboats and armed barges in the harbor and local merchants agreed to sink ships in its entrance to serve as a barrier to British vessels. In August, city leaders formed a “Committee of Vigilance & Safety” that drafted every white man in the city between the ages of sixteen and fifty. Smith put his citizen-army to work digging trenches and earth works. When the British approached Baltimore in September, Smith had at least 9,000 men, maybe more, at his disposal. The battle of Baltimore is best remembered for the failed attack on Fort McHenry, but another operation enjoyed almost equal significance. As the Royal Navy approached from the sea, a British army advanced on Baltimore by land. Smith sent 3,200 men to meet them at North Point, a few miles southeast of Baltimore, on September 12. As they had done at Bladensburg, the American militia retreated when British regulars charged them, but they fell back in good order, and in the skirmishing before the main battle American snipers killed Ross, the British commander. The death of a popular general demoralized the British and delayed their advance. Ross’s second-in-command, Colonel Arthur Brooke, seeing Smith’s formidable army arrayed against him on the outskirts of the city, decided against attacking Baltimore without close support from the fleet. But the larger warships could not get close to shore because of Fort McHenry. When the British saw “by the dawn’s early light” on September 14 that a naval bombardment of Fort McHenry had failed to reduce the fort, they abandoned the entire operation.

Why was Baltimore able to defend itself when the nation’s capital could not? “It is interesting to note,” Joseph A. Whitehorne has observed, “that American military success was in an inverse ratio to the scale of the federal government’s involvement.” American forces could win local victories under unusually intrepid commanders like Samuel Smith or Andrew Jackson, but in the ordinary course of business, the national government was simply too weak to fight effectively when lesser generals were in charge. Why was the central government so feeble?

The political ideology that dominated American politics during and after the Revolution had made it difficult for the federal government to prepare for war. Republican political thought exalted limited government and decentralized political power. Republicans feared “standing” armies as a threat to republican government. Additionally, military preparations required higher taxes, but many Americans saw direct taxes as a threat to their personal freedom.
At the beginning of the nineteenth century, 90 percent of Americans lived on farms or in small towns and had limited contact with the outside world. Local authorities commanded more respect than did the federal government. The only federal presence in most communities was the post office.24 Once the war began, state militia officers often disputed the authority of regular army officers. During fighting along the Canadian border, militia units repeatedly refused to enter Canada, on the grounds they could not be deployed outside the United States.25

Apathy toward the responsibilities of national citizenship manifested itself in other ways. In 1810, an economy-minded Congress voted to reduce the size of the army and navy. Two years later, with war imminent, lawmakers reversed course and voted to raise an army of 75,000 men.26 Despite having well over a million white men of military age available, the nation never met the congressional target. Few men wanted to enlist. Only about 5 percent of those eligible served in the regular army during the war. The population of the United States dwarfed Canada’s—7.5 million to 300,000—but the government could never raise enough men for a successful invasion.27

Nor could it prepare them to fight. The army lacked a trained, professional officer corps. Commissions were highly political. Congress had established the military academy at West Point in 1802, but by 1812, West Point had graduated only eighty-nine students. Instruction had been haphazard at best; when the war began, no one was enrolled. Ordinary soldiers received even less preparation for combat. The army had no standardized training manual until the end of the war. Small units were often detached from larger units and rushed into battle, which meant many companies lacked experience maneuvering within or with large regiments.28

An inadequate administrative system contributed to the army’s inefficiency. When Thomas Jefferson took office in 1801, the War Department had eighteen civilian employees. Appalled by this bloated bureaucracy, Jefferson eliminated one position, an accounting clerk, and reduced the entire executive branch from 130 employees to 126.29 Madison, as a result, inherited a War Department with a staff of seventeen. When the War of 1812 began, the army’s supply system collapsed. An army quartermaster general duplicated the work of a civilian commissary general, but no one could keep track of supplies on hand. On the brink of war, Madison had asked Congress to create two assistant secretaries of war, but lawmakers refused. Not surprisingly, the government’s inability to feed, clothe, and pay soldiers discouraged enlistments.30 The army, also predictably, struggled to keep its troops under control. About 10 percent of the regulars deserted. Others found legal ways out. State courts sometimes issued writs of habeas corpus to release disgruntled soldiers from their military obligations, often on the grounds they had been minors when they enlisted.31 The army lacked an intelligence service, had no capacity for strategic planning, and had no ability to coordinate different armies in the field. Early in the conflict, the United States had nowhere to put prisoners of war. There was no national prison system, so the army
had to use state penitentiaries and local jails. Those facilities were often little more than sheds with a few guards, and escapes became routine.32

A lack of money helped cripple the war effort. Loath to impose direct taxes on the citizenry, Republicans had relied heavily on import duties to finance the federal government. Restrictions on legal trade with Great Britain—even before 1812—had cut into those revenues. In March 1813, treasury secretary Albert Gallatin advised Madison, “we have hardly money enough to last till the end of the month.” John Armstrong had to ask Madison’s permission to shift money from one account to another to pay the War Department’s bills. From Virginia came complaints that when militia regiments were demobilized men were paid in IOUs, which the men had to sell at “half price or at a great discount” to pay their way home. In late 1814, the government failed to make its regular payments on the national debt.33

Meanwhile, illegal trade continued during the war and contributed to the administration’s financial woes. Because Federalist New England opposed the war, the Royal Navy did not blockade the New England coast until 1814. New Englanders bought British goods and smuggled flour and beef to British armies in Canada. Illegal trade drained hard currency out of the United States, and for much of the war, the federal government struggled to borrow money. Many of the nation’s biggest banks were in the Northeast and controlled by hostile Federalists, who were not inclined to extend credit to a Republican administration.34
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The case of David Parish illustrates the interconnections of illegal trade, government finances, and the war effort. The British were surprised that the Americans never made a serious effort to close the St. Lawrence River, a vital supply line to British forces in Upper Canada. They likely owed a bit of that good fortune to Parish, a large landowner from Ogdensburg, New York. Ogdensburg was in the St. Lawrence Valley along New York's northern border, where Parish carried on an extensive illicit trade with Canada. Military operations in his neighborhood would have been bad for business, but Parish reckoned he could make money playing both sides and loaned the federal government $7.5 million. In exchange, he apparently purchased a “tacit understanding” from the Madison administration to keep its troops away from Ogdensburg. After one regular army officer, Benjamin Forsyth, led raids from the area into Canada, Parish successfully pressured the administration to remove U.S. forces from the St. Lawrence Valley altogether.35

As president, James Madison could not overcome the weaknesses of the early American state, but he won reelection in 1812 and remained popular until the end of his second term. He was not without a host of critics. Hostile graffiti met him when he returned to Washington after the British raid. “James Madison is a rascal, a coward and a fool,” read one posting. Another scribbler wrote, “George Washington founded this city after a seven years’ war with England, James Madison lost it in a two years’ war.” Federalist ministers and newspaper editors ridiculed him viciously. Yet, when Madison left office, most Americans thought he had been a model president. Regarding Madison, former First Lady Abigail Adams was put in mind of “what [Alexander] Pope called the noblest work of God: an honest man.” Moreover, he was succeeded as president by his close ally James Monroe.36

Public satisfaction with Madison's performance as president owed much to eighteenth- and early nineteenth-century abstractions about war and presidential power. Americans of Madison's day worried a great deal about the abuse of executive prerogatives.37

To be sure, Madison's own thoughts about the nature of a republican chief magistrate had developed slowly. From the start of his public life in the mid-1770s, he knew he disliked the governor created by Virginia's constitution during the American
Revolution. Elected by the legislature for a one-year term and unable to act without the concurrence of an unwieldy council, the office, he believed, was “the worst part of a bad Constitution.” The Virginia Plan he drafted for the Constitutional Convention in 1787 provided for a single national executive to be selected by Congress for a single term, but the length of the term was left unspecified, and Madison said as little as possible about the executive’s duties. He deferred to the precedent set by the Articles of Confederation. Clothed with “a general authority to execute the National laws,” the chief magistrate “ought to enjoy the Executive rights vested in Congress by the Confederation.”38

Madison believed the legislature would dominate any republican government. In Philadelphia, he proposed vesting the veto power in a “revisionary council” composed of executive officials and federal judges because he feared an elected president, lacking the “pre-eminence” of “an hereditary monarch” would be too weak, acting alone, to overrule acts of Congress. After the Great Compromise established the principle of state equality in the Senate, over Madison’s objections, he and other large-state delegates began to advocate shifting powers from Congress to the executive. Thus the president acquired the right to appoint senior federal officials and to negotiate treaties. New concerns also arose about making the executive independent of Congress. After toying with the idea of a direct, popular election, the delegates created the Electoral College.39

If Madison worried mainly about the misuse of legislative power, he could envision one situation in which a republican chief executive might threaten the people’s liberties: when the republic faced a foreign threat. In a speech on June 29, 1787, Madison warned his fellow delegates of the consequences if the Articles of Confederation collapsed before a new central government could be created. Each state would have to assume responsibility for its own defense. The smaller states would create standing armies for protection against their larger neighbors, and they would give their governors broad powers. Madison told the convention: “A standing military force, with an overgrown executive, will not long be safe companions to liberty. The means of defense against foreign danger have always been the instruments of tyranny at home. . . . Throughout all Europe the armies kept up under the pretext of defending, have enslaved, the people.”40

During the debate over the ratification of the Constitution, Madison said little about the presidency and minimized its powers. He argued repeatedly that the president would be subservient to the state governments because the state legislatures controlled the selection of members of the Electoral College. After the Constitution took effect, Madison, as a member of the new federal Congress, introduced a proposed bill of rights that limited the powers of Congress and, to a lesser extent, the states, but he saw no need to put additional checks on the president.41

Events would soon shatter his complacency about presidential power. Ironically, the threat came not from the president himself, but from George Washington’s de
facto prime minister, treasury secretary Alexander Hamilton. Hamilton’s proposals to expand the role of the federal government in the economy with a permanent national debt, a national bank, and a protective tariff transformed Madison’s thinking about executive power in a republican state.

In a short essay he published in the *National Gazette* in December 1791, he explained his growing anxieties. The consolidation of power in the central government, he warned, could destroy the republican system. He questioned the ability of Congress to manage “all the various objects belonging to the local governments,” for Congress could not adequately represent every local interest. Authority would inevitably flow from Congress to the executive. The president’s new responsibilities might require a multi-member executive—a committee of co-presidents—but it seemed more likely that the presidency would evolve into a hereditary monarchy. Representative government would be a sham, and the president, now exercising the power of a king, might as well become one.42

Madison, for the time being, retained his faith in George Washington. But during Washington’s second term, disagreements over foreign policy poisoned their relationship and aggravated Madison’s fears of executive authority. Washington’s Neutrality Proclamation of 1793 worried him. Washington hoped to keep the United States out of the ongoing war between France and Great Britain. Madison could accept the Neutrality Proclamation as a statement of fact—America was not at war—but not as a declaration of foreign policy. That, he thought, would infringe on the right of the Senate to approve treaties, and he considered treaty-making to be primarily a legislative function.43

Other grievances quickly followed. In 1794, Washington’s annual message to Congress seemed to blame the anti-administration Democratic-Republican societies for provoking the Whiskey Rebellion in western Pennsylvania. Madison responded that Washington’s comments threatened freedom of speech and freedom of the press, and that the president should stay out of party politics. In April 1796, Madison complained when the administration refused to provide the House with its correspondence regarding the controversial Jay Treaty with England. Washington had objected on the grounds that the papers were irrelevant to any legitimate function of the House, since it had no authority to approve or reject treaties. Madison believed it was inappropriate for the executive to pass judgment on “the objects and functions of the house.”44

Dangers abroad and partisan animosities at home worsened during the presidency of John Adams. When negotiations with France over French restrictions on American trade collapsed in the XYZ Affair, Adams called for a military build-up and the arming of merchant ships. Madison responded by resurrecting the warnings he had made at the Constitutional Convention in 1787. War could inflate the prerogatives of the presidency until the office became a threat to republican government. He feared that the president, by controlling diplomacy while Congress was in
The Paradox of a Republican Presidency

recess, might provoke a war. As he explained to Jefferson, “the Constitution supposes, what the History of all Govts demonstrates, that the Ex.[ecutive] is the branch . . . most interested in war, & most prone to it.”

Ultimately, Adams waged only a limited naval war against France, and it was over by 1800, but even this so-called Quasi-War was too much for Madison’s Republican faction. Their opposition provoked a Federalist Congress into passing the Alien and Sedition Acts in an attempt to censor critics of the administration. The acts raised obvious First Amendment issues; they also aggravated Madison’s growing concerns about the abuse of presidential power.

He laid out his fears in a report he wrote for the Virginia legislature in late 1799. The Sedition Act assumed the existence of a federal common law; sedition had been a crime under English common law. Recognizing a federal common law would empower Congress to legislate on topics not authorized by the Constitution. That prospect prompted Madison to expand on the idea he had suggested in his “Consolidation” essay in the National Gazette. If the federal government assumed too much power, an overworked Congress would defer more and more to the executive. As the role of the president grew, so would the grandeur of the position and the patronage it controlled. Ambitious politicians would covet the office, and elections would become “so violent and corrupt” that people would ultimately demand a monarchy.

For Madison, the crisis passed with Jefferson’s victory in the presidential election of 1800. It would be logical to assume that the Republican ascendancy would have rehabilitated the presidency in Madison’s eyes, but it is not clear that it did. He seems to have entered the Oval Office in 1809 with a vision of a proper republican president that had been shaped by the political battles of the 1790s.

Madison demonstrated his concern about the limits of presidential power in his approach to the decision for war. In June 1812, when he sent his “war message” to Congress, he laid out the nation’s grievances against Great Britain, but he did not expressly ask Congress to declare war. Under the Constitution, a declaration of war was a decision for Congress, and he intended to defer to congressional prerogatives.

Going back to his days as secretary of state under Jefferson, Madison had tried to

Alexander Hamilton, 1755–1804. (Library of Congress.)
avoid war, but not because he dwelt on the human carnage. In the eighteenth century, it was possible to think of war as a contest between small, professional armies led by gentlemen who operated within strict rules of engagement and who fought with muskets that made it difficult to hurt anyone beyond a range of a hundred yards or so. In reality, war, even then was hell, especially for civilians caught up in the fighting. There were, for example, reports of mass rapes during British raids on Hampton and Havre de Grace in the summer of 1813.48

Still, for republicans like Madison wars presented mainly political problems. Wars cost money, which meant higher taxes and an increasing national debt. Public debt typically found its way into the hands of wealthy investors who always threatened to acquire too much political influence. Military spending encouraged the inflation, profiteering, and financial speculation that debased honest labor. And war, with its demands for the kind of quick action a legislature could not provide, could swell the power of the executive to levels deadly to a republican system.

Money motivated troublesome entrepreneurs like David Parish, but Madison’s biggest headaches came from Federalists who opposed the War of 1812 on political and philosophical grounds. The New England states regularly withheld their militia from federal service; Connecticut offered recruits twice what the U.S. Army paid in an effort to keep men out of the regular army. Federalists in Massachusetts offered to give up part of Maine in exchange for a peace treaty with Great Britain. A vocal minority of New England Federalists advocated leaving the Union altogether.49

The war clearly divided Americans along sectional, partisan lines. Eighty percent of southern and western members of Congress had voted for the declaration of war; 67 percent of the members from New York, New Jersey, and New England opposed it. Party affiliation was even more important than geography. Eighty percent of Democratic-Republicans in Congress voted for the war; every Federalist voted against it. Thirty-four Federalist House members issued a widely circulated protest against going to war “with little calculation about means, and little concern about consequences.” They could not “refrain from asking; what are the United States to gain by this war?” In Federalist Providence, Rhode Island, church bells tolled, shops closed, and flags flew at half-mast to protest the war declaration. In Boston, the noted cleric William Ellery Channing took to the pulpit at the Federal Street Church to tell the congregation, “They must give no encouragement, no unnecessary voluntary support to the war. They should leave the awful responsibility of this destructive measure entirely with our rulers, and yield no aid (except for defensive purposes) but what the laws require.”50

From the very beginning of the conflict Madison received reports that the divisions in the country “may lead to civil war or a separation of the Union.” Calling the war “unnecessary,” the Connecticut General Assembly sent him a resolution endorsing the governor’s refusal to mobilize the state militia for federal service. Mas-
o; Massachusetts’s 70,000-member militia never saw combat. In the fall Madison won a close race for reelection and one prominent critic of the war, John Randolph of Roanoke, lost his congressional seat in Virginia. Elsewhere the war hurt pro-administration Republicans. Daniel Webster won a congressional race in New Hampshire mainly on the strength of his opposition to the conflict. Republican majorities in the House and Senate declined. Republicans lost their majorities in the congressional delegations in Massachusetts, New Jersey, and New York, and they lost control of the New York assembly.51

As the war ground on, the public mood did not improve, and discontent extended beyond the Northeast. In April 1813, citizens in Ashtabula County, Ohio, sent Madison a petition condemning the “present war” as “unnecessary, unwise, and injurious to the best interests of our nation.” Solomon Birckhead wrote Madison from Baltimore, “the gloom & distress that pervades our City you can have no idea of. Perhaps in no City in the Union are assembled such a collection of vagrants from all quarters of the world.” Maryland’s House of Delegates bemoaned “the awful condition of national affairs.” The Constitution, they lectured Madison, had been intended to create a government stronger than the Articles of Confederation, but it appeared “this government would prove no less incompetent than the confederation which preceded it.”52

The opposition sometimes bordered on treason. Madison’s supporters feared Federalist leaders, especially in Massachusetts, “are using their utmost exertions to excite the citizens to separate themselves from the national compact, and to raise the standard of rebellion and civil war.” They urged the president to crack down on dissent. Supreme Court justice Joseph Story proposed giving Congress broad power to punish common law crimes against the state along the lines of the notorious Sedition Act of 1798. Supporters recommended the creation of Republican militias in New England that could be mobilized against “any force that could be raised to oppose the general government.” Madison received proposals to disenfranchise Federalists and to incorporate into Republican states, Federalist states that refused to call up their militia.53 David Jones, a chaplain with the northern armies, urged Madison to allow his generals to court-martial, within twenty miles of American lines, any suspicious civilian, and if convicted, “hang him on the spot.” Jones also suggested Madison arrest the governor of Vermont after he recalled the Vermont militia from New York on the grounds they could not be made to serve out of state. Bolling Hall, a pro-administration congressman from Georgia, called simply for “a prompt and radical change.” The Philadelphia printer Mathew Carey peppered Madison with attacks on Federalist traitors in New England and with apparently unsolicited advice. After Madison repeatedly refused to prosecute his critics, Carey concluded “we are gone past the point of redemption” and castigated the president: “None of the human race without positive guilt, ever made so awful, so deplorable, so irrevocable a sacrifice of human happiness as you have done.”54
Early in the war, John Randolph of Roanoke predicted Madison would establish a dictatorship and turn the country into “one vast prison-house.” Events proved Randolph wrong. Madison failed to intervene when mobs in Baltimore abused local Federalists, a failure that might be attributed as much to his modest view of presidential power as to an indifference to civil liberties. He also refused to sign legislation permitting the naturalization of aliens during wartime. Otherwise, Madison generally showed a scrupulous regard for individual rights. He insisted that civilians be tried in civilian courts, not in military tribunals. When Elijah Clark, a United States citizen living in Canada, was taken prisoner while serving in the British army and convicted of espionage in a court-martial, Madison overturned the decision. Samuel Stacy, an American civilian arrested as a spy by military officials, obtained a writ of habeas corpus from a New York state court. Commodore Isaac Chauncey wanted to ignore the writ and hang Stacy, but Madison ordered him released.55

Madison knew respect for civil liberties had a cost. As early as August 1812, he complained privately that New England’s opposition to the war had a “crippling” effect on military operations and discouraged the British from entering into peace talks. Only a month before the signing of the Treaty of Ghent ending the war, he described “the conduct of the Eastern States” as “the source of our greatest difficulties.” It was, he thought, the main, if not the only, reason Great Britain continued hostilities. “The greater part of the people in that quarter,” by which he meant New England, “have been brought by their leaders, aided by their priests, under a delusion scarcely exceeded by that recorded in the period of witchcraft.”56

Yet Madison found reasons for optimism. He never believed a majority of New Englanders supported secession. As exporters of southern cotton and tobacco and western wheat, they had an economic interest in keeping the Union together. He attributed much of the opposition to the failure of efforts to invade Canada at the beginning of the war. Madison had hoped to strike quickly before the British could organize their defenses, but assembling even a modest force and winning congressional support had proved more difficult than he had envisioned. He thought secessionists, the most radical opponents of the war, could best be addressed through “local efforts,” and he took comfort in the election results from 1813 and 1814. In 1813, New York reelected its pro-administration governor, Daniel Tompkins, and Republicans in the Massachusetts assembly won enough seats “to control tho’ not to cure the sinister councils” that had dominated the state. A year later, Republicans won twenty-one of New York’s twenty-seven congressional seats. That outcome, Madison wrote Thomas Jefferson, “alone crushes the project of the Junto faction,” his term for northern Federalists who dreamed of creating an independent New York–New England confederacy.57

His annual message to Congress in December 1813 reflected his stubborn optimism: “The war has proved . . . that our free Government, like other free Governments, though slow in its early movements, acquires, in its progress, a force
proportioned to its freedom; and that the Union of these States, the guardian of the freedom and safety of all and of each, is strengthened by every occasion that puts it to the test.” By spring, though, with Britain’s war against Napoleon coming to a close, Madison feared Americans should “be prepared for the worst measures of the Enemy and in their worst forms.” Federalist opposition and “our difficulties in procuring money without heavy taxes,” he confided to Jefferson, weighed against “the experiment of prolonged hostilities.”

How then, with all the travails he faced, can Madison’s political survival be explained? Madison’s durability owed something to pure partisanship. He was a Democratic-Republican, and Democratic-Republicans, at least in the South and West, stood by him to the end. The Federalists, by contrast, had been in decline since 1800; unhappiness with pre-war economic sanctions against the British and the French, which hurt the United States as much as they hurt the Europeans, and with the War of 1812 itself, only arrested the decay. When public opinion swung in favor of the war after the Battle of New Orleans and the Treaty of Ghent, the Federalists could not recover.

The burning of Washington did not deal Madison’s reputation a fatal blow. The British occupation lasted less than forty-eight hours, after which the federal government quickly resumed its normal, if modest, operations. A congressional investigating committee absolved Madison of personal responsibility and attributed the disaster to poor communications between John Armstrong and William Winder and to the various inadequacies of the militia system. Most people faulted Armstrong and Winder, not Madison, for the debacle. Armstrong and Winder invited contempt. Blaming the victims, they charged the American defeat to the cowardice of the soldiers under their command, men in whom, as they put it, the “love of life . . . predominated over a love of country and of honor.”

Madison, by contrast, managed to spin the attack on Washington to his purposes. The president could minimize the significance of the defeat by pointing to Washington’s military insignificance. The weaknesses of the federal government that made Washington difficult to defend also made the national capital barely worth defending. Madison then used the destruction to inflame anti-British passions. On September 1, 1814, he issued a proclamation condemning the British for a “deliberate disregard of the principles of humanity and the rules of civilized warfare.” Within two weeks, newspapers throughout the country had reprinted Madison’s proclamation almost a hundred times. Cockburn and Ross drew widespread censure for their needless destruction of public buildings. The British victory at Bladensburg accomplished nothing, but their defeat at Baltimore helped revive American morale.

British and American negotiators in Ghent, Belgium signed the treaty ending the war on Christmas Eve 1814. The diplomats agreed to a ceasefire that formally settled nothing. In a final odd twist to an odd little war, the most spectacular American victory of the conflict came in New Orleans a few days later. Since Americans on the
East Coast got news of New Orleans first, and only heard about the peace treaty later, the war felt like an American triumph, and Madison benefited from that feeling.63

He also encouraged it. When Madison presented the treaty to the Senate, he described it as an American triumph with glory for all. “The late war,” he said, “has been waged with a success which is the natural result of the wisdom of the legislative councils, of the patriotism of the people, of the public spirit of the militia, and of the valor of the military forces of the country.” He added, “The nation can view its conduct without regret and without reproach.”64

Note the emphasis on honorable conduct. Madison had not, his admirers could argue, allowed the war to undermine the nation’s republican institutions, and to many Americans fidelity to principle was as important as more tangible accomplishments. Gordon S. Wood has called the War of 1812 “a Republican war that Madison sought to wage in a republican fashion.” His reserved leadership style reflected a republican commitment to individual rights and limited government. He tolerated his Federalist opposition. He authorized no censorship, no internments, and no military tribunals. His administration treated enemy aliens and prisoners of war humanely. Washington mayor James Blake praised Madison for waging war “without infringing a political, civil or religious right.”65

Not only could Madison claim he had protected the people’s liberties at home, he could also argue he had vindicated American rights abroad. As the war went on, without accomplishing much, it become more and more a war for national prestige, a war to show the world the United States would resist when its rights were invaded. John Taylor of Caroline called it a “metaphysical war . . . a war for honour, like that of the Greeks against Troy.” Fighting the war honorably became a kind of end in itself. Survival, with the nation’s republican institutions intact, constituted success.66

The war had always had an abstract quality; impressment and neutral rights did not directly affect most Americans.67 Relatively few men saw combat in the War of 1812, and most of the fighting took place at sea or along the border with Canada, which meant public opinion was shaped by what people heard or read about the war, not what they witnessed firsthand.68

A remote, ideological war did not require concrete gains. “[B]y simply declaring victory,” the historian Paul Gilje has written, “Americans were able to win the peace.” How Americans remembered the war became more important than the historical record. Republican newspaper editors took up the refrain of victory from Madison. The tendency of many observers in Britain to see the Treaty of Ghent as a British surrender reinforced the Republican interpretation, and Americans did not want to think their wartime sacrifices had been in vain. Americans who lived through the War of 1812 saw it as a war to vindicate republicanism itself, and that war, they thought, James Madison had won.69
NOTES


30. Once the war began, Congress did create a general staff for the army, but it dealt mainly with supply and procurement issues and other housekeeping functions. White, *The Jeffersonians*, 215–37.


45. JM to Thomas Jefferson, April 2, 1797, *JMW*, 586.


56. JM to Richard Cutts, August 8, 1812, *PJM-PS*, 5:91–92; JM to Mathew Carey, September


63. Hickey, *The War of 1812*, 306–7; Bickham, *The Weight of Vengeance*, 199–200; Andrew Lambert, *The Challenge: America, Britain, and the War of 1812* (London: Faber & Faber, 2012), 422. As early as June 1814, Madison and the Cabinet had agreed to accept treaty language saying that the failure of the negotiators to address impressment did not mean “that the British claim was admitted or that of the U.S. abandoned.” Memorandum on Cabinet Meeting, June 27, 1814, *PJM-PS*, 7:591.


68. Eustace, *1812*, xvi.

Map detail from G. M. Hopkins, Atlas of Baltimore County, Maryland (Philadelphia: Bourquin's Steam Lithographic Press, 1877). (Maryland Historical Society.)
Garitee v. Mayor and City Council of Baltimore: A Gilded Age Debate on the Role and Limits of Local Government

JAMES RISK and KEVIN ATTRIDGE

In 1877, William L. Garitee brought suit against the City of Baltimore in what would become an important case regarding Maryland’s common law of public nuisance claims against local municipal government. Four years earlier, Daniel Constantine, a contractor for the city’s harbor improvement, had begun dumping spoil in the Patapsco River between Colgate Creek and Sollers Point. The spoil came from the dredging of Baltimore’s basin, now referred to as the Inner Harbor, and improvements being made to the Jones Falls canal. Constantine’s dumping prevented Garitee from conducting business at his wharf—it reduced the depth of the river and made it impossible for ships to reach Garitee’s dock. After several failed attempts to have municipal authorities stop the dumping, Garitee filed suit, but the Superior Court of Baltimore City decided against him. Garitee appealed the decision, and in March 1880 the Court of Appeals of Maryland ruled in his favor, remanding the case to allow Garitee to proceed with his public nuisance claim and seek damages. Judge Richard Henry Alvey presided over the appeal.

Although Baltimore had seasonally dredged its harbor since the late eighteenth century, and similar suits had been brought against city in the past, the case of Garitee v. Mayor and City Council of Baltimore proved to be different.1 Previous cases, such as Baron v. Mayor and City Council of Baltimore (1833) made constitutional claims against the city for the wrongful taking of private property for public use.2 Garitee filed his suit claiming his rights had been violated under the public nuisance law.3 We must therefore view the case as a tort claim and not as a violation of a citizen’s constitutional rights.

As a tort suit, Garitee v. Mayor and City Council of Baltimore was part of a larger, on-going debate on the role of government. During the Gilded Age, the federal government assumed a laissez-faire stance toward business, but the Progressive Era that followed witnessed efforts to rein in business, most visibly with passage of the

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Sherman Antitrust Act and President Theodore Roosevelt’s trust-busting. Prominent among political discussions of the 1870s and 1880s, when Garitee filed his lawsuit, was a national debate over the role of government.

That same debate surfaced in state and city governments but in a somewhat different fashion. Baltimore’s government expanded in the 1870s with the creation of city hall, the city library, the harbor board, and several other municipal services. Its health commissioners alone hired as many as six hundred employees after a single snowstorm. The expansion of government was accompanied by a period of economic liberalism under Democratic mayor Joshua Vansant. (Subsequent administrations were forced to curtail spending and restrict the expansion of government, which brought economic depression to the city.) Garitee found himself in the middle of this debate. As a businessman, he should have hailed the city’s expansion, but as a victim of the city’s dumping he endured the negative effects of the city’s growth. His lawsuit became a microcosm of the conflict between the objectives of the government and individual businessmen, and his case challenged the role of and established limits on the powers of local government.

Following the Civil war, seasonal weather extremes and the continuation of a population boom prompted the city to consider improvements to Jones Falls. Officials eyed the stream, which emptied into the basin, as a source for the city’s water supply until “a prolonged drought in the fall of 1869” proved that it was inadequate. Regardless of this finding, the city had to improve the Jones Falls to prevent further flooding of the downtown area near the mouth of the falls and to improve sanitation in and around the harbor. On January 31, 1870, the city council approved a plan to install sewers on both sides of the canal, while at the same time dredging the channel to deepen and widen it.

Though the project was intended to benefit the city, many landowners suffered detrimental effects to their property. William L. Garitee, owner of a brickyard on the banks of the Patapsco, was one. Dredging the Jones Falls required the removal of several tons of silt and debris that Constantine, the city’s contractor, dumped along the Patapsco Neck between Colgate Creek and Sollers Point—the location of Garitee’s waterfront property. In addition to his brickyard business, Garitee also received visitors via steamship for day excursions at a hotel located on his property. The dredge material freshly deposited in front of his property prevented ships from reaching his wharf and thus cut his second source of income.

Garitee contacted the city’s contractor and local officials several times about halting the dumping, and both promptly dismissed him. With no other options, Garitee filed suit against the mayor, the city council, and Constantine in 1877, claiming that the City of Baltimore had effectively put him out of business by illegally interfering with his ability to ship bricks from his brickyard or receive guests at his hotel. With that, Garitee v. Mayor and City Council of Baltimore was placed on the docket of Baltimore’s Superior Court.
The nineteenth century was a period of phenomenal growth for Baltimore, most notably between 1840 and 1880, when its population more than tripled. Much of the growth in the latter half of the century could be attributed to the large number of southerners who came looking for work after the Civil War. Thousands of German immigrants and large numbers of newly emancipated slaves contributed to the swelling figures.  

The city’s rapid growth was at once a blessing and a curse. In 1839 the city’s assessed value had stood at $55,793,370; in 1880 the actual value was $634,800,000. Taxation on assessed property provided much revenue for municipal coffers and facilitated increased rail transportation, port and harbor improvements, and improved water and sewer services, among other projects necessary for health and well-being. Despite its new wealth, Baltimore failed to effectively fight disease, which ran rampant along Baltimore’s waterfront, and a comprehensive sanitation system did not become a reality until after the great fire in 1904. Prior to that time, the city relied on private provision of sanitation services, which resulted in the dumping, or emptying, of raw sewage directly into the harbor. Areas near the shore where water lay stagnant became breeding grounds for disease. In the month of July 1876 alone, “150 cases of typhomalarial fever occurred in one block of Fells Point,” and the lack of a comprehensive sanitation system contributed to Baltimore’s having “the highest typhoid rate of any big city in the country” at the time.  

Baltimore was not alone in experiencing Gilded Age growing pains. Other major metropolitan areas such as New York, Philadelphia, Boston, and New Orleans experienced similar increases in population. When the nineteenth century dawned, New York had over 60,000 residents; by its end, there were almost 3.5 million. Philadelphia, home to 41,220 residents in 1800, grew to almost 1.3 million residents at the beginning of the twentieth century. Boston, whose growth most closely resembled that of Baltimore, expanded from 25,000 to more than half a million people during the century. Urban expansion often helps local businesses, but not in William L. Garitee’s case.  

The Jones Falls had always presented problems for Baltimore. The city’s rapid growth and rising property values quickly led to the overdevelopment of the Jones Falls basin. That, in combination with inclement seasonal weather patterns, resulted in periodic flooding of lower downtown streets. The earliest flood was recorded in 1796, but the most disastrous occurred in 1837 and 1868. Each time, water from the Jones Falls rose to the second story of nearby buildings, claimed a large number of lives, and caused millions of dollars in property damage. In between those two major floods, the channel breached its banks on five different occasions. The death and destruction wreaked by the 1868 flood finally prompted the city to look into options for improving the Jones Falls channel.  

The resulting plans called for straightening, widening, and deepening Jones Falls, installing sewers along both sides of the channel, and raising the channel walls to a
height of thirteen feet, six inches above mid-tide. In straightening the channel and widening it to 125 feet, the city hoped to improve access to the city dock and allow larger ships to sail farther up the channel for loading and unloading. Sewers were to be graded at one foot in 750 minimum. Such grading would “give a current, when the sewer is three-fourths full of water, of three feet per second” and have the ability to drain one thousand acres. The plan was estimated to cost $3,250,000 and be completed in eighteen months, but “renewed disputes soon interrupted the work.”

The improvements also called for dredging the channel. Captain Daniel Constantine was awarded the contract and appears to have taken it upon himself to decide where to dump the dredge material. According to the court transcripts, Garitee claimed Constantine stated, “He was going to dump wherever he could find ground.” In 1873, Constantine began dredging the Jones Falls channel and dumping the spoil near Garitee’s property on the Patapsco River. Garitee claimed Constantine was still dumping in 1874 and that the dumping re-commenced in 1876 after the appointment of new harbor officials.

As it happened, a growing Baltimore meant an increased demand for brick, or so Garitee thought, but, despite what seemed to him an obvious opportunity, his own brick business was not prospering. He did not realize that several factors in addition to Constantine’s dumping were impeding his business. One was that, shortly after he leased the Creery Brick Machine Company on the Patapsco River, demand for Baltimore’s colored brick fell. Newer developments were being designed in Greek revival style, and people began to prefer “gray and white . . . over the natural colors of the local clay. . . . By 1870, color was under a pall in the American city.” Under Mayor Vansant, the city also experimented with different paving methods. One of the more popular called for replacing brick and cobblestone streets with Belgian block. Garitee’s clay pits only yielded clay for traditional Baltimore brick. Finally, there was the severe economic depression of the 1870s. Lavish displays of wealth and excess marked the Gilded Age’s unprecedented growth, but under Mayor Vansant, city spending proved to be “defective.” Although the mayor’s improvements were desperately needed, their cost outstripped the city’s financial resources by more than $13,000,000. The city paid for those excesses by “floating debt.” The end result was that smaller brickyards like Garitee’s “experienced the same cycles of lessened production and business prosperity as did the city itself.” Once Vansant was out of office, Mayor Ferdinand C. Latrobe worked quickly to curtail excessive spending and reduce the size of local government.

Baltimore’s financial troubles were part of a larger national depression that lasted through much of the 1870s. Several national events sparked the economic downturn, including the Great Chicago Fire of 1871, but much of the blame for the depression lay with the financial practices of Jay Cooke and federal monetary policy. Jay Cooke & Company, a Philadelphia investment house, held most of the federal war bonds and was commissioned as the government’s agent to finance the expansion of the
transcontinental railroad. Yet by the early 1870s, most railroads had overbuilt and investments in them soured. In September 1873, the company collapsed, setting off a string of bank failures. That same year, Congress passed the Coinage Act, which devalued silver, placed the country on the gold standard, and tightened the nation’s money supply. The resulting depression was felt nationally, but Eastern cities such as New York, Philadelphia, and Baltimore were hit hardest because the financial markets were so closely tied to the railroads.21

Locally, businessmen like William Garitee felt the effects. Like most manufacturers, Garitee sold his bricks on credit.22 Builders paid for the bricks after they had received payment for their own services. In hard times, they struggled to collect payments due and as a result, were unable to pay their suppliers. Businesses like Garitee’s were left holding an empty bag.

Had Garitee been able to establish his brick company and later hold on to his Willow Springs Farm, the risk he undertook might have paid great dividends. In 1885, Burns & Russell purchased 125 acres of land adjacent to Garitee’s Willow Springs Farm for $15,000, almost double the amount Garitee had paid Sophia Reed for the land sixteen years earlier. Moreover, in 1899 competition in the Baltimore brick industry forced many small players to merge, resulting in the formation of the Baltimore Brick Company, the single largest brick-maker in Baltimore. Having gone out of business almost two decades earlier, Garitee was never presented with the opportunity to merge with the other small brick-makers.23

On the day William L. Garitee filed his lawsuit, he was a fifty-seven-year-old middle-class brick manufacturer with a wife and seven children, who years before had fallen on hard times.24 Although he continued to “climb” the social ladder and gave the appearance that he belonged among the city’s elite, his financial affairs told a different story.

Census records and newspaper articles reveal that Garitee held a variety of occupations. The 1850 census listed Garitee as a plasterer living in Baltimore’s Eighth Ward.25 An 1848 classified ad in the Baltimore Sun indicated that Garitee sold building materials including white pine lumber and shingles. By the middle of the decade, he had begun selling real estate and acquiring his own portfolio of property.26 When the Civil War broke out, he owned properties worth $53,790.27 Yet, his rise was not without its troubles. In 1856, a year after acquiring a brickyard in Carroll Field, he lost a wooded country estate of 168 acres for failure to make payment on his mortgage.28

After the war, Garitee continued to elevate his social status, moving his residence to a corner of Lafayette Square in the Nineteenth Ward.29 In 1868 he purchased an auctioned lease of the Creery Brick Company on the Patapsco River, presumably because the clay at his Carroll Field brickyard was running out.30 The following year, he bought 156 acres adjacent to the brickyard, known as the Willow Springs Farm. In the court transcripts, Garitee admitted that he was holding the land for a better
price and that he had purchased the Willow Springs Farm for the clay and water rights. According to the court proceedings, the Willow Springs Farm also included a hotel that Garitee leased out to church groups for day excursions.31

Despite his real estate acquisitions, Garitee’s financial troubles escalated after the war. In 1870, his estate was valued at $25,000, less than half that declared in 1860. At the root of his financial troubles were several lawsuits between 1869 and 1877 that cost him more than $3,000 in judgments and an unknown amount in attorneys’ fees and

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Map detail from G. M. Hopkins, Atlas of Baltimore County, Maryland (Philadelphia: Bourquin’s Steam Lithographic Press, 1877). (Maryland Historical Society.)
garitee v. mayor and city council of baltimore

He had to sell almost half of the Willow Springs Farm in 1877. Later, he renamed the remaining acreage, “The Hope,” perhaps out of a desire to reverse his fortunes. Garitee’s “hope” never materialized. The city’s dredge spoil put him out of business. Eight years later he lost what remained of the farm and moved to Philadelphia, where he died in 1892.

Joshua Vansant, the mayor when the dumping at Garitee’s property began, served two terms for the Democratic Conservative Party from 1871 to 1875. Under his administration, the city saw rapid expansion in the areas of education and public works. Twelve new schools were built, including the City College on North Howard Street, which was the first German-English school and “the first school house for colored children.” New police and fire stations were constructed, Port Warden lines (shipping lanes in the harbor) were established, several storm sewers were built, and the Gunpowder Falls was approved for use as the city’s water supply, replacing the inadequate Jones Falls. As previously mentioned, Vansant was committed to opening and paving streets using a variety of new methods. All of this expansion came with large costs: a $1,500,000 dollar loan for the Jones Falls improvement, a $4,000,000 dollar loan for the Gunpowder River project, and a $320,000 loan for the Western Maryland Railroad. Vansant’s expenditures resulted in a financial downturn for the city and his electoral defeat in 1875.

When Garitee first filed his lawsuit in 1877, Baltimore’s mayor was Ferdinand C. Latrobe, the well-connected scion of a prominent family. Latrobe was a progressive with a focus on education and public works while holding the line on fiscal expenditures. During his mayoralty, the city saw the construction of twenty-nine schools, including the Johns Hopkins University, and opened the Enoch Pratt Free Library. In 1877, his administration settled the Camden Yards Railroad Strike—a consequence of the depression—and in 1880 the city celebrated its sesquicentennial.

The city council then consisted of two branches. Members of the lower chamber, or first branch, were required to possess $1,000 of assessed property and were popularly elected on an annual basis.” Initially, the first branch had two members for each of the eight separate wards, but by 1877 the city consisted of twenty wards with the first branch having one representative from each. The upper chamber, or second branch, comprised members of the social and political elite. Members were elected to two-year terms and were required to own a minimum of $2,000 in real property. At first, each ward was represented by a single member, but in 1846 members of the second branch began representing two wards. When Garitee came before the courts, the city council had a total of thirty members, twenty in the first branch and ten in the second. The charter of 1796 gave the mayor and council the authority to regulate “markets, streets, lots, bridges, police, fire companies, sewers, public health, and the harbor.” Because of the specific powers granted to the mayor and the council, Garitee had to name both in his suit against the city; however, it appears neither the mayor nor the council authorized Daniel Constantine, the city’s contractor, to dump dredge
spoil in any specific location. Constantine chose the site on his own.

The only individual to be named in Garitee’s suit was Daniel Constantine. Born in 1826, Constantine was a devout Catholic who served his faith as a delegate and leader of the city’s annual St. Patrick’s Day Parade. As a ship’s captain, he was politically connected. From 1870 to 1872, he represented the first and second wards as a member of the second branch of the council. In this socially and politically influential position, he made the connections necessary to secure the contract for dredging Jones Falls in 1873. Later, the city awarded him contracts for dredging the harbor basin and the Middle Branch of the Patapsco that brought as much as sixteen cents per cubic yard. At the beginning of November 1876, Constantine reported, “150,000 cubic yards of sediment were removed during [October] in the formation of [Jones Falls].” After contracting with the city for many years, Captain Constantine served as special inspector of foreign steam vessels at the port, superintendent of the Bayview Asylum, and warden of the city jail.

George Hawkins Williams is listed as the lead attorney for the plaintiff. Born in Baltimore, he graduated from Harvard Law School in 1839, studied in the offices of William Schley, and was admitted to the Maryland bar in 1843. Williams served
one term in each house of the General Assembly, primarily so he could “use his influence to defeat the proposed extension of the city limits into his county.” He also used his influence to ensure that the Eastern Shore would always have one of Maryland’s two U.S. senators.44

Charles Joseph Bonaparte assisted Williams in representing William Garitee. Bonaparte, the grandson of Elizabeth Patterson and Jerome Bonaparte, was the French emperor’s grandnephew, but representing Garitee hardly warrants a footnote in his distinguished career. He graduated from Harvard in 1871 and Harvard Law School in 1874, and was admitted to the Maryland bar that same year. He presided over the Civil Service Reform Association of Maryland, chaired the Baltimore Reform League, ran the Charity Organization Society, served as vice president of the Society for the Suppression of Vice, and held trusteeships with the Catholic University of America and the Enoch Pratt Free Library Association. Outside of Baltimore, Bonaparte served on the Board of Overseers for Harvard University and from 1902 to 1904 was a U.S. official on the Board of Indian Commissioners. In 1905, President Theodore Roosevelt appointed him secretary of the navy, and a year later he became U.S. attorney general. Under Bonaparte’s direction, the Department of Justice organized the first force of special agents commonly known today as the Federal Bureau of Investigation.45

Baltimore City was represented by three attorneys. The first, James Latimer McLane, had studied law under Severn Teackle Wallis and served as city counselor from 1878 to 1881 and again from 1884 to 1885. He was assisted by Edward Otis Hinkley, one of the most distinguished lawyers in Baltimore, who later helped found the American Bar Association. Hinkley’s colleagues and peers, whether consenting or opposing, often acknowledged his intellectual skill and ability, firmness of principle, honesty, and sincerity of purpose.46 Thomas William Hall Jr. was the city solicitor and the final defense attorney in the case. With the outbreak of the Civil War, he was imprisoned for his role as editor of The South, a pro-Southern Baltimore paper, but released after a year in jail. Upon his release, he joined the Confederate army, was commissioned a captain, and led troops in campaigns from Virginia to Mississippi. After the war, he remained in the Deep South until Maryland passed a new constitution in 1867 that made the state a more hospitable place for former Confederates. Hall joined the editorial staff of the Sun and served as a professor of law at the University of Maryland when he eventually returned to the state.47

Judge Richard Henry Alvey presided over Garitee’s appeal. Born in St. Mary’s County as the eldest of eight children, Alvey studied law under a local practitioner before being admitted to the bar in 1849. Although a staunch democrat and opponent of the Civil War, Judge Alvey was arrested in February 1861 on charges of communicating with the Confederate army and spent the following year in prison at three different Union forts. After the war, Alvey was able to reestablish his name and was even elected a delegate to the Maryland constitutional convention in 1867.
Additionally, the new state constitution made Alvey a candidate for chief justice of the fourth judicial circuit. His election to that post inaugurated him as a member of the Maryland Court of Appeals. Following the Garitee appeal, Alvey was re-elected to the Court of Appeals and was eventually appointed chief justice. His colleagues regarded him as an honest man with great sympathy for human rights. Many agreed that his preparation and integrity set him apart. “His searching eye and his complete preparedness to deal with every situation, without the slightest hesitation or effort, made him an absolute master of his courtroom.” Alvey supposedly would not tell a lie, even for a position on the U.S. Supreme Court.

The jury for Garitee’s remanded case appears to have been quite different from that of his original trial, which had been made up mostly of businessmen, many of whom operated businesses along or near the Jones Falls. Deepening and widening the channel to allow larger ships access to the docks would naturally lead merchants along the Jones Falls to side with the city, given that they would directly benefit from the improvements. The jury for Garitee’s retrial contained members who would have been more sympathetic to a brick-maker. About half were laborers, including two bricklayers. Others were merchants with businesses closely related to Garitee’s.

As Garitee began his trek through Maryland’s court system, he quickly discovered a bias in favor of the city. Gilded Age politics were rife with corruption, and state and local governments were hardly immune. Judge George W. Dobbin, presiding over Garitee’s original suit in Baltimore’s Superior Court, did not even require the defendants to proceed. After the closing of the plaintiff’s case, the court issued a directed verdict and instructed the jury that Garitee had not provided evidence from which they could find that he had sustained injury or damage for which he could recover in this action. Garitee had to show not only that he should recover under the law but that he also had to overcome the bias in favor of a dredging project that would advance Baltimore and the state as a whole.

Garitee immediately appealed the ruling to the Maryland Court of Appeals and was granted certiorari. The appeals court decided to hear the case mainly because this was one of many in Maryland in which a riparian landowner had endured the negative effects of dredging. Local newspapers gave the case featured coverage thanks to the appeals court’s unprecedented decision to hear it. The Baltimore Sun’s “Letter from Annapolis” on January 23, 1880 read, “This case is known as one of the ‘Dumping Cases,’ and the decision of the Court of Appeals will be looked for with much interest.”

Garitee claimed that his rights were being violated under public nuisance law. Specifically, he was trying to recover through a private action, which created an extra hurdle for him. Judge Alvey, who wrote the opinion for the case, clarified Garitee’s burden for his claim under public nuisance:
The general rule doubtless is, in regard to which there is but little disagreement among the authorities, that no person can maintain a private action for injuries resulting from a common nuisance, unless he can show that he has sustained some special damage therefrom different from that sustained by the public generally.54

Because of this, Garitee brought four distinct grounds to recover for a special damage in order to show that he suffered differently than did other landowners affected by the dumping.55 He effectively argued that he endured loss of custom to his hotel as a pleasure resort, depreciation in the value of his land, loss of lucrative sales, and discomfort from foul odors to occupants of his premises.

Garitee's witnesses supported his claims. They testified that the dumping caused a terrible odor, shallower water depths in front of his property, and a decrease in the number of fish in the area. In addition, Garitee was also able to show, via witness testimony, that a new wharf to reach deeper water would cost $10,800, and that the city knew full well that it was dumping spoil in front of his property rendering him unable to deliver on contracts.56

Garitee's attorneys put on the stand captains and crewmembers of dredging vessels, neighboring property owners, employees, potential brick-buyers, and engineers, as they were eyewitnesses to the dumping. An observer could see that they were trying to tell the story of continuous, deliberate dumping by the city in front of his property. James Legg, a tugboat captain, testified that he deposited mud in front of Garitee's property two or three times a day. When asked where he put the dredge debris, Legg answered that the scows “went in as near as [they] could.” A. Dodge, a dredger, stated that a city official was on board with him the whole time and that they “dumped all along the front of [Garitee's property].” Garitee's lawyers effectively demonstrated that these scows, carrying forty to sixty tons of debris each, dumped continuously in front of his property in 1874 and 1875. On top of this, Garitee wanted to show that there was nothing he could do to stop the dumping. He shouted at them from his property and at one point even chased after the dredging ships. When he tried to discuss the matter with Mayor Vansant, he was turned away.57

Garitee also attempted to demonstrate that he was suffering on a personal level as a result of the dumping. His son, Charles E. Garitee, testified that there were no more excursions to the hotel because steamboats could not come close enough to land people on the shore. In his own testimony, Garitee revealed that his brick business had been declining for the past couple of years, so much so that he did not make any bricks during the years that preceded the beginning of the lawsuit in 1877, and that there were three or four hundred thousand bricks just sitting on the property. On cross-examination, the city's attorney forced Garitee to admit that the reason he had not made any more bricks was because he had lost all of his capital.58 In the end though, Garitee was able to show that a business—his—was struggling
concurrently with deliberate and continuous dumping in front of it, and that the city's actions were indeed damaging.

The City wasted no time and conceded that Garitee had rights as a riparian owner for the full property, even though much of it was leased. But it contended that the dumping project was completed by competent authority under the Act of 1872. The defendants further argued that although Garitee may have been injured by the dumping, this was a case of *damnnum absque injuria*, or “loss without injury,” and therefore could not maintain an action. Even though Garitee was damaged, he could not recover under the law. In order to receive a judgment in his favor, Garitee would have to prove that the City was not given the authority to dump in front of his property by the Act of 1872.

Much of the argument on appeal focused on the Act of 1872, which the City contended gave them authority to dump in front of Garitee's property. The defendants contended that chapter 246, approved April 1, 1872, allowed the City to keep the ship channel, from the mouth of the Patapsco River up through the basin, “in proper condition in respect to width and depth.” Garitee argued that the City improperly interpreted the Act. He suggested that it gave the city the right to preserve, not to obstruct, the navigable channel. Its duty is to do precisely the opposite of what it has done, and, far from being exempted from liability for an obstruction placed by its agents in the channel, it would be responsible for such a nuisance, even if created by other persons.

Garitee argued further that the City was still governed by Baltimore's charter, the Act of 1796, which states: “No person, his servant, etc., shall put or throw into the Patapsco river, or any of the navigable branches thereof, any earth, sand, or dirt, or lay out on the beach or shore of said river below common high water mark.” The only exception provided by the Act was that debris could only be dumped if it was secured by stone walls or dovetailed log pens to keep it from moving into navigable branches of the Patapsco. Garitee therefore stated that “These provisions manifest the care with which the Legislature has guarded this river and harbor against deposits and obstructions of all kinds, not only the main channels thereof, but every part of them.” The City countered by arguing that the Act of 1796 was amended by 1870 and again by 1872. In other words, “If these Acts conflict, then [the Act of 1872], being the later, must prevail.”

In his decision, Judge Alvey decided two questions before the court. First, he asked whether Garitee actually retained the rights of a riparian owner. Taking into account that the City conceded that he had full riparian rights, Judge Alvey quickly concurred that Garitee possessed full riparian rights even though one of his lots was under lease. Next Alvey asked, “to what extent, if at all, the appellees were authorized to make the deposits in front of the appellant's property, with proper legal regard to
his rights as riparian owner.” This required one to look directly at the two laws that were supposedly in conflict. “Here there is no sort of conflict between the later and previous statutes,” Judge Alvey maintained, “the later statute simply conferring additional power in affirmative terms, without at all undertaking to regulate or touch upon the subject-matter of former statutes.” He continued:

The [Act of 1796], being therefore still in force, the appellees were not only without authority for what they did, but their acts were in plain violation of the terms of the statute. And that being so, all the authorities agree in holding that the obstructions complained of, placed in a public navigable river, without competent authority; would constitute a public nuisance.66

After this ruling in Garitee’s favor, Alvey remanded the case back down to the lower court so that a jury could calculate damages. He further instructed the lower court that the City of Baltimore (mayor and city council) be dismissed from the case and that all damages were to be paid by Daniel Constantine.67 In the Superior Court of Baltimore City, the jury awarded Garitee $10,000 in damages.68

It is unclear why the city’s attorneys did not argue for sovereign immunity against a private suit. Sovereign immunity has a storied history dating back to the days of Roman common law.69 Maryland’s legal system is no exception. Perhaps the changing rules surrounding the city’s right to immunity clouded the issue and the city’s attorneys felt more confident they could win by pursuing the city’s right to dump under the Act of 1872.

Although the city failed to argue its right to sovereign immunity, Judge Dobbin may have considered the city’s immunity as a government entity when he ruled that Garitee had not provided evidence of his injury. The city attorney’s failure to invoke an argument of sovereign immunity, however, likely played a role in Judge Alvey accepting the case. It is also likely that Judge Alvey accepted the city’s sovereign immunity when he ordered Daniel Constantine responsible for all damages and dismissed the mayor and city council of Baltimore from any liability in remanding the case back to the lower court. The question of sovereign immunity will remain one of the great unanswered mysteries of this case, as the records make no mention of it.

If focusing solely on the opinion, an observer can clearly see a man unfortunately wronged by the inevitable side-effects of an expanding city but who was nonetheless awarded damages after turning to the law to make him whole again. One may even consider Garitee fortunate, considering that this was the first dumping case to ever reach the Maryland Court of Appeals. That, despite his victory, Garitee was nowhere near “whole again” was not due to any shortcomings of the court system. Rather, there were three aforementioned storylines surrounding the case—the dredging of the Jones Falls, the changing brick industry, and the economic depression—to which we can add a fourth, Baltimore’s rapid growth. Unfortunately, Garitee found himself
on the wrong side of all of them. A growing city cut off his means of business; the
city’s notion of progress included such projects as expanding its ability to harbor
the largest ocean-going ships and using new technology to rebuild its roads. Such
improvements would seem to benefit local businessmen, but Garitee had trouble
adapting to Baltimore’s progress. The economic downturn only made matters worse
for him, including his inability to sell bricks on credit. Garitee may have won his
case, but changing conditions outside the courtroom doomed his business.

*Garitee v. the Mayor and City Council of Baltimore* sparked a great many lawsuits
against Daniel Constantine from other property owners who had been damaged by
the Jones Falls project. Justice William H. Richardson of Baltimore County issued 141
warrants in fifty-four illegal dumping cases that came before him within a month of
the *Garitee* decision. After reviewing the evidence, Richardson awarded the plain-
tiffs a total of nearly $3,000 and imposed a fine of $50 on Constantine. Justices of
the peace also imposed one to two hundred $20 fines on Constantine. Additionally,
the *Baltimore Sun* reported that the decision in the Garitee case would also most
likely overturn numerous cases in Anne Arundel County, which only spelled more
trouble for Constantine.

Even though the city was let off the hook, *Garitee* held that the city was only al-
lowed to dump its dredge material if it was engaged in an improvement project and
if it did not cause injury to the rights of private property. This would signify that
it could not continue to dump in the same manner lest it find itself in Constantine’s
position. Even though the government was expanding the city at a significant rate,
it still had a responsibility to its inhabitants. In *Garitee*, the Maryland Court of Ap-
peals highlighted this responsibility and forced the city to reconsider where it would
allow its contractors to dump dredge material in the future.

The *Garitee* decision is remarkable in view of Maryland’s support of dredging
projects in the latter half of the nineteenth century. When Garitee filed his lawsuit,
he was essentially fighting against Baltimore’s progress. The Jones Falls project was
only one of several dredging efforts during the 1870s. The municipal government,
in conjunction with the Army Corps of Engineers, was achieving immense success
by dredging the Patapsco River and the basin even before they began dumping in
front of Garitee’s property. Completion of the Brewerton and Craighill channels in
1870 made Baltimore’s harbor one of the very best in the country, and despite the
economic depression, domestic exports rose from $15 million in 1871 to $40 million
in 1877. Most citizens saw the Jones Falls project as necessary to further the city’s
progress.

An example of Baltimore’s enthusiasm for dredging was the further expansion
of the Brewerton and Craighill channels. Local businessmen used the initial success
of the Brewerton and Craighill project to lobby for more. The city and the Army
Corps of Engineers were even able to upgrade their dredging equipment after the
channel project left their old equipment in need of costly repair. The corps, which
had decided that it would be more cost-effective to sell their old dredges and contract for future work, began selling their old dredges a few months before they started the second phase of the channel expansion. By the time they began, the combination of contracted dredging companies and new purchases by the army actually increased its force of dredges to thirteen. Three of these were the brand new clamshell models that were three times as fast as the old dipper model and were also better for the winter months. The thirteen dredges set a record as the most ever to be used for a single project.\(^\text{75}\)

But before further dredging could take place, Baltimore needed funding. Once the city had prospered significantly from the clearing of the Brewerton and Craighill channels, that was not hard to obtain. Such entities as the Corn and Flour Exchange began lobbying the city to expand its dredging projects. The *Sun* joined in by stating it would make sense to conduct further dredging to attract more ships to Baltimore since the city was located two hundred miles closer to St. Louis than was New York. Other grain producers soon joined the lobbying effort. The *Sun* urged the city to ask the federal government to appropriate at least $300,000 for the project.\(^\text{76}\)

Mayor Vansant needed little persuasion and went further, stating that the “matter of sea navigation is too important to all the great producing and commercial interests of Baltimore to be allowed to depend on the contingency of national aid.” The mayor then formed a Board of Improvement in 1872. The board received $100,000 from the national government, and, after appropriating $200,000 in municipal money, placed William Craighill, under whom the Corps of Engineers had completed the Brewerton and Craighill channels, in charge of the project.\(^\text{77}\)

By 1874 the Brewerton and Craighill channels were further dredged to a depth of twenty-four feet throughout and widened from 250 feet to 400 feet. The turn from the Brewerton Channel to the Craighill Channel was widened to 1,000 feet so that the largest of sea-going ships could enter the harbor with ease. The project was deemed a success as the dredge material was removed at twenty-two cents per cubic yard. Much of that was due to the new dredges, which dropped the price by fifteen cents per cubic yard from the previous channel project. Several railroad companies admired the work, the *Sun* called it “one of the most important to the present and future of Baltimore occurring in many years,” and the city even invited sixty of its most prominent citizens for a tour down the channel in July 1874.\(^\text{78}\)

It is commonly assumed that in order to win a case, the plaintiff has to meet the burdens set out by the law. Many times, though, this is simply not enough, since bias can lead to subjective fact-finding. Yet, though Alvey was fully aware that dredging projects were popular, he applied the law strictly and did not permit outside forces to affect his opinion in *Garitee*. In the end, his decision had a significant effect on dredging customs in Maryland. Contractors and municipalities could no longer dump irresponsibly. Although the role of government in expanding the city overwhelmed William Garitee to the point that not even a court victory could save his
business, his suit helped countless waterfront property owners and limited the role of local government.

NOTES

An earlier version of this paper appears on Digital Commons, University of Maryland Francis King Carey School of Law.


8. Baltimore City Superior Court, Court Papers, *Garitee v. Mayor and City Council of Baltimore*, 1877, drawer R, no. 4, box 39 [MSA T51-36, 2/20/7/9], 3, 4, Maryland State Archives, Annapolis (hereafter cited as Court Papers).

9. Ibid, 8–11.


11. Scharf, *History of Baltimore City and County*, 187. When Scharf’s book appeared in 1881, the “census valuations of Baltimore property [in 1880] were not yet absolutely and exactly attainable.” Scharf approximated the actual value by the “addition of 70 per cent to the assessed valuations,” the addition of $150,000,000 in unassessed and exempt property, $30,000,000
for the city’s share in Baltimore County, and “100 per cent for real value [of Baltimore’s share in Baltimore County]” as estimated by the county clerk.


14. George A. Gripe, “Baltimore’s Vesuvius,” *Baltimore Sun Magazine*, April 29, 1973; David F. Woods, “Jones Falls Floods Caused Deaths, Terrible Destruction Four Times,” *Baltimore Evening Sun*, June 26, 1972; Tyson, *Plan for the Improvement of the Channel of Jones’ Falls*. . . . The flood of July 24, 1868 was described as the worst flood in the history of the city. On July 31, 1868, Henry Tyson, civil engineer, along with several others submitted plans for the improvement of Jones Falls. Tyson’s plans were ultimately those selected by the city.


16. Tyson’s plan called for “the material to be removed as fast as Excavated to some proper place provided for its reception by the contractor.”

17. Court Papers, 8, 9.


23. “Burns & Russell Co. of Dundalk,” as archived in the Dundalk-Patapsco Neck Historical Society archives under “Burns and Russell”; Court Papers, 2; Robinson, “Brick in Baltimore.” Garitee is listed as “Out of Business” in the 1880 federal census. Garitee lost the Willow Springs property in 1888 for failure to pay his mortgage. The property was auctioned the following year.

for 1850 shows William Garitee and his wife Hannah with an infant son named William. William the younger is not listed in the 1860 census when he would have been 10 years old, but six other children are named.

29. 1870 U.S. Census.
30. Court Papers, 14–15. Transcripts from *Garitee v. Mayor and City Council of Baltimore* refer to the leased property as the Creery Brick Machine Company. An article in the *Baltimore Sun* cites Garitee’s lease of the Cray Brick Company for $4,000. “Local Matters,” *Baltimore Sun* (1837–1895), May 23, 1868, http://www.proquest.com/ (accessed November 7, 2009). Burns and Russell, one of Baltimore’s oldest and most prominent brick manufacturers also had a brick operation at Carroll field. Burns and Russell moved their operations to the property adjacent to Garitee’s Willow Springs Farm in 1885 citing an exhaustion of the clay. It seems plausible that Garitee’s Carroll Springs field operations might have been experiencing the same exhaustion some years earlier.
31. Court Papers, 14–16.
33. Court Papers, 3, 14–15. Trial proceedings are dated March 13, 1879. Garitee stated he sold the 75 acres of the Willow Springs Farm “about a year ago, or a little over.” “Baltimore County,” *Baltimore Sun* (1837–1895), August 22, 1889, http://www.proquest.com/ (accessed November 7, 2009). In a classified ad by William Seemuller & Company for the auction of William L. Garitee’s former property, the Willow Springs Farm is referred to as “The Hope.”
35. Coyle, “The Mayors of Baltimore,” 6, 7; Olson, *Baltimore*, 166. Olson stipulates that finance reform was a major campaign issue in the mayoral election of 1875. Mayors overestimated tax revenues and used the “floating debt” to pay for long-term obligations.
37. Ibid.
39. “St. Patrick’s Day Parade,” *Baltimore Sun*, March 7, 1879, 1. Constantine’s political connections were evident in the positions he later held for which he appears to have been not the least qualified. His death notice acknowledged as much: “The funeral was largely attended, many of Captain Constantine’s political friends and his associates in the different societies to which he belonged being present.” See, “Capt. Daniel Constantine,” *Baltimore Sun* (1837–1985), September 2, 1899, 7; http://www.proquest.com/(accessed November 7, 2009).


41. “Harbor Improvement,” *Baltimore Sun*, November 2, 1876.


43. The Maryland Court of Appeals Docket lists three attorneys representing William L. Garitee. Those attorneys were George Hawkins Williams, Charles Joseph Bonaparte, and Charles Garitee. Charles Garitee was William L. Garitee’s second and eldest living son. Charles Garitee did not represent his father in the original trial, and his role in the appeals case is unclear. Although listed on the Court of Appeals docket, his name does not appear in the briefs, opinions, or judgment of the Court of Appeals.


46. Sams and Riley, *Bench and Bar in Maryland*, 521, 572–73; Dan Friedman, “The History of the Baltimore City Solicitors” (Annapolis: Maryland State Archives, 2003) under “Special Collections” http://www.msa.md.gov/msa/speccol/sc2600/sc2685/text/solicitors.pdf (accessed November 21, 2009). Sams notes that McLane was city counselor from 1878 to 1880. Friedman notes the years as 1880 to 1881. Both authors agree on the years 1884 to 1885.


48. Sams and Riley, *Bench and Bar in Maryland*, 474; “Portrait of a Judge,” *Baltimore Sun*, July 23, 1957. Judge Richard Henry Alvey was discussed as a candidate for the nation’s highest court, but his birthday made him one month too old to be considered. When urged to falsify his date of birth in order to be eligible, he refused.

49. John W. Woods, ed., *Woods’ Baltimore City Directory 1880* (Baltimore, 1881), 114, 163, 240, 242, 564, 763, 776, 806, and 1018. Nine of the twelve jurors were identified in the directory. They included two real estate agents, two cigar makers, two distributors, a box maker, a carpenter, and a clerk.

50. Ibid., 54, 64, 194, 297, 621, 639, 675, 702, 712, and 816. Ten of the twelve jurors were identified in the directory. They included two bricklayers, a builder, an engineer, a stove maker, a bookseller, a foreign correspondent, a restaurateur, a tobacconist, and an upholsterer. Of these, the builder, the engineer and the stovemaker had businesses that were closely related to brick making. Each of these businessmen could have engaged in business or required the services of a brick-maker such as William Garitee.

51. Garitee, 7.

53. Garitee, 1.
54. Ibid., 8.
55. Ibid., 2.
56. Court papers, 84. William Shoemaker, an engineer, said it would cost $10,800 for the wharf to reach deep water.
57. Court Papers, 8, 10, 30, 31, 41.
58. Ibid., 25, 60, 67.
59. Garitee, 4.
60. Ibid.
61. Ibid., 1.
63. Garitee, 1.
64. Ibid., 4 (ch. 58, approved March 1st, 1872).
65. Ibid.
66. Garitee, 6, 8.
68. Baltimore City Superior Court, Retrial Record, Box #627 [MSA C1497-30, 2/17/11/15].
70. “Local Matters,” Baltimore Sun, April 23, 1880.
72. Baltimore Sun, March 31, 1880.
73. Ibid.
75. Ibid., 48, 50. The clamshell design featured two jaws.
76. Ibid., 49.
77. Ibid., 49, 50.
78. Ibid., 50.
Of the thousands of Americans who are recorded as having fought in the War of 1812 only a small number are presented as fully formed men. The rest are merely names on lists of names, ranks, units, and dates of service. For most, nothing remains, aside from rosters, to tell us about them. Any other records, if they were made at all, have long ago disappeared. Their gravestones have weathered into illegibility. Yet, a fair number of former Defenders inhabit the area between obscurity and fame.

Some left small marks as flour merchants, ice dealers, coopers, grocers, brick manufacturers, privateers, lawyers, and physicians. Others started what were to become great industries. John Adlum, for example, developed the Catawba grape and is now considered a pioneer in American grape growing.

Others are remembered for their oddities, such as Dr. William McPherson, who was buried with what he claimed to have been the original Fort McHenry flag, or Joseph Almeida, who was shot by soldiers of his Most Catholic Majesty, Ferdinand VII, or Solomon G. Albers who instructed that he was to be interred in an above-ground vault with a key inside because he worried that on the day of Resurrection “some accident may keep him in, or perchance the angels will forget him.” Others are noteworthy because they endured. Elizabeth Sands, who died at the age of 101 years, was made an honorary Old Defender near the end of her life because of her service as a nurse during the war.

John Adlum (1759–1836). Lieutenant in Captain Hempstone’s Company, 3rd Regiment (October 12, 1807), Captain in Artillery Company, 1st Brigade, Harford County (May 31, 1808).1

Adlum is now remembered as the “propagandist of winegrowing” in the U.S., going so far as sending President Thomas Jefferson a gift of wine of which Jefferson spoke well. For a time, Adlum’s was the authoritative voice on grape growing and

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wine-making in America, yet he was forgotten within his lifetime, died in poverty, and fell into obscurity. Not until the late 1890s was the importance of his contribution to viticulture (the study of grapes) and viniculture (viticulture with an emphasis on winemaking) recognized. He has been called the “Father of American Viticulture,” though that is too grand an assessment of his achievements.²

John Adlum was born in York, Pennsylvania, on April 29, 1759, the son of Joseph and Catherine Adlum. He joined a company of Pennsylvania volunteers at the start of the American Revolution, was captured by the British at New York, and then sent home. He obtained the rank of major in the Provisional Army of the United States, a force created to fight a war with France in 1799–1800. Adlum later fought at Havre de Grace, Maryland, when the British raided and burned it in May 1813.³

Following his Revolutionary War military service, Adlum earned his living as a surveyor. He developed an interest in grapes and took notes on the wild grapes he saw while surveying. He also speculated in land and by 1798 had accumulated enough wealth to retire to a farm near Havre de Grace. In 1814, he moved to Georgetown [in the District of Columbia??], to a two-hundred-acre property he called “The Vineyard” near Rock Creek (just north of where the National Zoo is today). All the while he was experimenting with plantings of various species of grapes and making wine from them. After years of tedious experimenting, he found success with the Catawba grape, though it was left to others to make good wine from it. Nevertheless, for six years he was “the recognized oracle on the subject of wines and vines in America” before falling out of people’s minds and apparently ending his life in poverty. Thomas Pinney offered a fair summary of his achievement in A History of Wine in America: “[Adlum] came at the right time in the right place, and . . . he is fully entitled to the credit of introducing the Catawba [grape] and of knowing how to promote it.”⁴

John Adlum is buried in Oak Hill Cemetery, Washington, D.C., in lot 133.⁵

Solomon G. Albers (c.1776–October 13, 1839). 1st Major in the 1st Regiment Artillery attached to the 3rd Brigade.⁶

If Solomon Albers is remembered at all it is because he rests in Area K of Greenmount Cemetery, “buried in a large vault, and has had the key of the door pushed inside through a crevice in the back of the vault. He expects to rise in the flesh, and is fearful some accident may keep him in, or perchance the angels will forget him.”⁷

Solomon Albers, a native of Bremen, was born in 1776.⁸ Baltimore city directories list him as a “grocer” residing, in 1816, on “Dulany Street near Columbia Garden,” whose place of business was at McElderry’s wharf.⁹ He was also one of twenty-four private investors in the Baltimore privateer Wasp, a schooner built in 1810.¹⁰

Wasp was a popular name for ships, and during the war of 1812 three American privateers carried the name: one from Philadelphia, one from Baltimore (Captain Taylor), and a schooner from Salem, Massachusetts. Captain Taylor’s Wasp was
commissioned by the federal government in the summer of 1813 to protect trade on
the Chesapeake.\textsuperscript{11}

After the war Albers was a minor investor in Baltimore’s Phoenix Shot Tower
Company (1829) and in the Baltimore and Potomac Steam Packet Company (1829).\textsuperscript{12}
He died on October 13, 1839 at 7 p.m. after a brief illness. His wife, Elizabeth, died
in March 1850.\textsuperscript{13}

\textbf{Hope Bain (May 30, 1795–October 5, 1876).} Private in Capt. Samuel Sterrett’s
Independent Company, 5th Regiment, 3rd Brigade at the Battle of North Point.\textsuperscript{14}

At the age of nineteen Hope Bain “ran off from home to join the Fifth Regiment
at Bladensburg,” and served as a private from August 19 to November 18, 1814. He par-
ticipated in the battles of Bladensburg (August 24, 1814) and North Point (September
12, 1814).\textsuperscript{15} He lived long enough to see war as a young man, and as an old one.

His father, a Scot also named Hope Bain, had been an officer in the Royal Navy
and married Elizabeth Hobbie Watts, an English widow who lived in Antigua, West
Indies. Their son Hope was born on May 30, 1795, while his parents were visiting
Aberdeenshire, Scotland. Upon the family’s return to the West Indies the father sold
his commission and moved the family to Baltimore, where he taught school.\textsuperscript{16}

What his son did immediately following the war is lost to history. \textit{Keenan’s City
directory} of 1822 lists a “Hope Bain, cordwainer.” In 1830 he was appointed an agent
for the American Sunday School Union and sent to work in western Tennessee and
the Mississippi Valley.\textsuperscript{17} The American Sunday School Union was a consortium of
Protestant Churches (Baptist, Episcopal, Methodist, Presbyterian, Moravian, Dutch
Reformed, Congregational, Lutheran, German Reformed, and Friends), whose task
was to establish Sunday Schools which, once set up, were free to affiliate themselves
as they saw fit.\textsuperscript{18}

Bain, who had been raised as a Presbyterian, converted to Universalism in 1847
and was ordained a preacher the following year at Norfolk, Virginia. He taught
there for fifteen years before moving to North Carolina in 1851, making his home in
Goldsboro, and preaching in twenty counties.\textsuperscript{19}

Though a citizen of North Carolina, Reverend Bain did not embrace the South-
ern Cause when civil war broke out. A “Tribute to the Departed,” published in the
1877 \textit{Universalist Register}, described him as “a Union man in the strictest sense,
thoroughly loyal to the government during the late war, which alienated from him
many of his former associates and hearers.”\textsuperscript{20} Bain stated in 1875 that he had declined
a chaplaincy in the Confederate army because “he could not preach for a cause he
could not pray for.”\textsuperscript{21} That is not to say Bain, the Unionist, opposed the institution of
slavery. Henry S. White (1828–1916), a chaplain attached to the Fifth Rhode Island
Heavy Artillery who was a prisoner of war in North Carolina, wrote that on May 9,
1864, “a Universalist minister, Rev. Hope Bain, hearing that a Yankee chaplain was
among the prisoners, called on me. He at once asked me what right we had to come
down there to interfere with their negroes. He proceeded to show me, by certain arguments, that the negro was only fit to be a slave, that he was better off as he was among the Southern people, that God made him for that use, and was rampant and raging at the Yankees for their sacrilegious presumption in attempting to set them free or use them as men.”22 When Gen. William Tecumseh Sherman’s soldiers encamped near Goldsboro (March 23–April 10, 1865), Rev. Bain served as their chaplain.23

In 1867 he appeared in Baltimore (apparently as a guest preacher) and continued preaching in North Carolina, though his circuit had diminished to six counties. He delivered his last sermon at Goldsboro, in 1875.24

Bain married twice. Maria Roach Bain (1794–1843) bore him eight children, and Joanna Eliza Ogden Bain (1818–1887) bore him three more. His last years were “greatly straitened in pecuniary matters.” Hope Bain is buried in Plot 251 of Willow Dale Cemetery, Goldsboro, Wayne County, North Carolina.25

William Henry Batchelor (1787–1885). Private in the Fifty-first Regiment Maryland Militia. Carried the colors during the Battle of North Point after the color-bearer was wounded.

According to his obituary, Batchelor was born in the barracks at Fort McHenry in 1787. That statement was in error, because in 1787 Fort McHenry did not yet
exist—it was built between 1794 and 1803, and the first soldiers were garrisoned there in 1802.26

As related by his grandson, during the war of 1812, Batchelor enlisted as a private in the Fifty-first Maryland Regiment. At North Point, when Ensign John Kirby, the color-bearer, was wounded, Batchelor took up the standard and carried it for the rest of the battle. In recognition of his bravery, he was given the flag when he was mustered out.27

Over the years Batchelor worked as a watchman at Baltimore’s penitentiary and as a policeman. In June 1840, he and two other policemen confronted one John Spicer, who had in his possession a number of ducks that did not belong to him. Spicer took the idea that passive resistance was the best way of handling matters and refused to stand or walk. The agents of the law procured a wheel-barrow “upon which this recusant loafer was laid and tied down with a cord, and so wheeled to the office.”28

Less amusing was the riot following the 1840 presidential election between Democratic candidate Martin Van Buren and the Whigs’ William Henry Harrison. On election day, November 2, 1840, about eleven at night, after the polls had closed, Whigs congregated around the Eutaw House, a grand five-story hotel that had been completed five years earlier and was located at the corner of Baltimore and Eutaw streets where the Hippodrome Theatre now stands. Democratic partisans convened, and soon fire axes and bludgeons appeared and a fire engine was “dragged to pieces.” Policeman William Batchelor tried to intervene and for his troubles received nine broken ribs, five on the right side and four on the left, a bruised and injured chest, “thirty-two different wounds in the head, one of which fractured the skull,” a broken right jaw, “the sight of the right eye nearly destroyed by a wound from some sharp instrument, and both ears nearly cut off.”29 These are horrific injuries indeed, but one must treat newspaper reports a little skeptically, because on December 16, 1840, forty-four days after the riot, the Sun reported that Batchelor was “in a fair way for actively engaging in his duties again.” His obituary, many years later, stated that he had also been wounded by a bullet in the cheek during the riot.

Batchelor married Elizabeth Deshon on April 28, 1819, and the couple had two sons and a daughter. He died on Saturday, March 21, 1885, at quarter past nine o’clock at night at his daughter’s residence on Orleans street.

Years later, a controversy began over Batchelor’s North Point flag.30 For years, many held that this flag was also the standard Americans carried at the Battle of Cowpens, on January 17, 1781. What’s more, it was supposedly carried at Cowpens by Batchelor’s father, also named William Batchelor. But Batchelor’s grandson, William III, stated that his grandfather had never said anything about the flag having been in the Revolution and understood that the real color-bearer of the Cowpens flag had died in 1781. The Cowpens/Batchelor flag, which the Society of the War of 1812 turned over to the State of Maryland in October 19, 1907, was nevertheless
displayed for many years in Annapolis as a relic of the Revolution. In 1973, Grace Rogers Cooper, a fabrics specialist at the Smithsonian, examined this relic and dated it from the nineteenth century rather than the Revolutionary War. 

**John Colein (c.1794–1882)** Served in Captain Bond’s company, which was transferred to Captain Hook of Hookstown. 

John Colein was born on July 24, 1794, near Brooklandville in Baltimore County. His father had been a colonel in the Continental Army under George Washington. Colein was a carpenter by trade. At the start of the war he joined Captain Bond’s company, later transferred to Captain Hook, of Hookstown in Baltimore County. After the battle of Bladensburg the company was transferred to Chinquapin Hill, so called because of the dwarf chestnut trees (Chincapin) that grew there. The hill, then part of Commodore John Rodgers’ strong defensive line east of Baltimore in September 1814, the present site of Patterson Park. Colein served there until the end of the war.

Colein helped to build the first steamboats made in Baltimore. The *Chesapeake*, completed in 1813 and owned by Capt. Edward Trippe, Lt. Col. William McDonald, and Andrew Fisher Henderson, was the first steamboat built in Baltimore. Next was the *Philadelphia*, which went into service in 1816.

Colein was also “engaged on the first street cars in this city,” a uselessly vague statement. The horse-drawn cars were built for the City Passenger Railway Company which was incorporated in 1862.

Ann M. Colein, his wife, died on March 29, 1881. John Colein died on November 25, 1882, leaving three sons, John, Thomas, William and two daughters.

**Dutton, John (c.1797–1877).** Private in Captain Ringgold’s company, Sixth Regiment Infantry, noted for surviving a rare medical procedure in his old age.

John Dutton served as a private during the War of 1812. Early City Directories, such as *Kennan’s* 1822, list him as a bricklayer in Fells Point. In 1835 he was listed as an inspector of lime and charcoal.

He was one of the ninety-six managers for the Mechanics’ Fancy Ball, a charity event held at the Holliday Street Theatre on January 10, 1838, to raise funds for “the purchase of firewood for the poor.” At least two thousand were present. Dutton was also one of four men appointed to distribute firewood to the poor in Fells Point. 

On August 11, 1838 a violent wind and rain storm passing through Baltimore blew down a brick warehouse being constructed by bricklayer Thomas Daugherty on John Donnel’s wharf. Evidently there was some public suspicion that the builder used an inferior mortar, for Daugherty caused a notice to be printed in the *Sun* defending his work and his reputation. Dutton and two others avowed that there was no stinting in the quality of the brick, the lime and the workmanship. 

In October 1838, Dutton advertised that his Marine Hotel, at the corner of
Market and Alice Anna streets, was ready to receive boarders. Over the years he was mentioned here and there in the newspaper record: president and a founding member of the Deptford Fire Company (1843); member of the First Rifle Regiment of Maryland Volunteers; a manager of a “Military and Civic Ball” given by the Columbian Riflemen (1846); member of the Baltimore City Council, First Branch, Second Ward (1846); in the lime business (1848); vice-president of the Old Defenders; member of the Gratitude Division, Sons of Temperance; and an independent candidate for magistrate in 1857.

At age eighty, Dutton began to suffer from what we now call pericardial effusion, an excess of fluid in the fibrous sac (pericardium) surrounding the heart. A normal amount of fluid is from one to four tablespoons, but Dutton’s heart was being severely squeezed by a much larger amount. In November 1876, in a procedure so rarely performed that it was newsworthy, Dr. John N. Monmonier removed almost a quart of fluid using a hollow needle and aspirator. Writing in 1879, a physician noted that he had found only seven reports of the operation ever having been performed in the United States. According to the Baltimore Sun, a few days after the procedure “the patient has experienced much relief and not the slightest inconvenience from it.”

Dutton died less than two months later, on January 13, 1877, and was buried in the Methodist Cemetery on Philadelphia Road. Notices of his death in the Sun did not mention Mrs. Dutton, who must have existed as we know he had at least four daughters: the eldest was Mary H. Willis (c.1821–1897), the second was Elizabeth Dutton Lowry (c.1822–1911), and the fourth was Sallie M. Baylies (m. 1855).

**Fairbank, Noah (c.1790–1883).** Private under Captain John Mathews for a little over a month.

Very little is known of Fairbank’s early life. He was born in Talbot County, perhaps on Tilghman Island. The year of his birth is uncertain: various sources give it as 1787, 1790 and 1791. His mother and father were from Maryland. In 1813, at the age of twenty-two, he substituted for a conscript. His service as a private in the Maryland Militia under Capt. John Mathews lasted for a little more than a month, but it was sufficient for him receive 160 acres of land as a war pension. After the war he made his living as a captain of sailing packets from Baltimore to Fredericksburg, Virginia, and destinations in between.

Captain Fairbank’s ability to pilot a riverboat, particularly during bad weather, earned him the sobriquet “Storm King.” So great was his reputation that his death after many decades of retirement was still worthy of notice in the New York Times. The day after his death, a brief item on page seven noted that he had “commanded the first steam-boat in Virginia waters.” The steamers he commanded include the Rappahannock, the Mary Washington, the Maryland, and the William Selden. He commanded the Virginia from 1853 until it was burned by Confederate forces in April 1862 in order to prevent its capture by Union forces.
He was evidently affluent, for he lived in a house on Caroline Street in Fredericksburg that was worth about $1,500.42 He was also known to own slaves in 1860.

Fairbank married Sarah Ann Osborne (died c.1855) in Baltimore on December 22, 1815. The marriage produced two children. They apparently divorced around 1844. Noah remarried a much younger woman, Julia Ann Smith (or Becker) on July 4, 1845 in Philadelphia.43 Julia was killed by lightning during a storm on September 6, 1880 near Summit Station in Spotsylvania County, Virginia. Noah was unharmed.44 After her death he moved to Fredericksburg, where he was cared for by a Mrs. Jane Walker in her home. On July 27, 1882, a brief item in the *Washington National Republican* noted that he “is living in Fredericksburg, Va., in a destitute condition.”

Noah Fairbank died in Fredericksburg on December 1, 1883, though his headstone gives the year 1884.45 His funeral was held in St. Mary’s Catholic Church.

**Geyer, Henry Sheffie (1790–1859).** 1st Lieutenant, 38th Infantry; paymaster (December 25, 1813 to June 1815).46

Geyer was born in Frederick, Maryland, on December 9, 1790, the son of a father who had immigrated from Prussia. He studied law under his maternal uncle Daniel Sheffey (1770–1830).47 Daniel was a shoemaker before he read law in Abbeville, Wythe County, and worked his way to the U.S. House of Representatives as a congressman from Virginia.48

Geyer was admitted to the bar in 1811 and practiced law in Frederick. On May 20, 1813, he entered the army as a first lieutenant in the Thirty-eighth Maryland Regiment, was elevated to paymaster, and was stationed for a time in Norfolk, Virginia. He was mustered out on June 15, 1815.

He then moved to St. Louis, Missouri and in time rose to be one of the most important figures in that state’s legal world. His biography—and Missouri’s history—could have been quite different. In 1816, Geyer fought a duel for reasons not now known with George H. Kennerly (1780–1867), a trader and businessman. The two men, both veterans of the War of 1812, met on Bloody Island, a sandbar in the Mississippi outside St. Louis. Kennerly was wounded in his knee and the two agreed to meet again to finish the duel once Kennerly’s knee healed. They never met again on the field of honor but they reconciled their differences and became friends.

Most notably, Geyer was counsel, along with Reverdy Johnson, for John Sanford, executor for the owner of Dred Scott in *Scott v. Sandford*, 60 U.S. 393 (1857). (Note that Sanford’s name is misspelled on the Court’s docket.)

Geyer’s importance to Missouri is now overshadowed by his work in the case of *Scott v. Sandford*, but he was also captain of the first militia company in the territory. In 1818, he became a member of territorial legislature and was a delegate to Missouri’s state constitutional convention in 1820. He was elected five times to the legislature after its admission to the Union and was speaker of the first three state general as-
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In 1820–24, 1834–35, and 1844–48, he was a member of the Missouri House of Representatives. He served as a Democrat to the Thirty-first Congress (March 4, 1849–March 3, 1851) and as a Whig to the U.S. Senate, serving from March 4, 1851, to March 4, 1857. After his term ended, he resumed the practice of law. For over forty years he was involved in all the important land cases in Missouri.49

Sandford was not Geyer’s first appearance before the United States Supreme Court. In 1838 he was co-counsel arguing for the defendant in Strother v. Lucas 37 US 410 (1838), a case involving titles to certain properties in St. Louis that turned on Spanish and French law. The territory of Louisiana encompassed 828,000 square miles and was controlled by France from 1699 to 1762, was ceded to Spain, then ceded back to France in 1800, then sold to the United States in 1803. The formal ceding was conducted in St. Louis on March 10, 1804. Two lesser cases will serve to give a sense of Geyer as a lawyer.

The first, The State vs. Darnes (1840), commanded a great deal of attention at the time.50 It involved the Argus, a newspaper published in St. Louis that was owned by Andrew Jackson Davis and edited by William Gilpin. A number of its articles were severely critical of William P. Darnes. Though Gilpin declared that, as editor, he was solely responsible for what appeared in the newspaper, Darnes exacted his vengeance on June 1, 1840 by beating the owner, Andrew J. Davis, with an iron cane, striking his head and denting and fracturing his skull in three places. Davis was taken to a hospital where he was attended to by three physicians, one of whom was the well-regarded William Beaumont (1785–1853).51

Beaumont removed a portion of Davis’s skull (trepanation), removed fragments of bone that had been driven into the brain, and elevated a portion of the skull. At the time, trepanning was a very risky operation with little chance of success. After surgery the course of treatment was “purging, puking and bleeding.” After a promising day or two, “inflammation and suppuration of the brain came on,” and Davis died in the evening of June 8, 1840. Darnes was indicted for manslaughter and tried in the criminal court of St. Louis.

Geyer’s closing speech ran about 55,700 words and was delivered in two sessions. He argued that the press may not abuse people with impunity and that the right to defend one’s character was as legitimate as self-defense of life. Darnes was charged with and committed for murder before Davis had died. Trepanning was highly likely to kill the patient, Beaumont chose it out of a desire to experiment, and the trepanning, not Darnes’s assault, was the cause of Davis’s death. The autopsy to determine whether Davis’s death was natural or unnatural was suspect because “when a man dies in the hands of a physician, it is called a natural death; when he dies without medical assistance, it is an unnatural death.” Moreover, Doctor Beaumont was not qualified to be a surgeon, and his investigations of digestion were trivial. Beaumont had “a passion for experiments,” as evidenced by his studies of Alexis St. Martin’s digestion, and in treating Davis he committed a fatal error. Thomas S. Nelson, a
lawyer in St. Louis, said disapprovingly of Geyer’s closing argument that it “one of the most ingenious and effective apologies for club law, ever spoken,” but in the eyes of the jury Geyer was persuasive. Darnes was convicted of manslaughter in the fourth degree and fined five hundred dollars.

In another case, a mechanic was sued for unskillful and faulty work he had performed. The plaintiff’s expert witness was a man named David B. Hill, a highly respected carpenter, mechanic, and builder, who wore “purple spectacles, with side as well as front glasses” and was “exceedingly fond of taking snuff.” Hill gave his testimony, at length and in detail, as to the shortcomings of the work, then was Geyer’s turn to cross-examine. His first question was: “Mr. Hill, you have discovered perpetual motion, haven’t you?” “Yes, sir, I have.” Geyer lauded Hill as a good and well-meaning man who was “insane on the subject of mechanics.” The court, jury, and spectators burst into laughter, and a laughing jury does not convict.

In his Reminiscences of the Bench and Bar of Missouri (1878), William Van Ness Bay wrote that Geyer “was generally regarded as a cold, selfish, reserved, and austere man, which no doubt was in many respects true; for no one—not even those who were allied to him by blood—could claim to be on terms of intimacy with him.” Geyer was married three times: in 1818 to Clarissa R. Starr (d. 1829), who bore two daughters; in 1831 to Joanna Easton Quarles, who bore two sons; and to Jane (Stoddard) Charless, in 1850.53

Henry Sheffie Geyer died in St. Louis on March 5, 1859. Geyer Street in that city is named for him, and the University of Missouri’s Mizzou Alumni Association annually presents a Henry S. Geyer Award in his honor.

Godman, John Davidson (1794–1830). Sailor under Commodore Joshua Barney of the Chesapeake flotilla.

John Godman’s biography brings to mind William Blake’s remark that while some men live lives of abundant good fortune others “to misery are born.” In 1816, Godman, then twenty-one, wrote that, “[b]efore I was two years old I was motherless—and before I was five years old I was fatherless and friendless—I have been cast among strangers—and I have been deprived of property by fraud that was mine by right—I have eaten the bread of misery—I have drunk of the cup of sorrow—I have passed the flower of my days in a state little better than slavery, and have arrived—at what? Manhood, poverty, and desolation.” In 1813 he contracted tuberculosis of the lungs, then called consumption, which, in time, killed him. Despite his hardships he had a preternatural capacity for work and left his mark not only in medicine as an anatomist, physiologist, and pathologist, but also as a naturalist, an editor, a translator, and an author noted for his writing about nature.

John Davidson Godman was born in Annapolis on December 20, 1794, one of eight children of Samuel Godman (1740–c.1803), a captain in the 4th Battalion
Maryland Continental troops (4th Maryland Regiment) in the Revolutionary War, and Anne (Henderson) Godman. Samuel Godman had been a man of wealth but ended his life as an insolvent debtor. He was imprisoned for a time and released in November 1789 by an act of the Maryland legislature “for the relief of sundry insolvent debtors confined in sundry gaols.” What estate remained after his death was mismanaged by those to whom he had entrusted it.

After the death of his mother when he was two, John Godman was given to an aunt who lived in Wilmington, Delaware. When he was four his aunt moved to Chestertown, on the Eastern Shore of Maryland, and placed him in school, for his family recognized and appreciated his precociousness. Two years later his aunt died. What he did for the next several years is unknown.

Little good comes from illness and that was particularly so for John Godman, as ill health followed him throughout his life. But it was an illness in 1809 or 1810 that brought together Godman and William N. Luckey (died c.1847), the man who would become his benefactor and closest friend. Luckey, then a senior medical student in the office of Dr. Thomas E. Bond, treated Godman, who was then a student at John Creery’s school in Baltimore, for abdominal cramps (bilious colic). At the time, Luckey took no particular notice of his patient.

Bond’s office may have had more than the usual complement of interesting medical things because his forte was medicinal substances. Boys “would frequently drop in to gaze at the labeled jars and drawers.” It may seem odd that a physician would let curious boys troop into his office and look about, but such was Bond’s habit. Thomas E. Bond (1782–1856) converted to Methodism around 1805 and was both a Methodist preacher (holding a D.D.) and a physician. He had been a professor of materia medica (“lists and categories of medicine”) at the University of Maryland College of Medicine from 1807 to 1808. Interestingly, though he practiced medicine, it was not until 1819 that he received an honorary M.D. from the university where he had taught.

One evening in 1810, William Luckey noticed a boy, small for his age, among a group of boys who were attempting to read the labels on the jars and drawers. This boy “appeared to be quite adept in the Latin language.” Luckey asked his name and was reminded that he had treated John Godman some time before. Since then Godman had taught himself Latin, since Creery’s school taught only English. “I will,” he told Luckey, “make myself a Latin, Greek and French scholar.” This he accomplished and later in life studied German, Italian, and Spanish.

Sometime between late 1811 and early 1812, Godman was apprenticed to a newspaper publisher. It was a situation he disliked both because “[f]rom the oldest to the youngest, master and man, all seem to have a disposition to pick on me,” and because he was “cramping over a font of types, where there are words without ideas.” In January 1814 he began to teach himself chemistry, most likely using the English practical chemist Samuel Parkes’s A Chemical Catechism, a book originally written
for the instruction of Parkes’s daughter, Sarah Mayo, and by no means a children’s book. In addition to chemical knowledge, the book contained “moral and religious admonitions introduced in different parts.”

In a letter written in October 1813, Godman described pain in his chest and a “slow burning fever” at night, symptoms that Luckey attributed to an enlarged heart. Godman did not think he was suffering from a contagious disease because he shared accommodations with “a youth who was born with it [the disease], and had it fully developed.” It is likely that these symptoms were the first manifestations of the pulmonary tuberculosis that would kill him less than two decades later.

In 1814 he joined the Chesapeake Flotilla and became a sailor under its commander, the salty naval veteran Joshua Barney. An early experience made a lasting impression on him. He had been ordered to climb to the top of a mast, and as he was doing so he looked down and became dizzy and disoriented. The captain shouted, “Look aloft, you lubber!” Godman did so, regained his self-possession and completed his climb. He would recall the incident throughout his life. At times of doubt and anxiety, he would expel these feelings with the recollected command “Look aloft, you lubber!”

Godman was “in the service during the British attack on Fort McHenry.” Barney’s men scuttled their flotilla of barges at Pig Point, on August 22, 1814, twenty-two days before the beginning of the bombardment. While Barney and several hundred of his flotillamen went on to Bladensburg, his first lieutenant, Solomon Rutter, went to Baltimore with the remainder and took command of fourteen gunboats and five hundred men stationed there. The water between the Fort and the Lazaretto was blocked with a boom and sunken ships. Rutter’s barges were behind this barricade with eight- and twelve-pound guns, and on the night of September 13–14 thwarted a British attempt to land behind the fort.

After the war Godman lived with his sister, Mrs. Stella Miller, in Baltimore. He had resigned himself to working at his disliked profession of printing, but what had seemed inevitable was disrupted by a letter in April 1815, from his friend, William N. Luckey, who had opened a practice in Elizabethtown, Lancaster County, Pennsylvania. Luckey invited Godman to move into his house and study medicine. This was a Godsend: “I was, thirty minutes before I received your letter, on the point of going to a printer in this city, to seek employment.”

On April 10, 1815, four days after the date of the letter, John Godman arrived in Elizabethtown. In six weeks he had read through Luckey’s library of books on chemistry, materia medica, anatomy, surgery, and medical practice. He remained with Luckey for five months, then returned to Baltimore. After dealing with some “pecuniary difficulties,” he found a patron, Dr. John B. Davidge (1768–1829), and completed his medical studies, attending the lectures of 1816–17 and 1817–18. In the winter of 1817 Davidge broke his thigh bone in an accident, and the faculty chose Godman to substitute for him. He passed his graduate examination, which lasted
twenty minutes, on February 7, 1818, and was graduated in March 1818. His degree of Doctor of Physic was conferred at a public commencement on April 6, 1818.\textsuperscript{71} Doctor Godman opened his first practice in New Holland, Lancaster County, Pennsylvania. After a few months he moved to Anne Arundel County, into a house kept by a widower that “was pleasantly situated on the bank of Curtis’s creek, a considerable arm of the Patapsco.”\textsuperscript{72} He took long walks during which he carefully and accurately observed his surroundings. This care and interest in the natural world would be reflected in his writings on natural history.

When an open chair in the department of anatomy at the University of Maryland was filled by another, Godman moved to Philadelphia, where he lectured in anatomy and physiology. On October 6, 1821, he married Angelica Kauffman Peale (1800–1859), daughter of Rembrandt Peale and granddaughter of Charles Willson Peale, then straightaway moved to Cincinnati to begin work as a professor of surgery at the Medical College of Ohio.\textsuperscript{73} He arrived around November 1, 1821 but resigned his appointment shortly thereafter. He had a superlative knowledge of anatomy but was a failure at surgery.

Over the next several years he supported himself and his family by writing. After his resignation he founded a medical journal, \textit{Western Quarterly Reporter of Medical, Surgical and Natural Science}, which lasted but a year, from 1822 to 1823. In October 1822 he returned to Philadelphia, where he earned his living as a private lecturer on anatomy and physiology, contributed papers to journals, wrote books, reviews, and articles on natural history for the \textit{Encyclopedia Americana}, and translated from Latin, French, and German. His major work was \textit{American Natural History} (1825–1828) in three volumes. In 1826 he occupied the chair of anatomy at Rutgers Medical College, located at 68 Duane Street in New York. The school operated from 1826 to 1827, but worsening tuberculosis compelled Godman to resign in mid-session. He and his wife went to the West Indies for several weeks in the hope that the change would do him good. It did not, and he returned to Germantown, Pennsylvania, where for the remaining eighteen months of his life he produced a prodigious amount of writing.

Godman, wasted to a skeleton by tuberculosis, died in Germantown on April 17, 1830, at the age of only thirty-five. An anatomic feature, Godman’s fascia, still bears his name. He left behind a body of articles, books, correspondence, and biographical reminiscences by himself and by those who knew him.

\textbf{Hawken, Samuel (1792–1884).} Served in the 1st Regiment of Maryland Militia. Later known for the Hawken rifle.

Samuel Hawken was born in Hagerstown on October 26, 1792 and was the fourth son of Christian Hawken (1756–1821), a gunsmith. The family’s name was originally Hachen. Samuel’s father was born in York County, Pennsylvania, and had established his permanent gun-making shop in Hagerstown in 1784. Five sons
became gunsmiths. Three lived out their lives in Hagerstown and two, Samuel and an older brother, Jacob (1786–1849), found their way to St. Louis.\(^7^4\)

Samuel served in the 1st Regiment of Maryland Militia during the war, participating, according to J. Thomas Scharf, “in the defense of Washington and the battle at Bladensburg.”\(^7^5\) In 1815 he set up business in Hagerstown in the shop formerly owned by his father. The following year, 1816, he moved to Xenia, Ohio, a town in southwestern Ohio twenty-one miles from Dayton and 344 miles from St. Louis. There he earned his living as a maker of guns until 1821. In that year the double blow of his wife’s death as well as his father’s, on May 10 (sources conflict on the order of deaths), motivated Samuel to briefly return to Hagerstown then move to St. Louis in 1822.

Samuel was not a stranger alone in a city. His brother Jacob had established a business there. Jacob Hawken had worked as a gunsmith at the U.S. Armory at Harpers Ferry, Virginia, from 1807 until 1818. He moved to New Madrid, Missouri, in 1819 then to St. Louis in 1820. By 1821 he had established a gun-making business with a partner, James Lakenan, a Virginian from Henrico County. Lakenan died August 25, 1825. Samuel then became a partner. As craftsmen skilled in working with metal, the Hawken brothers were not just gunsmiths but sold services (such as restocking, repairing, and cleaning guns), tools, and other metal items. About 60 percent of their income derived from orders for guns. In a typical year they would manufacture about 120 rifles. Production peaked in 1849, during the Gold Rush, at
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about 200 rifles annually. Their rifles were very expensive but of very high quality and superior craftsmanship. The Hawken brothers used what was then state-of-the-art technology, experimented with various manufacturing techniques, and used a percussion lock in place of a flintlock (a lock in a firearm is the mechanism used to ignite propellant). Their rifle was well adapted to the needs of the plainsmen, who sought a firearm that had a shorter barrel than that of the long rifle so that it could be carried on horseback, was rugged, and could accept a larger charge of gunpowder so that its bullet would kill a bison or bear. The Hawken rifle was the favored weapon of the hunters of the American Fur Company.

After a fire in his neighborhood in 1832, Samuel Hawken organized a fire company. It was incorporated in 1837 and dissolved in 1855. “Uncle Sammy,” as he was called, was a popular and active fireman. Scharf relates that one night in the winter of 1841–1842 the firemen had to extinguish a fire when the temperature was twelve degrees below zero. Whiskey was poured into the pumps to keep the water from freezing in the fire hoses (note that they would have had to add enough alcohol to produce a solution of 40 percent ethanol by volume in order to have a mixture that would not freeze at the stated temperature). On his way home from the fire the extreme cold caused Hawken to fall unconscious in the street. Fortunately, he was quickly found.

Jacob Hawken died of cholera on May 8, 1849, during a great cholera epidemic that officially killed 4,317 people, at least 6 percent of the city’s population. On May 17, 1849, nine days after his death, a great fire destroyed twenty-three steamboats and the riverside commercial district. Samuel was also stricken but recovered.

Samuel Hawken retired in 1854. There are conflicting accounts of what he did next. He died on May 9, 1884 and is buried in Bellefontaine Cemetery in Saint Louis.

Though it was a good and influential firearm, there are fictions regarding the popularity of Hawken rifles with trappers, explorers, hunters, and prospectors. A good corrective is The Hawken Rifle: Its Place in History by Charles E. Hanson Jr.

McPherson, William (c. 1795–June 25, 1878). A captain in the regular army during the War of 1812, said to have owned the flag that flew over Fort McHenry during the bombardment.

McPherson, who was stationed at Fort McHenry during the Battle of Baltimore, later claimed to have in his possession the “immortal banner” that flew over the fort during the British bombardment. It was the original, he insisted, for it had never left his possession.

After the war, McPherson became the proprietor of the “Mount Clare Hotel,” which in 1842, according to J. Thomas Scharf, was “situated a short distance from Mount Clare Depot, now the Western Scheutzen Park, and was one of the most pleasant resorts about Baltimore. From it a full view could be obtained of the city,
the surrounding country, the Patapsco River, and a portion of the Chesapeake Bay. It had around it a spacious flower-garden and orchard, and a conservatory in which the proprietor of the hotel, Mr. McPherson, cultivated oranges and lemons.  

McPherson died on June 25, 1878, survived by his wife and one daughter. He was buried in Green Mount Cemetery along with “the old flag” and a British shell that had been fired at the fort.  

It would be easy to dismiss McPherson’s claim and wave him away as an eccentric attention-seeker who was either lying or self-deluded, but perhaps not. Mary Pickersgill, her daughter, two nieces, and an indentured African American woman produced two flags for the fort: a garrison flag, 30 by 42 feet, which we now know as the “Star-Spangled Banner,” and a smaller storm flag, 17 by 25 feet. The “Star-Spangled Banner” is now at the Smithsonian Institution’s National Museum of American History, but the whereabouts of the storm flag are currently unknown, raising the possibility that it might be resting with William McPherson.

**Sands, Elizabeth, née Warner 1789–1890.** The news of Elizabeth Sands’ death in Baltimore was reported nationwide, all the way to the west coast: *The [Phoenix]* Arizona Republican noted “Death of an Old Defender” and the *Los Angeles Herald* mentioned “A Centenarian: Death of Elizabeth Sands—The Last of the Old Defenders.”  

“She was almost as old as the republic. Our constitution was adopted only a few months before she was born. General Washington took his seat as President of the United States when she was fifty days old,” the Reverend G. Braxton Taylor said at her funeral, framing a life of 101 years and five months. “She lived under the administrations of thirty-nine Governors of Maryland, and of all the Presidents of the United States.” But why was she to be found among the “Old Defenders”?

Elizabeth Sands was born Elizabeth Warner, the daughter of Pennsylvania Quaker Cuthbert Warner (1753–1838), in Darlington, Harford County, on March 7, 1789. Her father was the first of three generations of Warners who were renowned for the manufacture of fine silverware in Baltimore.  

The family moved to Baltimore around 1799 where her father established a watch and clock-making business. He is credited with being the first clockmaker in Maryland. In 1805 she married Peter Smick, a tinsmith. In time they had four children.

When war broke out in 1812, Elizabeth and her husband were living in a large brick house about a quarter of a mile from Annapolis. According to an account of her life, apparently based on an interview published in the *Sun* of September 7, 1887, at some ungiven date, but apparently when the British blockaded Annapolis in April and July 1813, eleven hundred American troops were encamped around the house: six hundred on one side and five hundred on the other. “The troops did all their cooking in the kitchen and stole everything eatable they could lay their hands on.” Six barrels of gunpowder were kept in the Sands’ barn while the troops camped on
the Severn River. Peter Smick made tin cartridge boxes for them. He died of a fever before the blockading British left the Severn.

Elizabeth had other personal and familiar connections with the war. She was in hospital service about the Severn River and nursed the wounded after the Battle of North Point, at which her nephew, Elisha Marriott, was killed. For this work she was made an honorary member of the Old Defenders Association before it disbanded in September 1884. Her two brothers, John Smith Warner and Andrew E. Warner, were Old Defenders.

In July 1824, Elizabeth married John Sands, and this second marriage produced two children. John Sands died in February 1828. Elizabeth outlived her children from both marriages. Peter W. Smick, a printer, was the last one. He died at the age of seventy-seven on March 14, 1890.85 His mother outlived him by twenty-one weeks.

After the Old Defenders Association was disbanded, Robert Rennert (1837–1898) hosted annual dinners for the several surviving Old Defenders at his hotel, the Rennert. Elizabeth attended one in the hotel’s private parlor in September 1888.86 Those who were too infirm to attend were sent the bill of fare.

During the last twelve years of her life, by which time she had become a celebrity by reason of her great age, Elizabeth was cared for by her grandchildren, John E. Warner and Dollie E. Warner at 1303 Division Street. She fell ill during the last two
weeks of her life, and this prompted visits by friends, relatives, neighbors and many other persons. The oddest visitor was her nephew, “Harrison Warner, aged 89 years, who pushed a wheelbarrow from his Ohio home to Baltimore.” Harrison started in April from McConnellsville, Ohio, 280 miles west of Baltimore as the crow flies, a red wheelbarrow before him, and visited his aunt on Saturday, July 18, 1890.

Elizabeth Sands died on August 3, 1890, at 7:40 in the morning. She was a member of the First Baptist Church, Fremont and Townsend Streets, for seventy years. At her request, the hymn “O think of the Home Over There” (1873) was sung at her funeral. She was buried in Green Mount Cemetery, in the family lot.

NOTES

5. http://oakhillcemeterydc.org/map.html, item 61: “Major John Adlum—Revolutionary War soldier and Captain in War of 1812; developed the Catawba grape. Lot 133.”
8. The inscription over his vault reads “Major Solomon G. Albers / Born in Bremen in the year 1770 / Came to America in 1793 / Departed this Life October 13, 1839.”
9. Matchett’s 1816 and 1831, Keenan’s 1822.
16. Ibid., 116.
17. Ibid.
19. *Universalist Register* for 1877, 467–68.
20. Ibid.
23. See *Universalist Companion and Almanac*, 1864 (Boston, 1864), 44.
27. Ibid., “At Odds Over Flag,” March 15, 1914.
28. Ibid., “Police Intelligence—A Barrow Knight,” June 15, 1840.
29. Ibid., November 4, 1840.
32. Marine’s *The British Invasion of Maryland* (1913) does not list John Colein. The biographical information here is drawn from an article, “Death of a Veteran of 1812–14,” which appeared in the *Sun* on November 27, 1882.
36. Ibid., August 13, 1838, “Destructive Storm,” and August 18, 1838, “To the Public.”
37. Ibid., October 25, 1838, “Marine Hotel.”
44. Sun, September 7, 1880, “Telegraphic Summary.”
45. Photograph at http://www.findagrave.com/cgi-bin/fg.cgi?page=pv&GRid=5096893&PIpi=2574116
46. Marine, British Invasion of Maryland, 295.
47. The name was spelled in different ways.
51. Beaumont was famous for his investigations of human digestion while he served as surgeon in the United States Army. In 1822, when he was stationed at Fort Mackinac in Michigan, near the border with Canada, a Canadian voyageur, Alexis St. Martin, was injured in such a way that a permanent opening into his stomach resulted. Between 1822 and 1833 Beaumont conducted innumerable experiments exploring digestion, ultimately publishing Experiments and Observations on the Gastric Juice, and the Physiology of Digestion in 1833. See, Reginald Horsman, Frontier Doctor: William Beaumont, America’s First Great Medical Scientist (Columbia: University of Missouri Press, 1996).
54. William Blake, “Auguries of Innocence,” (c.1803), line 120.
59. Ibid.
60. Eugene F. Cordell, Historical Sketch of the University of Maryland, School of Medicine (1807–1890) (1891), 18. http://books.google.com/books?id=ke4lAAAAYAAJ.
66. Juettner, Daniel Drake and His Followers, 72–75.
75. Scharf, History of Saint Louis City and County, 1:809.
78. Scharf, History of Saint Louis City and County, 1:810.
79. Baltimore Sun, June 28, 1878, “An Old Defender Laid to Rest with the Star Spangled Banner Above Him.”
81. Baltimore Sun, June 28, 1878.
83. Baltimore Sun, August 6, 1890, “Burial of a Centenarian.”
85. Baltimore Sun, March 15, 1890, “Peter W. Smick.”
86. Sun Supplement, September 13, 1888, “One Old Defender Was There: Mrs. Elizabeth Sands, Aged 99 Years, Was Also Present at Mr. Rennert’s Dinner.”
87. Baltimore Sun, July 26, 1890, “Illness of Mrs. Sands, Aged 101 Years.” See also ibid., May 24, 1890, “An Aged Pedestrian and his Barrow.”
88. Baltimore Sun, August 6, 1890.
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