

Summer 2013

MARYLAND

Historical Magazine



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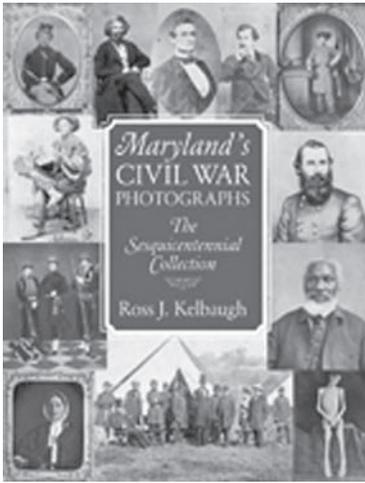
The Journal of the Maryland Historical Society

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Cover

Wells and McComas Monument, c. 1880

Folklore holds that on September 12, 1814, two teenaged militiamen, Daniel Wells and Henry G. McComas, shot British General Robert Ross during the Battle of North Point. Though they were killed in the resulting action, Ross's death ultimately may have spared Baltimore from ransom or destruction. In 1854, city military groups gathered to plan a monument to "The Boy Martyrs of 1814," and four years later their remains were removed from Greenmount Cemetery, laid in state at the Maryland Institute, then ceremoniously reinterred beneath the monument's foundation in Old Town. The monument itself, seen here festooned with centennial decorations, was completed in 1872.

MdHS photographer James Singewald's twice great-grandfather, Louis P. Kornmann (1850–1923), owned a cigar shop across the square and for decades served as the monument's caretaker. Family ties prompted James' curiosity and, in need of a senior thesis topic, he went in search of the monument. It survives, but many of the adjacent buildings are shuttered and boarded up. James has photographed much of the neighborhood, and a sampling of that work is featured on pages 217–228. (Maryland Historical Society.)



Baltimore harbor, 1851. Maryland's 1851 constitution legally separated the city from Baltimore County and designated Towson the county's new seat of government. (Maryland Historical Society.)

The Mayor and City Council of Baltimore v. the County Commissioners of Baltimore County: Tracking Maryland's Rule of Law in an Unruly Time

BRENDAN COSTIGAN

In 1863 the Maryland Court of Appeals handed down its decision in the case of *The Mayor and City Council of Baltimore v. the County Commissioners of Baltimore County*, reversing the outcome of a civil trial held in the Superior Court of Baltimore City in April 1859. In that case, the Baltimore County commissioners sued the mayor and city council of Baltimore to recover the amount they had paid to compensate the county's state's attorney for prosecuting several criminal cases in a special term of the county circuit court in 1855. These cases had been removed in the preceding year from the Baltimore City Criminal Court.

In the 1859 civil trial, the judge of the Superior Court of Baltimore City issued an instruction requested by the Baltimore County commissioners and denied another requested by the mayor and city council of Baltimore, a decision that led to a jury finding in favor of the plaintiffs. Those opposing jury instructions reflected disagreement between the two parties as to the interpretation of two state statutes concerned with the authority of circuit court clerks to calculate and authorize payments for the costs of cases that originated in one jurisdiction and were tried in another. The Baltimore authorities appealed the trial court's adverse ruling on the instructions, leading the Court of Appeals to consider and rule on the construction of the statutes during its December 1862 term.

The removed cases prosecuted during the special term of the Baltimore County Circuit Court were typical of criminal activity in the city during the 1850s. The special term was atypical, though, given the absence of the elected Baltimore County Circuit Court judge and the appointment of a special judge to preside over the removed criminal cases, a fact that would later prove critical to the resolution of the case on appeal. These cases and many more making daily passage through the

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city's criminal court reflected the rapid urbanization and political change taking place in the city.

The Mayor and City Council of Baltimore v. the County Commissioners of Baltimore County illustrates the intersection of judicial reforms enacted pursuant to the new Constitution of 1851 that were intended to improve the efficiency and effectiveness of judicial administration. As Maryland in the 1850s was coping with a profound shift in political and legal affairs, its courts were also becoming increasingly busy with criminal litigation. The three phases of the case—the removed criminal cases tried at the special term, the civil suit, and the appeal—collectively illustrate the impact these political and cultural shifts had on the state's judicial establishment.

Two general themes are discernible from the course of events that followed the initial removal of the criminal cases in 1854 up to the final resolution of the case in 1863. The first is the general tension between the practical need to deal with criminal litigation efficiently and effectively, balanced against the judicial inclination for propriety and transparency. In the 1850s, Baltimore was in political and cultural turmoil, the effects of which were apparent in the ever-increasing number of cases making their way through Baltimore's criminal court. As criminal activity intensified and became more widespread, an increasing number of cases were removed to other jurisdictions—especially Baltimore County—making those courts partly responsible for the maintenance of law and order in the city.

That tension supports the finding of the second discernible theme, which was the fraternal nature of the state's legal system, evident in the fields of justice and politics. Many of the lawyers and judges working in the state's courtrooms were at one time or another elected state officials, responsible for writing the laws that they interpreted and enforced. Some were delegates to the convention that drafted the 1851 state constitution and therefore were the architects of the legal system in which they operated. As for criminal defendants, the coordinated disorder of the 1850s that was perpetrated by Baltimore's rowdier residents often meant that the accused would come and go in groups of two or more. The disposition of one case could, and did, affect another, circumstances that benefited the defendants more often than it did the state. In light of these themes, *The Mayor and City Council of Baltimore v. the County Commissioners of Baltimore County* reflects a unique confluence of these factors and their impact on the administration of justice during one of Maryland's most turbulent decades.

Judicial Administration Under the Constitution of 1851

The Constitution of 1851 made several political, administrative, and judicial changes that would have a bearing on the outcome of this case. It created Baltimore County as an independent political unit, carving it out of Baltimore City and providing its residents with their own body of government. The courts involved in *The Mayor and City Council of Baltimore v. the County Commissioners of Baltimore County* were also

creations of the same constitution, itself a product of a convention in Annapolis that met from November 4, 1850 to May 13, 1851.¹

The convention was inspired in part by widespread demand for changes to the state's judicial system, specifically on judicial tenure and the exorbitant costs of trials. Critics claimed that the state spent more on judicial salaries and litigation than other larger and more populous states and demanded fewer judges and limitations on fees paid to county clerks and registers of wills. Gubernatorial appointment of judges and the privilege of lifetime office for good behavior were declared "contrary to the spirit of American institutions." There were also allegations that the appointing power had been abused. Critics of the appointed position of state attorney general also sought to abolish the practice of charging large fees payable to him or his deputies.²

The new constitution, which was ratified on June 4, 1851, replaced practical life tenure for appointed judges with an elective system that provided for one judge to be elected to a ten-year term for each of the eight newly created judicial circuits.³ That year, Democrats Henry Stump and William Frick were elected judges of the criminal court and Superior Court of Baltimore City, respectively. Upon Frick's death in 1855, Benjamin C. Presstman was appointed, followed by Z. Collins Lee.⁴ Democrat Albert Constable was elected judge of the Sixth Judicial District, which included the circuit courts of Baltimore, Cecil, and Harford counties.

The new constitution also eliminated the office of the state attorney general, replacing it with an elected state's attorney for each county and Baltimore City.⁵ These state's attorneys would be elected to a four-year term and paid in fees regulated by law. In 1851, Democrats Lloyd W. Williams and Charles J. M. Gwinn were elected state's attorneys of Baltimore County and City, respectively.

After ratification, the General Assembly passed several measures designed to assist judicial administration under the new system, including laws regulating the times of holding the circuit courts, setting the duration and cost of incarcerating persons convicted in removed cases, and fixing compensation awarded to the state's attorneys for removed criminal cases.⁶ In 1852 and 1854 two laws went into effect, the interpretation of which would form the center of the county commissioners' case against the mayor and city council at trial and on appeal.

The first, the Act of 1852, chap. 315, provided for the payment of costs in cases removed from courts in Baltimore City to the Baltimore County Circuit Court. The second, the Act of 1854, chap. 269, provided for the payment of costs in cases removed statewide. The practice of removal permitted a defendant to request a change of venue by submitting an affidavit stating grounds for believing that a fair and impartial trial could not be had in the court of original jurisdiction. The purpose of these acts was to enable state's attorneys and witnesses to collect per diem costs and expenses. Removal was a subject of discussion at the constitutional convention, although the delegates were more concerned with its use in civil cases. Albert Constable, then a member of

the Cecil County delegation, spoke against leaving the option to the judge, calling a change of venue “a matter of right and not discretion.”⁷ The Removal Acts of 1852 and 1854 codified the relative administrative powers and duties of the judges and clerks of the various courts with respect to the financing of removed cases.

Though noted by neither the Baltimore City Superior Court at trial nor the Court of Appeals in its later decision, constitutional and statutory provisions providing for the appointment of special judges to preside in cases where the elected judge had a conflict of interest were a significant factor in the county commissioners’ civil suit against Baltimore’s mayor and city council. Section 22 of the judiciary article of the Constitution of 1851 prohibited an elected judge from presiding over a case in which he was related or formerly of counsel to one of the parties. When a judge was disqualified under such terms or unable to preside over a case for any reason, the parties could consent to appoint a proper person to preside, or the judge of an adjoining circuit could do so.⁸

In 1852 this section of the constitution was codified with chapter 68, which provided for the appointment of “some proper person” to preside over such cases. For cases in which the state was a party, such as criminal prosecutions, the state’s attorney of the jurisdiction could consent to the appointment of a special judge. Any person so appointed was “considered to be holding the [court]” for the jurisdiction and would “possess all the powers and discharge all the duties [of the] court.” Any person not a judge of the state but appointed to preside would be paid by the state a per diem of ten dollars for each day. Any judge of the state so appointed would be compensated for any travelling expenses incurred.⁹ The special judge appointment process would be supplemented by subsequent statutes.¹⁰

These removal and special judge reforms were intended to assist judicial administration under the new constitution, and the decade following its adoption demonstrates how common both practices were, as well as the effect they had on the resolution of controversies in the state courts. One author writing about crime in Baltimore during the 1850s described removal as “a common dodge, a means of buying time, of making it more difficult for witnesses to appear.”¹¹ As for special judges, contemporary sources indicate the range of reasons for their appointment, with several going on to distinguish themselves in state legal and political affairs. Between 1851 and 1860, special judges were appointed to preside in courts throughout the state when judges elected to those courts fell ill¹² or had some relationship with one of the parties to the action.¹³ When illness befell the elected judge of the Baltimore County Circuit Court in February 1855, the appointment of a special judge to take his place was essential to ensuring that the criminal cases removed to that jurisdiction were efficiently disposed of in order to allow the regular business of the circuit court to proceed.

The Judicial Impact of Political Change and Growing Urban Disorder

At the time of the constitutional convention in 1851, political power in Maryland was shared by the Whigs and the Democrats, the two dominant national parties. A controversial subject of debate was how to apportion representation in the new General Assembly among the counties and Baltimore City. The city was home to more than a quarter of the state's population but held only one-sixteenth of the seats in the House of Delegates. The issue was settled by apportioning seats in the lower house on the basis of population for the first time in the state's history, increasing the city's representation in the legislature to one-eighth of the total representation of the state.¹⁴

The Whigs and Democrats remained the state's two dominant parties in the first years under the new constitution and each put on a show of strength in 1852 when Baltimore hosted both presidential nominating conventions. Democrat Franklin Pierce received the state's eight electoral votes in a victory over Winfield Scott that mirrored the outcome nationwide.¹⁵ In short order, nativism, a growing political movement identified by its fierce anti-immigrant and anti-Catholic platform, would transform the state's political and judicial landscape. Nativist sentiments were expressed at the constitutional convention, particularly on the issue of representation.¹⁶ After adjournment, it would not be long before animosity against foreigners, naturalized citizens, and Catholics would find an outlet in the political violence that would come to characterize Baltimore's elections in the 1850s.

This sentiment found a voice in the American Party, also known as the "Know Nothings." Their rapid growth in Baltimore paralleled the nativists' rise in the nation's cities, many of which were experiencing an influx of European and Catholic immigrants, especially from Ireland and Germany. The American Republican party appeared in Baltimore as early as 1844 and received the support of the *Clipper*, the newspaper which later became the advocate and organ of the Know Nothings. In March 1853, a new order, the United Sons of America, was formed in the city. In August 1853 the group organized a mass meeting in Monument Square at which speakers argued in favor of extending the naturalization period for immigrants and restricting office-holding to native born citizens. The gathering was attended by an estimated five thousand people.¹⁷

In the election of 1853, Know Nothings gained traction by mobilizing their forces against a proposed bill that would allot state funds to support Catholic schools. Their efforts paid off: although Democrat Thomas Ligon of Howard County was elected governor, his party lost ground in the legislature. Ten Know Nothing candidates were elected to the House of Delegates and held the balance of power that was otherwise equally divided between Democrats and Whigs. By the 1856 presidential election, the nativist influence in Maryland was apparent: James Buchanan, a Democrat, won the presidency with 174 electoral votes to 114 garnered by his Republican opponent, John C. Fremont. The American Party-Know Nothing candidate, former president

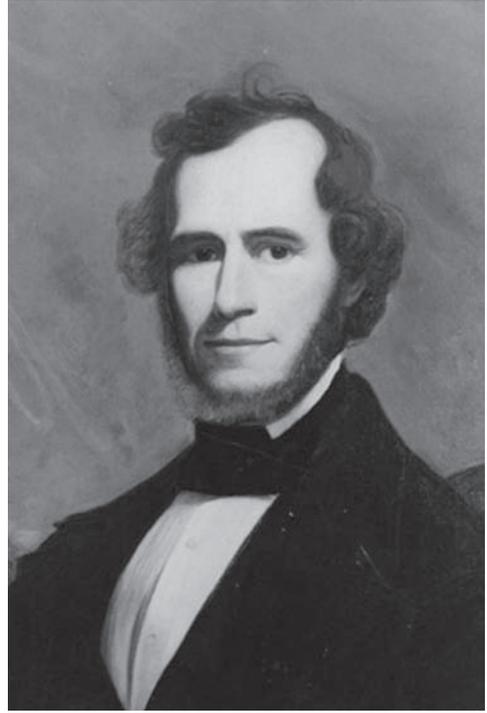


Millard Fillmore (1800–1874). Fillmore, last member of the Whig Party elected to the presidency of the United States, ran on the American Party, “Know Nothing” ticket in 1856 and won only the state of Maryland. (Library of Congress.)

Millard Fillmore, received only eight electoral votes, but all were from Maryland, where he received 54 percent of the votes cast, easily surpassing Buchanan (45 percent) and Fremont (0.3 percent) in the process.¹⁸

The Know Nothings probably would have been unable to secure and maintain their power without the help of the “political clubs” that emerged from the confrontations between the city’s gangs and its private fire companies, whose competition with one another over territory often led to rioting. It was not unheard of for a fire company to start a fire when nature, accident, or mischief did not present an opportunity. In 1852 a coalition of these companies divided jurisdiction over the city, reducing the inter-company bloodshed. Deprived of one outlet for organized violence, working-class ruffians joined young nativist businessmen in the Know Nothing cause and served as political muscle and election-day shock troops. Gangs with colorful names like the Rip Raps, the Plug Uglies, and the Blood Tubs grew in number and took advantage of these new outlets for aggression.¹⁹ In 1854 the Know Nothings announced their mayoral candidate for Baltimore, Samuel Hinks, who soundly defeated his Democratic opponent in a victory that also gained the party majorities in both branches of the city council. The election was marked by a relatively mild degree

Democratic Governor Thomas Ligon (1810–1881). (Maryland State Archives.)



of disturbance that paled in comparison to the violence and intimidation that was soon to become the trademark of Baltimore elections.²⁰

In October 1856, the city witnessed some of the worst election-day rioting in its history when Thomas Swann of the Know Nothing Party was elected mayor over the Democratic Party's candidate, Robert C. Wright. A battle broke out at Lexington Market between the Rip Raps and the powerful New Market Fire Company, and skirmishes took place throughout the city during the day. These scenes were repeated during the next month's presidential election. At the municipal elections of October 1857, several Democratic candidates for city council withdrew from the race and notified their supporters to steer clear of the polls for their own safety. In the end, the Know Nothing ticket defeated the Democrats by more than nine thousand votes. Thomas Swann was reelected mayor, soundly defeating independent candidate, Colonel A. P. Shutt. Fighting men from both parties took control of polls throughout the city, using threats and violence to discourage opposition voters. Colonel Shutt withdrew from the race and urged his supporters to avoid voting if it meant a risk of personal danger.²¹

One author described the sense of fear felt by residents of a city managed by a political organization that at times seemed to work in cooperation with the criminal elements. "Licensed rowdies" walked the streets with clear disregard for the law. Police may have been unwilling to take action against them, especially if they held a connection with or belonged to a particular nativist club. If and when such rowdies



Samuel Hinks (1815–1887), Know Nothing mayor elected 1854. (Maryland State Archives.)

were arrested, they would appear before a magistrate and often be released or bailed out by friends or associates. Many did not show up for trial. In the event that a case went to trial, the charges were often difficult to prove because the defendants could usually provide an alibi or have one provided for them. Partisanship played a role in jury selection as well, with grand and petit jury pools selected by the sheriff, who in turn had been elected to office. The elected state's attorney was also regarded by some as friendly to nativist interests.

In short, the Know Nothings' success at the polls secured political influence, which could be used to wield a measure of control over the judicial system. In the event that club rowdies were concerned that their political influence was insufficient to avert a conviction, they allegedly resorted to witness intimidation.²² But subtler tactics were also at their disposal, including the option of removing their case to another jurisdiction.

Cases Removed from the Criminal Court of Baltimore City and Prosecuted in the Baltimore County Circuit Court

The civil suit filed by the Baltimore County commissioners against Baltimore's mayor and city council concerned criminal cases removed from the city's criminal court to the county's circuit court for prosecution by the county state's attorney during an 1855 special term. The county commissioners submitted in evidence the full transcript of

Thomas Swann (1809–1883), elected mayor of Baltimore in 1856 by the Know Nothing Party. (Florence MacKubin, 1906. Maryland Commission on Artistic Property.)



one of these removed cases. The joint record does not show which removed case's transcript was submitted. Nevertheless, the *Sun's* dutiful coverage of the proceedings of the state courts provides ample illustration of the type of criminal cases that were removed, as well as the effort and expense of prosecuting these cases.

Between October and early December 1854, cases against fifteen separate defendants were removed from the Baltimore City Criminal Court to the county's circuit court. The charges against the defendants were typical of criminal activity in Baltimore during the 1850s, including cases of larceny, false pretences, burglary, and the very common offense of selling liquor on a Sunday. There were also more serious cases of arson, assault, rape, and murder. Several defendants had criminal histories in Baltimore and exemplified the decade's criminality. One example is Charles King, accused of burglary and shooting with the intent to kill a night watchman. King was arrested in December 1852 for allegedly assaulting his wife and acquitted the following January. In May 1854 he was himself the victim of assault after a man named Henry Faithful was arrested and charged with throwing stones at him.²³

In September 1854, King was arrested on suspicion of shooting a city watchman named David N. Stone while attempting to burgle a home near the corner of Lombard and Greene Streets. A shoemaker identified a shoe left at the scene as one he made for King. Two police officers tracked King to Alexandria, Virginia, where they arrested him as he was playing in a game of cards. He fit the description given by Stone and bore a mark over his left eye, the same place the watchman had struck the burglar with his espantoon. Police also discovered and seized a large leather trunk belonging to King that was stored at a public house on Pratt Street where he once lodged. The



Engine house of the New Market Fire Company, 1859. The New Market was a powerful anti-Know Nothing organization allied with the Democratic Party during the 1850s. (Maryland Historical Society.)



Detail, opposite page. New Market Fire Company.

trunk contained several items King was alleged to have stolen, including “purses, eye-glasses, cards, dice, ladies’ black kid gloves, and a great variety of fancy articles.” He was indicted in early October in Baltimore’s criminal court and pleaded not guilty. Less than two weeks later, he joined a group of prisoners in an attempt to break out of jail and was caught trying to escape through the chimney. On November 17, the cases against King were removed to the Baltimore County Circuit Court.²⁴

Another would-be escapee was nineteen-year-old Washington Lewis, arrested on the charge of setting fire to a stable in South Baltimore. Arson, or incendiarism, was a common offense in 1850s Baltimore, as a means of intimidation and a source of entertainment for the “rowdies.” Lewis’ case was removed from the Baltimore criminal court to the county’s circuit court in December 1854, with the defendant jailed for his inability to pay \$5,000 in bail.²⁵

Under ordinary circumstances, the cases against Lewis and the other defendants that had been removed to the Baltimore County Circuit Court would have been

tried before Judge Albert Constable, who had been elected as a Democrat in 1851. Before representing Cecil County at the state's constitutional convention, Constable had been a member of the U.S. House of Representatives, serving Maryland's Fifth Congressional District from 1845 to 1847. He was next considered as the Democratic candidate for governor in 1847, though he declined the nomination.²⁶ In addition to his involvement in Democratic Party politics, Constable was a respected trial attorney, described by John Thomas Scharf as "one of the men who have made the deepest sort of impression upon the Baltimore County bar" and a lawyer "who studied his profession with intense ardor and application."²⁷

Before the removed criminal cases could be taken up, Judge Constable sought to conclude the Baltimore County Circuit Court's remaining civil business in January 1855, including the resolution of *Thompson Pegg et als. v. Richard Colvin Warword* (the "Colvin Will Case"), a case involving a "considerable amount of property" and "a number of intricate legal questions." The judge was stricken that month with a sudden illness, which delayed the start of the case until January 21.²⁸ At its conclusion in February 1855, Judge Constable took an indefinite leave of absence, leading to the calling of a special term of the Baltimore County Circuit Court for the hearing of the cases removed from the city's criminal court.

The calling of the special term was a matter of necessity, as the Baltimore criminal court was under a constant deluge of casework, both sordid and severe. Pursuant to chapter 68 of the Act of 1852, local attorney and Democrat Algernon Wood was appointed to preside as special judge over the removed criminal cases that would be prosecuted by the county state's attorney, Lloyd Williams, also a Democrat.²⁹ By the end of the special term, Williams would prosecute eighteen such cases. Another attorney, Robert C. Barry, would also prosecute two of these cases while acting as a defense attorney for others. The special term would not be the first time that Wood and Williams shared the Baltimore County courtroom; in 1853 the two lawyers had appeared before Judge Constable as prosecutors in *State v. Joseph Sinnott*, a case in which they secured a guilty verdict against a defendant charged with "enticing, persuading and assisting Jane Taylor, a slave of Joshua Marsh, to run away from her owner."³⁰ Wood was the first special judge appointed to preside over cases in the county circuit court, although the practice had become common in other courts throughout the state since the adoption of the Constitution of 1851.³¹

The special term began inauspiciously when the absence of witnesses caused the postponement or dismissal of several of the removed criminal cases set for trial.³² From late February to early March 1855, Wood presided over seven removed cases of larceny and selling liquor on a Sunday that were prosecuted by Williams. Though Judge Constable's continuing absence postponed the start of the circuit court's regular March term, the special term continued with Williams and Barry prosecuting nine individual defendants on charges of larceny, perjury, arson, rape, murder, and selling goods without a license.

The facts surrounding the more serious cases tried at the 1855 special term illustrate the fraternal nature of justice during the period, just as they validate the observation of removal as “a common dodge” for guilty defendants. In several of the cases, witness absenteeism or memory loss, convenient alibis, dubious character testimony, and defendants’ failure to appear would have a bearing on the ultimate disposition of the charges. The arson cases against five defendants in particular—Edward Priest, William Carroll, Washington Lewis, Hugh Davy, and George Clarke—stand out as prime examples. On March 8, Williams, assisted by Barry, prosecuted Edward Priest (alias Preece or Perkins), charged with allegedly burning the stable of William Whitelock near Low and Chestnut Streets on October 20, 1854. The state called as its first witness the city watchman on patrol that evening, Patrick Foley, who testified to seeing only Priest and Carroll, his alleged co-conspirator, near the burning stable on the night in question. Foley ran after Priest and arrested him, finding him in possession of a bottle that he opined was wine or spirits. Foley provided further detailed testimony on the progress of the blaze, stating that two horses were inside the stable at the time, and that Priest had made an unsuccessful attempt to escape from his custody. After bringing Priest to the watch house, Foley searched him and found matches, cigars, and a pistol on his person. The neighborhood watch captain, Lewis Howell, was also called as a witness and testified to Watchman Foley’s good character and truthfulness.

On cross-examination, Foley admitted to knowing that a reward had been offered for the detection and conviction of arsonists (“incendiaries”), one to which he believed he was entitled if Priest was convicted. He also admitted to being dismissed from his job as a night watchman about three weeks after Priest’s arrest, having been caught sleeping while on duty. The defense then presented testimony from another watchman, a man named Rutherford, who testified to seeing Foley coming from the stable with Priest in custody and that the defendant appeared very drunk. Rutherford, who had known Priest for two years, offered that he was “not a vicious young man” so far as he knew, and that he frequently saw him “with the boys about there on the corners,” associating with a group of young men called “the Parkers.” The defense also called nine character witnesses, all of whom attested to Priest’s general good character. After brief arguments, the jury entered a verdict of not guilty without leaving the box. The next day, Barry was assigned to prosecute the arson case against Carroll, but Barry confessed to a plea of not guilty instead, probably inspired by the outcome of the Priest case.³³

Three days later, Barry prosecuted a charge of arson against Washington Lewis for allegedly setting fire to a Federal Hill stable. The case involved testimony from several witnesses, with two state witnesses claiming to have overheard Lewis predict that there would be a fire on the night in question. The state also called the night watchman who was on duty that evening and a man who had assisted in the defendant’s arrest, both claiming to have heard Lewis say at the time of his arrest, “Sonny, they

have got me straight, but they will have to prove it.” In his defense, Lewis’ attorney, John B. Wilson, produced a witness who testified that it was a common saying among the boys of the neighborhood that “there will be a fire and some fun tonight.” The jury returned a verdict of guilty, although the state did not oppose Lewis’ motion for a new trial made later that month.³⁴

On March 15, Williams brought the state’s case against Hugh Davy, indicted on the charge of murder for allegedly shooting Balthazar Groeninger at Brendell’s Brewery on West Saratoga Street in May of 1853. Davy had a history of criminal activity that went back as far as January 1850, when he was implicated as an accomplice to William Kelly, a boy caught by a store owner while trying to steal several pairs of India rubber shoes. Three years later, and only a month before the shooting in question, Davy was arrested on the charge of assaulting and attempting to stab a police officer. As he awaited trial on the murder charge, Davy was arrested and charged with arson in September 1853 for allegedly setting fire to a carpenter shop belonging to Joseph Merritt the previous month. After entering a plea of not guilty, his attorney—the same Robert C. Barry who prosecuted arson cases against Priest and Carroll—removed both cases to the Baltimore County Circuit Court. In March 1854 both cases were postponed for trial until the court’s November 1854 term. Judge Constable’s absence led to the assignment of Davy’s case to the special term of 1855. When the murder case against Davy finally went to trial in March 1855, he was the only person of the eleven parties indicted as principals and accessories to be tried in the county’s circuit court.³⁵

The state first brought its murder case against Davy on March 15 and presented testimony that on the evening of May 15, 1853, a dozen young men entered through the rear yard of Mattias Brendell’s brewery near the corner of West Saratoga and Calhoun Streets, where they began “dancing or shuffling their feet . . . , throwing beer and pretzels on the floor, and blowing out the lights.” When he objected to their conduct, George Brendell, the proprietor’s brother, was knocked to the floor and dragged out into the yard, where four or five men beat him. His brother Mattias rushed to his defense with a cavalry saber that hung behind the bar and struck the assailants with the flat of the blade. Suddenly a pistol was fired by one of the assailants, the ball passing through Mattias’s arm and striking the chest of Balthazar Groeninger, an employee of the brewery who was then crossing the yard. Groeninger was killed instantly and the assailants fled. After none of the state’s witnesses at the trial were able to identify Davy as being at the brewery when the murder occurred, the jury rendered a verdict of “not guilty.”³⁶

The state’s remaining case against Davy for allegedly burning the carpenter shop in August 1853 was complicated by its parallel proceeding against George Clarke, who was charged with arson as a co-defendant in the Baltimore Criminal Court. Clarke’s case stettered after he agreed to appear during the special term of the Baltimore County Circuit Court as a witness against Davy. Williams’s case against Davy relied

on Clarke's testimony as the sole witness to the alleged arson. After Clarke did not show up in court and efforts to locate him failed, the indictment against Davy was submitted to the jury, which rendered another verdict of not guilty. Wood denied Williams's request for a continuance until the next term to allow time to locate and secure Clarke, stating that Davy had been in jail awaiting trial since September 1853 and he would not permit further delay. Instead, a warrant was issued for Clarke's arrest and Davy was held to bail to appear as a witness against him.³⁷

From March 16 to March 18, Williams prosecuted Charles Powell, an African American man charged with the rape of Barbetta Keifer, a German immigrant, in that "delectable locality" of Fell's Point known as "the Causeway" in January 1854. Also indicted was Powell's alleged co-conspirator, Charles Bowen, on the charge of aiding and abetting in the rape. If found guilty, Powell would face imprisonment in the penitentiary for a period of not less than two and not more than twenty-one years, or death by hanging, at the court's discretion. Both Powell and Keifer had been in jail—the latter as a witness—since January 1854. The details of the trial were not fully reported, as it contained testimony that "was not of a character suitable for publication, being principally in reference to the chastity of the prosecutrix."³⁸

Keifer claimed that on the night of January 6, 1854, she went into Charles Bowen's house at Caroline and Wilk Streets to obtain a glass of wine. Once inside, the door was locked behind her and her mouth was gagged with her apron, after which, she alleged, Powell carried her up the stairs and raped her with Bowen's assistance. A very large crowd attended the trial, an event distinguished by "a full representation of rowdydom" that evidenced "the morbid appetites and sympathies of that portion of the community." After both sides presented witnesses and arguments, the jury left to deliberate and returned with a verdict of guilty, followed immediately by the defense's motion for a new trial. The next day, Bowen failed to appear to answer for the charge of aiding and abetting Powell, at which time his recognizances were forfeited.

At the end of the day, Barry issued on behalf of the bar a resolution praising Wood's work as special judge, acknowledging the "courteous, firm, able, and impartial manner in which he has presided at the special term . . . and discharged all required duties." A few days later, Williams shared with the public a letter he had received from Judge Constable, who was convalescing in Charleston, South Carolina. The judge wrote to inform the state's attorney that his health was "considerably improved by the genial weather" and that he planned to proceed farther south to Havana, Cuba, to continue his recuperation. The special term of the circuit court concluded its remaining matters and adjourned, with the *Sun* reporting that both "Judge Wood and the state's attorney, Mr. Williams, have dispatched business in the most energetic manner, and to the general satisfaction of the members of the bar and the community."³⁹

The Baltimore County Commissioners Seek Compensation from the Mayor and City Council of Baltimore City

The record shows that scores of cases were removed to the Baltimore County Circuit Court during the May 1855 term of the Baltimore City Criminal Court. The *Sun* reported that between May and July, seventy-four such cases were removed, each projected to cost the city an average of \$50, or \$3,700 in total, not including the cost of incarcerating until the November 1855 term those defendants unable to give bail.⁴⁰ Also in July, the Baltimore County commissioners, pursuant to the removal act of 1854, chapter 269, section 5, provided the mayor and city council with a statement of all the costs and compensation related to the prosecution of the cases removed to and prosecuted during the 1855 special term.⁴¹ This notification was the first of several efforts at recovery made by the county commissioners prior to their civil suit going to trial in the Superior Court of Baltimore City in April 1859. The record indicates that at no time did the mayor and city council of Baltimore make any effort to compensate the county commissioners for the \$2,233.33 already paid to Lloyd W. Williams. In October 1855, Mayor Hinks approved a resolution to pay to Williams \$266.66 for “services in removed cases from Baltimore City Court,” far less than the amount already paid to him and sought in the commissioners’ lawsuit.⁴²

The city’s refusal to pay the full amount demanded may have been based on a belief in the soundness of its legal position. On August 22, Judge Constable died in Camden, New Jersey, with one observer noting that “his strict attention to his arduous duties in connection with that *cause célèbre*, the Colvin will case, was the immediate cause.”⁴³ After that case, Judge Constable’s association with the Baltimore County Circuit Court effectively ended. His March 1855 letter to Lloyd Williams, sent from South Carolina while he was en route to Cuba, indicates that he was not in a position to calculate or approve any amounts payable to the state’s attorney for the prosecution of the cases removed from the city’s criminal court in 1854.

On August 31, Governor Ligon appointed fellow Democrat James M. Buchanan to the judgeship left vacant by Constable’s death.⁴⁴ Buchanan had had a lengthy career in Maryland law and politics, having been elected to the House of Delegates in 1826 at the age of twenty-three. In 1841 he had been nominated for Congress but declined in order to focus on his growing legal practice, which he continued after being appointed postmaster of Baltimore City in April 1845. Buchanan would later represent Baltimore County at the 1851 constitutional convention, serving as president pro tem. His appointment as judge of the sixth district was met with support across the political spectrum, although his time on the bench would prove to be short. He was defeated for reelection on November 8, 1855, by John H. Price, a candidate for the Know Nothing party. Instead of serving out the remainder of his term, Buchanan vacated the bench and accepted an appointment from President James Buchanan (no relation) to serve as ambassador to Denmark.⁴⁵

In the same election, the Baltimore County Commission also fell under Know

Nothing authority, joining Baltimore City under the party's control after it swept the 1854 municipal elections with the election of Mayor Samuel Hinks. While the Democratic Judge Stump remained on the bench of the Baltimore City Criminal Court, the newly elected Baltimore state's attorney and sheriff were both Know Nothings. For the office of Baltimore County state's attorney, the Know Nothing candidate, Richard Gittings, defeated Lloyd W. Williams to become the youngest person ever to serve in the office, elected at the age of twenty-five after having been a member of the bar for only three years.⁴⁶ Unlike Judge Buchanan, Williams remained in office to serve out his full term as state's attorney and continued to prosecute, including several removed cases in December 1855. These cases were tried after the Baltimore County commissioners compensated him for prosecuting the removed criminal cases at the 1855 special term, shown by a receipt dated November 19, 1855, indicating that he had been paid \$2,223.33 for those cases by the Baltimore County treasurer.⁴⁷

Notwithstanding their shared political affinity, the new Baltimore County commissioners and the mayor and city council of Baltimore remained at odds over the issue of compensation for the prosecution of the removed criminal cases. A statement from January 30, 1856, from the City Register's Office to the First and Second Branches of the City Council noted that the city owed the county an estimated \$4,535.50 "for amount due on account of Baltimore County Court," \$4,000 of which was estimated as the expense of removed criminal cases.⁴⁸ Over one year later, the county commissioners presented the First Branch with a petition asking compensation for prosecuting criminal cases removed to the Baltimore County Circuit Court.⁴⁹ This request was apparently ignored, as it was followed by an October 1857 summons from Judge Lee of the Superior Court of Baltimore City that was issued to the mayor and the city council of Baltimore, ordering them to appear in January 1858 "to answer an action at the suit of the County Commissioners of Baltimore County." An additional summons, labeled as an "Action for \$4000," followed on December 17 and was served on Mayor Thomas Swann.⁵⁰

The record shows that the mayor and city council of Baltimore at least kept abreast of the Baltimore County commissioners' demands. The mayor's 1858 message to both branches of the city council, dated January 18, shows a detailed listing of court expenses "payable by the Mayor and City Council of Baltimore," totaling \$7,456.19 for cases removed to the Baltimore County Circuit Court.⁵¹ On January 28, the city comptroller provided the Baltimore City Council with a statement of the expenses of the city courts and of cases removed to Baltimore County for the previous year, including \$2,483.33 owed to Richard J. Gittings for prosecuting such cases.⁵² Absent from the account were any costs due to Lloyd Williams for the removed cases he prosecuted during the 1855 special term. The county commissioners also sought during this period compensation for the work of defense attorneys appointed to cases removed to the Baltimore County Circuit Court, presenting them with a bill for \$85.68 that was read and referred to the Joint Standing Committee on Claims.⁵³

On March 2, the committee responded, asserting that the claim for payment was “not a legal one against the city, the judges of the circuit court having no authority to appoint counsel to such cases.”⁵⁴ Their refusal to do so indicates the mayor and city council’s willingness to reject claims for compensation that were based on dubious legal grounds, even when the work justifying the compensation was done in the interest of city jurisdiction.

The year 1859 arrived and the removals continued, as did the Baltimore County commissioners’ efforts to receive compensation.⁵⁵ On February 3 they requested a cash advance from the mayor and city council of Baltimore, noting the large expenditures of removed cases that was anticipated for the upcoming term. The city council, however, took no further action after a resolution from the First Branch to advance the payment to the Baltimore County commissioners was received by the Second Branch and laid on the table, followed by adjournment.⁵⁶

The County Commissioners Prevail in the Superior Court of Baltimore City

The Baltimore County commissioners’ case against the mayor and city council finally went to trial in the Superior Court of Baltimore City on April 11, 1859, Judge Z. Collins Lee presiding.⁵⁷ The county commissioners sought to recover \$2,223.33 in fees paid to Lloyd Williams for prosecuting the criminal cases removed from the Baltimore City Criminal Court to the Baltimore County Circuit Court for the 1855 special term.⁵⁸ The county commissioners submitted into evidence the receipt for that amount from November 19, 1855, showing payment to Williams by the county treasurer, John Stansbury, on the order of Henry M. Fitzhugh, clerk of the Baltimore County Circuit Court, as well as the return of the Baltimore County clerk made to the mayor and city council of Baltimore, stating the amount of \$2,223.33 owed to the county by the city.⁵⁹ The county commissioners also submitted the full record of one of the cases removed from the city’s criminal court to the county’s circuit court and tried at the 1855 special term.

The trial in the Superior Court of Baltimore City turned on a legal question relating to the parties’ differing interpretation of the removal statutes of 1852 and 1854. Several factual matters are worth considering and add subtext to the resolution of the case. First and foremost, the record shows that Lloyd Williams prosecuted eighteen cases during the 1855 special term, with Robert C. Barry prosecuting the two arson cases against William Carroll and Washington Lewis. Given that the Act of 1852, chapter 315 permitted a maximum of \$30 for each case, Williams was entitled to at most \$540 for prosecuting the eighteen removed cases at the 1855 special term. Furthermore, because \$30 was the maximum allowed for each case, it is possible that Williams was entitled to far less, which may explain why the mayor and city council of Baltimore approved \$266.66 in payment to Williams in October of 1855.⁶⁰

These facts produce more questions than answers. It is unclear why Henry

Fitzhugh authorized and the Baltimore County commissioners paid to Williams \$2,233.33, an amount he would be entitled to if he prosecuted seventy-four cases removed from the Baltimore City Criminal Court. Is it a coincidence that exactly seventy-four cases were removed from the Baltimore City Criminal Court to the Baltimore County Circuit Court at the conclusion of the former's May 1855 term?⁶¹ The record shows that Williams prosecuted at least six of these cases in the Baltimore County Circuit Court in December 1855. Of course, he did so *after* the Baltimore County commissioners paid him the \$2,233.33 and *after* he was defeated for reelection to the office of state's attorney. Those cases not prosecuted by Williams during his remaining days in office were taken on by Richard S. Gittings when his term as Baltimore County state's attorney began in January 1856, including the cases against Charles King for burglary and attempting to kill a night watchman, removed from the Baltimore City Criminal Court back in November 1854.⁶²

Is it possible that Fitzhugh, Williams, and the Baltimore County commissioners were looking beyond the 1855 November election and assumed that Williams would be prosecuting the cases removed from the Baltimore City Criminal Court during its May 1855 term? Did Fitzhugh ever approach Algernon Wood to authorize the transfers? Did Wood have any authority to do so as a special, and not elected, judge? Why did Fitzhugh not approach Judge Buchanan, appointed in August 1855, or Judge Price, elected in November 1855, to request their signature on the transfers? Is it because they would not have authorized the amounts? Did Judge Constable's absence and eventual demise provide Fitzhugh, Williams, and the Baltimore County commissioners—all Democrats—with an opportunity to swindle the mayor and city council of Baltimore City—predominantly Know Nothings—out of \$2,233.33? There was certainly no love lost between the two political parties, as the sudden and forceful rise of the Know Nothings displaced much of the power and influence once enjoyed by the Democrats in Baltimore City and Maryland.

The record does not provide any solid evidence of fraudulent or political motives on the part of Fitzhugh, Williams, or the Baltimore County commissioners, meaning that these and other related questions, while intriguing, are speculative. Furthermore, the discrepancy in the amount to which Williams was entitled for prosecuting the removed cases and what the county commissioners actually paid him and sought compensation for was not raised by either party at the trial in the Superior Court of Baltimore City. Rather, their disagreement centered on their diverging interpretations of the authority of the clerk of the Baltimore County Circuit Court to make the payments at issue, a dispute reflected in their opposing jury instructions requested of Judge Lee at the close of evidence.

The Baltimore County commissioners requested that the jury be instructed that the "transcript of the records, and short copies of judgments . . . show that the several sums mentioned as costs and compensation taxed and allowed to [Lloyd Williams], were due and payable to him by the Baltimore County Commissioners," and that if

the jury found that the statement of said costs and compensation, and all other costs in said cases, was sent to the mayor and city council by the Baltimore County clerk between July 1 and July 10, 1855, and that the commissioners did pay the \$2,223.33 to Williams, then the commissioners were entitled to recover that amount from the mayor and city council. For their part, the mayor and city council of Baltimore requested that Judge Lee instruct the jury that, notwithstanding the evidence, the Baltimore County commissioners were not entitled to recover \$30 in each case and legal fees of \$3.33 $\frac{1}{3}$, because the allowances did not appear to have been made by any order or judgments of court.⁶³

The county commissioners' requested jury instruction was grounded in their belief that they were entitled to the fees pursuant to the removal statutes of 1852 and 1854. The former, concerned with the "payment of costs in cases removed from City Courts to the County Circuit Court," provided that "in all criminal cases removed from the City criminal court to the County Circuit Court, and tried," it "may be lawful for [Baltimore County] Circuit Court Judges to allow to the [Baltimore] County state's attorney, in addition to the sum now allowed by law, such compensation, not to exceed \$30 for any one case, as the [Baltimore County Circuit Court] Judge may deem just and proper, to be levied and collected from [Baltimore] City."⁶⁴

The removal act of 1854, concerned with the "payment of costs in removed cases," detailed the necessary steps that all of the state's counties and Baltimore City were required to take in order to compensate their state's attorneys for prosecuting removed cases. First, "all costs and expenses incident to the trial of all actions, issues and presentments, removed from one County to another, properly chargeable to the County," would be paid by the County from which the case was removed." The clerks of the courts to which such cases were removed would "make and keep account of the costs and expenses" of the cases and "certify and return to the County Commissioners where the cases originated . . . the names of the parties to whom costs and expenses were due, the amounts thereof, and in what County the parties reside." The costs and expenses due to parties would first be paid by the county where the removed cases were tried, followed by payment to that county by the county from which the cases were removed. Lastly, the act required county clerks make returns annually, between July 1 and 10 of each year. Although it had statewide effect, unlike the Act of 1852, the Act of 1854 explicitly applied to all cases removed to or from Baltimore City, and required that in cases removed from Baltimore City, the mayor and city council would levy and pay the costs.⁶⁵

In effect, the Baltimore County commissioners argued that the evidence showed that the costs of the cases removed from the Baltimore City Criminal Court and tried at the 1855 special term of the Baltimore County Circuit Court were "properly chargeable" to Baltimore City and must be paid by the mayor and city council. Fitzhugh made and kept account of the costs and expenses of each of these cases and certified and returned to the mayor and city council of Baltimore the name of

Lloyd W. Williams, a resident of Baltimore County, as the party to whom the costs and expenses were due. The costs and expenses were then paid to Lloyd Williams by the Baltimore County commissioners. Therefore, the mayor and city council of Baltimore were obligated to levy the costs and compensate the Baltimore County commissioners for the amounts paid to Williams. In other words, Fitzhugh's signature on the documents was all that was required to pay Williams and obligate the mayor and city council to compensate the county commissioners.

The instruction requested by the mayor and city council that the county commissioners were not entitled to recover for the costs of the removed cases was in reference to the fact that none of the documents in evidence indicated that Judges Constable, Buchanan, or Price certified or were aware of these transfers. In other words, Fitzhugh, as the circuit court clerk, could not act without their authority, making the payments to Williams invalid.

In the end, Judge Lee agreed with the county commissioners' interpretation of the removal statutes, granting their requested instruction and denying the instruction requested by the mayor and city council. After the mayor and city council excepted to both rulings, the jury returned a verdict for the county commissioners, awarding them the \$2,223.33 on April 12, 1859.⁶⁶

The Mayor and City Council Appeal the Trial Court's Ruling on Jury Instructions

On May 19, 1859, the mayor and city council were granted review of Judge Lee's ruling by the Maryland Court of Appeals, making five points on appeal.⁶⁷ They claimed that the evidence did not show that the allowances in question were made by an order of a judge of the Baltimore County Circuit Court, arguing that the judgments must show that the cases were *tried* and the allowances were made *after* the trials took place, by his special order in each case, and not under a general order of the clerk (emphasis in the original). It is reasonable to assume that their emphasis in this first point on appeal was a not-so-subtle reference to the questionable timing of the transfer documents: looking solely at the seventy-four cases removed from the Baltimore City Criminal Court between May and July 1855, the mayor and city council may have been suggesting that Williams was paid by the Baltimore County commissioners for work on cases that he did not and would not prosecute.

They also asserted that the power given to the court by the Acts of 1852 and 1854 to authorize payments was discretionary and that it must appear from the judgments that a judge—not a clerk—exercised such discretion, made such a determination, and allowed such additional compensation in each case. By granting the Baltimore County commissioners' requested instruction, the mayor and city council claimed that Judge Lee erred by assuming that the evidence showed that the sums mentioned as compensation were owed by them, without allowing the jury to find that the compensation was allowed by a judge in the first instance. Lastly, they argued that

the intention of the Acts of 1852 and 1854 was to give the state's attorney such extra compensation as to the court might seem just and proper, within limits prescribed, and that it should appear from the transcripts that a judge estimated the amount owed to Williams before Fitzhugh could certify the allowance to him.⁶⁸

The Baltimore County commissioners made four points in reply. First, they claimed that they were obligated to pay Williams the respective amounts in the several cases and that, having paid them, were entitled to recover those amounts from the mayor and city council of Baltimore. They also asserted that the mayor and city council were estopped from objecting to payment by the county commissioners to Lloyd W. Williams since the mayor and city council were notified of the fees they owed and should have warned the county commissioners against paying him if they intended to resist compensation. Finally, the county commissioners claimed that the propriety of the allowance and the mode in which it was provided in the Baltimore County Circuit Court was not examinable.⁶⁹

In their brief, the county commissioners elaborated on the final point and asserted that the issue on appeal could be reduced to one question: Did the judge of the Baltimore County Circuit Court allow to Williams the \$30 in each case removed from the Baltimore City Criminal Court pursuant to section 2 of the Act of 1852? The affirmative answer, they argued, was twofold: first, Fitzhugh, as clerk of the circuit court, was "specially required" by that section to certify the costs and expenses, make and keep a full and accurate account, and to return the same to the mayor and city council of Baltimore. Fitzhugh did so and "no other person, not even the judge himself, was competent to make such a certificate." This act, they asserted, did not constitute the usurpation of authority claimed by the mayor and city council of Baltimore. Second, the county commissioners disputed the mayor and city council's point that the allowances in question should have been made in writing by a judge of the Baltimore County Circuit Court. The Act of 1852 did not expressly impose such a requirement, they argued, nor did the common law. In this regard, the county commissioners distinguished the Baltimore County Circuit Court from courts of equity, "where all the decisions and orders of the court are set out in writing." Furthermore, the county commissioners argued that in the circuit courts, "the most solemn acts and decisions of the Court only appear by entry of the Clerk in his docket, even the sentences of such Courts in the cases where the death penalty is pronounced."⁷⁰

After submitting their briefs, the parties awaited the decision of the Court of Appeals, which would not come for over two years. In the meanwhile, the Second Branch of the City Council of Baltimore City met, read, and passed a resolution in September 1859 to pay to the Baltimore County commissioners the charges made for criminal cases removed from Baltimore City Criminal Court. The General Assembly also remained engaged in overcoming inefficiencies in the state courts in debating a bill that would authorize that cases removed from Baltimore City to specific circuits, including Baltimore County, "shall occupy the best place on the calendar of the courts

of said counties.”⁷¹ The record is not clear as to whether these payments were made or what effect, if any, the legislature’s debate had on the practice of removal. Maryland would soon find itself caught in a civil war, an event that would have a profound impact on the state’s judicial and political landscape. In the immediate term, however, one thing remained the same: the process of removing cases from the Baltimore City Criminal Court to the Baltimore County Circuit Court continued.

The Decision of the Maryland Court of Appeals

The Maryland Court of Appeals considered *The Mayor and City Council of Baltimore v. the County Commissioners of Baltimore County* during its December term of 1862, with Chief Judge Richard Bowie, Judge Bartol, and Judge Goldsborough presiding. In his opinion, issued in May 1863, Chief Judge Bowie reversed without procedendo⁷² the decision of the Superior Court of Baltimore City, holding that Judge Lee erred in granting the Baltimore County commissioners’ requested instruction and denying the instruction requested by the mayor and city council of Baltimore City.⁷³

After reviewing the facts and the procedural history, Judge Bowie proceeded with the merits, observing that the points raised on appeal involved the relative powers and duties of the judges and clerks of the Baltimore County Circuit Court and the Baltimore City Criminal Court. He noted that the acts in question, although “*in pari materia*” (“upon the same matter or subject”) were “not entirely so, and not supplementary.” The Act of 1852 was local, confined to cases removed from Baltimore City to Baltimore County and vice versa. It invested the circuit court judge with discretionary power to make compensation, additional to that allowed by law, to the state’s attorney of the county wherein certain removed cases were tried. The Act of 1854, however, was general in its statewide operation and was limited to costs and expenses, with no allusion to “compensation additional” to that allowed by law. Judge Bowie noted that the purpose of this second act was to enable witnesses and other case participants to collect at home per diem, costs and expenses, and rely on another county or city for remuneration.⁷⁴

In reaching his decision, Judge Bowie agreed with the mayor and city council of Baltimore that none of the evidence showed that any specific allowance was made to Lloyd Williams by an order of a circuit court judge as required under both the Acts of 1852 and 1854. No mention was made of Judge Constable, whose absence from the circuit court was the impetus for calling a special term for the removed criminal cases in the first place. The opinion also made no reference to special judges in general or Algernon Wood in particular, and the parties did not brief any arguments on whether special judges at the time had the authority to order that such allowances be made. The Act of 1858, ch. 363 authorizing circuit court clerks to make certain entries and do certain acts in the absence of the circuit judge was not applicable by its terms and nevertheless would not have been given retroactive effect by the Court of Appeals.⁷⁵

Another unanswered question is whether Wood could be considered disqualified under section 22 of the judiciary article of the constitution and the Act of 1852, ch. 68, from presiding over the removed cases. The Act of 1852, ch. 68, allowed Lloyd Williams as the state's attorney to consent to the appointment of a special judge.⁷⁶ Wood had previously served alongside Williams as a prosecutor in the Baltimore County Circuit Court in the 1853 case of *State v. Joseph Sinnott*. His appointment could have been challenged under Section 22 of the constitution, which prohibited a judge from presiding over a case in which he was formerly counsel to one of the parties.⁷⁷ On the other hand, this provision may have applied only to actual circuit court judges like Judge Constable who once represented parties who then appeared before them after their election.

Judge Bowie acknowledged that the clerk is the “hand of Court,” and every entry made by him must be presumed to be made pursuant to an order from and in the presence of a judge. However, “where the law invests special power in a Judge, to be exercised as he may deem just and proper, it requires some evidence that judicial discretion has been exerted in each case.” With respect to the case at bar, the Acts of 1852 and 1854 placed that discretion in the hands of Judge Constable, Judge Buchanan, or Judge Price. The awarding of costs was an act of the court, and their taxation or computation, according to the fees prescribed by law, was a duty imposed on the clerk, subject to judicial supervision. Judge Bowie was clear in stating that the “allowance of compensation to an officer of the Court, in addition to the sum allowed by law, as a Judge may deem just and proper, is a judicial, not a clerical act, which must be evidenced by some order under authority of Judge.” The absence of any such determination by any of the three aforementioned judges therefore rendered invalid the allowances made by Fitzhugh, a construction Judge Bowie found enforced by “the practice of Judges in other circuits, under similar provisions, as well as obvious intent and meaning of law.”⁷⁸

ON MAY 11, 1863, the Baltimore City counselor informed the First Branch of the City Council of the Court of Appeals' ruling in their favor.⁷⁹ The opinion was a reminder that respect for institutional order remained paramount, especially in the most disorderly of times. This message resonated not only with respect to the Civil War—which by then had claimed the lives of tens of thousands of men—but also with regard to Maryland's recent political history, marked by the voter intimidation and violence that inevitably affected the operation of the state's courts. Notwithstanding the pressing need to efficiently dispose of cases that were pouring forth from the Baltimore City Criminal Court into the Baltimore County Circuit Court, the Court of Appeals viewed the manner in which these cases were administered as an affront to proper judicial procedure and transparency. Given the facts and circumstances of the case, one could view its decision as a *sotto voce* rebuke of the actions of the

county commissioners and Henry Fitzhugh, who at best were complicit in their carelessness, and at worst intent on fraud.

The historical record provides hints but no concrete proof of a link between politics and law in the removal of criminal cases or the final disposition of the case on appeal. The system of electing judges of the courts of original jurisdiction raised the specter—real or imagined—of political judicial decision-making, especially at a time when politics and crime were so inextricably intertwined. The system of elected judges instituted by the Constitution of 1851 received widespread criticism, despite being a reaction itself to the old process of gubernatorial appointment. It is noteworthy that the Constitution of 1864 reestablished the practice of judicial appointment. A potentially partisan jury pool could also encourage a defendant to remove his case, and may have been a factor in the removal of at least some of the cases prosecuted during the 1855 special term. If an alleged offense was motivated by or related to politics, a defendant might assume a fair trial could not be had in the court of original jurisdiction. The case arising out of the most infamous riot in Baltimore City history—the Pratt Street Riot of April 19, 1861—is a prime example. The defendants in that case were secessionist sympathizers who participated in an attack on Union troops from Massachusetts passing through Maryland on their way to help defend Washington, D.C. against the threat of attack from Confederate forces. Four soldiers and twelve civilians were killed. Charged with rioting, all of the defendants removed their cases to Baltimore County Circuit Court and were tried there on September 5, 1861.

The removed criminal cases were typical of 1850s Baltimore City criminal activity, and the appointment of Algernon Wood to preside over their trials was not extraordinary in a general sense, notwithstanding the potential appearance of a conflict of interest given his past work as a prosecutor. Judge Constable's illness and death, however, and the following chain of events invited a corrective decision that emphasized the authority of the judge as clearly distinguished from powers of a clerk, echoing criticisms directed against clerks in the period leading up to the constitutional convention of 1851. Within a year of the court's opinion, the state would have a new constitution and judicial system, formed in light of the lessons learned during an especially turbulent time.

NOTES

1. "Proceedings and Debates of the 1850 Constitutional Convention," *Archives of Maryland Online*, October 22, 2009, Maryland State Archives, <http://aomol.net/000001/000101/html/index.html>. Accessed October 10, 2011. The Baltimore City delegation was made up of Charles J. M. Gwinn, David Stewart, Robert Brent, George W. Sherwood, Benjamin Presstman, and Elias Ware. Representing Baltimore County were Benjamin Howard, James M. Buchanan, Ephraim Bell, Thomas J. Welsh, Hartwell J. Chandler, and James L. Ridgely.

2. J. Thomas Scharf, *History of Baltimore City and County from the Earliest Period to the Present Day: Part 2* (Philadelphia: L. H. Everts, 1881), 626, 629.
3. *Ibid.*, 628. A judge's salary could not be increased or diminished during his term or augmented by any fees or commissions in addition to their judicial salary. Judges were also required to be above thirty years of age, members of the state bar, residents in the state for at least five years, a resident for two years of the judicial circuit from which elected and committed to reside in the circuit for the duration of his tenure.
4. *Histories of the Bench and Bar of Baltimore City, in Commemoration of the Bicentennial of Baltimore City, 1797–1997* (Baltimore: Baltimore Courthouse and Law Museum Foundation, 1997), 61. Clerks later elected to the Superior Court include: John Spear Smith 1856–1857 and George E. Sangston 1857–1863. Scharf, *History of Baltimore City and County from the Earliest Period to the Present Day: Part 2*, 717.
5. Scharf, *History of Baltimore City and County . . .*, Part 2, 629.
6. These statutes included, respectively, the Acts of 1852, chaps. 34, 46, and 5; the Act of 1853, chap. 175; and the Act of 1853, chap. 208.
7. *Debates and Proceedings of the Maryland Reform Convention to Revise the State Constitution*, 2 vols. (Annapolis: William McNeir, official printer, 1851), 748–51.
8. Constitution of 1851, Article IV, section 22.
9. Act of 1852, chapter 68, sections 2, 4, 6, 7, and 8.
10. The Act of 1856, chapter 139, clarified that the power to appoint a special judge was not exhausted after an initial appointment, providing that another “proper person” could be appointed by the consent of the parties, or by the judge of an adjoining circuit, in the event that an appointed special judge died, resigned, or refused to act before the resolution of a case. The Act of 1858, chapter 316 expanded the operation of chapter 68 to allow the clerk of any of the state's courts to request any other state judge to appoint a special judge to preside over cases when the elected judge was unable to and the parties had not already consented to a judge already. The Act of 1858, chapter 363 authorized the clerks of the state circuit courts to make certain entries and do certain acts in the absence of the circuit judge, including calling over of the civil appearance docket (assigning cases for trial in a particular court, without presiding over them), taking the returns of the sheriff, and entering the appearance of the defendants. Clerks were also authorized in any regular or adjourned term to enter up judgment by the consent of the parties in the absence of the circuit court judge.
11. Tracy Matthew Melton, *Hanging Henry Gambrill: The Violent Career of Baltimore's Plug Uglies, 1854–1860* (Baltimore: Maryland Historical Society, 2005), 298.
12. William H. Young, Esq. served as special judge of the Baltimore City Criminal Court in early October of 1857 due to illness on the part of Judge Henry Stump. See, *Baltimore Sun*, September 30–October 3 and October 8, 1857. In June 1858, Judge Robert N. Martin served as special judge of the Baltimore City Court of Common Pleas due to the illness of Judge Marshall. The clerk of the court notified Judge Lee of the Superior Court of the need for a special judge, who in turn requested that Judge Martin take the position. In May 1860, Judge Brewer of the Circuit Court for Anne Arundel County notified the clerk that he was unable to attend court due to illness and requested that members of the bar either agree upon a special judge or to let the clerk adjourn the court each day. After consulting with one another, the members of the bar agreed to the appointment of Judge Brewer's son, Nicholas Brewer, Esq., as special judge for the day. *Sun*, May 10, 1860.
13. For example, Henry Goldsborough served as special judge of the Baltimore City Criminal Court in June of 1858 in the trial of Solomon T. Wilson. The presiding judge, Richard Bennett Carmichael, was disqualified from sitting in the case having previously been one

of the counsel. *Sun*, June 19, 1858. In August of 1859, Judge Alexander Evans was appointed to preside over a special docket of cases in the Circuit Court for Harford County in which Judge Price was disqualified. *Sun*, August 6, 1859.

14. Sister Mary St. Patrick McConville, *Political Nativism in the State of Maryland 1830–1860* (Washington, D.C.: Catholic University of America, 1928), 15, 16, 18.

15. *A Review of the Meetings of Presidential Electors in Maryland 1789–1980* (Annapolis: State Administrative Board of Election Laws, 1981), 13–15.

16. McConville, *Political Nativism in the State of Maryland*, 18, citing *Proceedings of the Maryland Constitutional Convention*, 1851, 94. As early as November 29, 1850, Mr. John F. Dent, delegate from St. Mary's County, submitted a resolution proposing to "inquire into the propriety of engraving into the constitution . . . some provision restricting from future foreign immigrants . . . the right of suffrage, until they shall have been residents of [Maryland] for at least ten years, . . . given notice . . . of their intention to become citizens of the United States, and have been fully naturalized[.]"

17. Lawrence F. Schmeckebier, *History of the Know Nothing Party in Maryland* (Baltimore: Johns Hopkins Press, 1899), 13, 14; Jacob Frey, *Reminiscences of Baltimore* (Baltimore: Maryland Book Concern, 1893), 91; J. Thomas Scharf, *Chronicles of Baltimore; Being a Complete History of "Baltimore Town" and Baltimore City from the Earliest Period to the Present Time* (Washington, D.C.: Kennikat Press, 1874), 543.

18. Schmeckebier, *History of the Know Nothing Party in Maryland*, 15, 16; *Baltimore Sun*, November 5, 1853; *A Review of the Meetings of Presidential Electors in Maryland 1789–1980* (Annapolis: State Administrative Board of Election Laws, 1981) 13–15.

19. Jean H. Baker, *Ambivalent Americans: The Know-Nothing Party in Maryland* (Baltimore: Johns Hopkins University Press, 1977), 121; Hamilton Owens, *Baltimore on the Chesapeake* (Garden City, N.Y.: Doubleday, Doran & Company, Inc., 1941), 263. Other groups included the Black Snakes, Tigers, Rough Skins, Red Necks, Thunderbolts, Gladiators, Ranters, Eubolts, Little Fellows, Screw Boats, Stay Lates, Hard Times, Dips, and the Ashland Club.

20. Schmeckebier, *History of the Know Nothing Party in Maryland*, 19. According to the *Sun* of October 11, 1854, "much excitement, so-called political, was manifested" with "a great deal of . . . quarreling . . . indulged in by squads on the corners and elsewhere. . . . Fortunately, however, but little fighting was done, and it is to be hoped that everything will go on peacefully today even though the spirit of the "largest liberty" will be present."

21. Scharf, *The Chronicles of Baltimore*, 549–51, 558, 565. Only in the Eighth Ward did the Democrats make a respectable showing, polling 1,013 votes.

22. Melton, *Hanging Henry Gambrill*, 125–26, 298.

23. *Sun*, December 17, 1852, January 10, 1853, and May 29, 1854.

24. *Sun*, September 27, October 6 and 17, and November 18, 1854.

25. *Sun*, December 2, 1854.

26. Jeffrey Scholnick, "Who Was the First Judge Elected in Baltimore County?" *Baltimore County Small and Solo Atty's Blog*, September 26, 2010, Law Office of Jeffrey R. Scholnick, <http://baltimorecountysmallandsoloatty.wordpress.com/tag/judge-albert-constable/> [Accessed April 20, 2012.]

27. J. Thomas Scharf, *The History of Baltimore City and County* (Philadelphia: J.B. Lippincott & Co, 1881), 718

28. *Sun*, January 15 and 22, 1855.

29. *Sun*, February 27, 1855.

30. *Sun*, November 27, 1852.

31. In February 1853, the General Assembly was informed of the work of special judges in the

Baltimore City Criminal Court and circuit courts of Charles, Caroline, Carroll, Frederick, Harford, Howard, Kent, Montgomery, Prince George's, Somerset, and Talbot counties. *Sun*, February 1, 1853; *Sun*, February 3, 1853; *Sun*, February 8, 1853; *Sun*, February 11, 1853; *Sun*, February 12, 1853. In February of 1854, the state comptroller received a report of the amount of compensation paid to these special judges and the General Assembly one month later passed the Act of 1854, chapter 234, which appropriated \$3,500 to pay them for services rendered.

32. "Proceedings of the Courts," *Sun*, February 28, 1855.

33. *Sun*, March 9 and 10, 1855

34. *Sun*, March 13 and 21, 1855.

35. *Baltimore Sun*, January 29, 1850, April 9, September 22 and 29, 1853, March 23, 1854, and March 16, 1855. The cases of three other defendants were set for trial in the Baltimore City Criminal Court, with the remainder removed to the Anne Arundel County Circuit Court. *Sun*, March 16, 1855.

36. *Sun*, March 16, 1855.

37. *Sun*, March 25, 1855.

38. *Sun*, March 19, 1855.

39. *Sun*, March 20, 21, and 24, 1855.

40. Robbery 3, larceny 10, selling liquor on Sunday 36, assaults 7, assaults with intent to kill 7, borrowing money from a bank whilst directors thereof 5, disorderly houses 3, false pretences 1, riot 1. Bawdy house 1. *Sun*, July 4, 1855.

41. This statement does not appear to be in the joint record. However, the Baltimore County commissioners requested instruction in the civil case, granted by Judge Z. Collins Lee of the Superior Court, referenced as evidence a "statement of the said costs and compensation, and all other costs in said cases, ... sent to the defendant [the Mayor and City Council of Baltimore City] by the Clerk of the Circuit Court for Baltimore county, between the 1st and 10th July 1855." Retrieved from EPCLIO, BALTIMORE CITY SUPERIOR COURT (Civil Court Papers) County Commissioners of Baltimore County v. Mayor and City Council of Baltimore, 1858, box no. 18, "Box R no. 17" [MSA T591-65, 2/19/8/27].

42. "Resolution No. 249. Resolutions relative to paying the expenses of removed Criminal cases." *The Ordinances of the Mayor and City Council*, April 15, 2012. <http://books.google.com/books?id=-UItQAAMAAJ&pg=PA178&lpg=PA178&dq=Lloyd+W.+Williams,+Baltimore+County&source=bl&ots=641z1NDnRX&sig=KsY2u3Ju9latlOhCJ1TfbeamGmo&hl=en&sa=X&ei=Le-VT6-gCKqH6QHNz8m7Dg&ved=oCGsQ6AEwCA#v=onepage&q=Lloyd%20W.%20Williams%2C%20Baltimore%20County&f=false>

43. Scharf, *History of Baltimore City and County*, 718.

44. *Sun*, September 1, 1855.

45. Scholnick, "What Baltimore County Judge later served as the U.S. Ambassador to Denmark?" *Baltimore County Small and Solo Atty's Blog*, October 3, 2010, Law Office of Jeffrey R. Scholnick, <http://baltimorecountysmallandsoloatty.wordpress.com/2010/10/03/what-baltimore-county-judge-resigned-to-become-u-s-ambassador-to-denmark/> [Accessed April 20, 2012.]

46. Scholnick, "Who Was the Youngest State's Attorney elected in Baltimore County History? Not John Raine, but Richard Gittings," *Baltimore County Small and Solo Atty's Blog*, October 31, 2010, Law Office of Jeffrey R. Scholnick, <http://baltimorecountysmallandsoloatty.wordpress.com/2010/10/31/who-was-the-youngest-state%E2%80%99s-attorney-elected-in-baltimore-county-history-not-john-raine-but-richard-gittings/> [Accessed April 20, 2012.]

47. "Received Nov. 19th 1855 of John Stansbury Twenty two Hundred and Twenty three Dollars and Thirty three Cents in full for being the amount due me as States Attorney for

Baltimore county for Removed Cases from Baltimore City, as per return of H.M. Fitzhugh clk, as per order _____. Nov. 19./55. Lloyd Williams. \$2,233 33/100." Retrieved from EPCLIO. BALTIMORE CITY SUPERIOR COURT (Civil Court Papers) County Commissioners of Baltimore County v. Mayor and City Council of Baltimore, 1858, box no. 18, "Box R no. 17" [MSA T591-65, 2/19/8/27]. Accessed October 15, 2011.

48. Mayor's Message & Reports of Officers, Baltimore, 1856, *Register's Statement* (Baltimore: City Register's Office, 1856), 39.

49. An exact figure was not reported. *Sun*, April 13, 1857.

50. Retrieved from EPCLIO. BALTIMORE CITY SUPERIOR COURT (Civil Court Papers) County Commissioners of Baltimore County v. Mayor and City Council of Baltimore, 1858, box no. 18, "Box R no. 17" [MSA T591-65, 2/19/8/27].

51. Specifically, the recipients of the amounts payable included: State's Attorney R. Gittings, \$2,483.33 1/3; State Witnesses, \$1,604.50; County Commissioner and Jurors, \$2,096.00; Court Clerk Henry Fitzhugh, \$598.55; Sheriff William Pole, \$506.97; Crier J. W. Owings, \$124.48½; Interpreter Frederick Yarthurst, \$12.00; Special Bailiff, \$10.00; City Sheriff Samuel Gaskins Jr., \$20.36½. Message and Reports 1858, *Message of the Hon. Thomas Swann, Mayor of Baltimore, To the First and Second Branches of the City Council, January 18, 1858* (Baltimore: George W. Bowen & Co., 1858) 77-78.

52. The following expenses were for the criminal court: state's attorney, \$9,318.23; clerk \$9,799.11; sheriff \$5,806.45; crier \$3,101.18; bailiffs \$3,609; interpreter \$624; grand jurors \$3,214 petit jurors, witnesses, &c, \$4,376.50, attorneys appoint by court \$830.56; board of jurors at tavern \$1,262; police, 2 terms \$308. Total \$42,238.03. The following expenses were for cases removed to the Baltimore County Circuit Court: R. J. Gittings, State's Attorney, \$2,483.33; state's witnesses \$1,604.50; county commissions and jurors \$2,096; Henry Fitzhugh \$598.55; Wm. Pole, sheriff, \$500; J. W. Owings, crier, \$424.48; Frederick Zarhurst \$12; special bailiff \$10; Samuel Gaskins, city sheriff, \$20.36. Total \$7,456.19. *Sun*, January 29, 1858.

53. "Commissioner of Balto. County, bill for payment, criminal cases removed from City." 1741 1858 372, retrieved from the Baltimore City Archives. November 11, 2011.

54. "Balto. County, defense council, for." 1744 1858 446, retrieved from the Baltimore City Archives, November 11, 2011.

55. *Sun*, January 29, 1859: Henry Beesenborough and Adam Sebold, both charged with larceny. *Sun*, February 5, 1859: Thomas Devin, charged with assault with intent to kill. Christian Linebacker, charged with selling liquor on Sunday. *Sun*, February 5, 1859: George Hollins, charged with the larceny of some jewelry, &c. *Sun*, February 12, 1859: Balty Smith, charged with assault with intent to kill. *Sun*, March 8, 1859: Charles Dougherty, indicted on the charge of arson, in the alleged setting fire to the shoe store of Valentine & Gallagher. *Sun*, March 28, 1859: The case of Huering and Philes, indicted for the larceny of an ox from Mr. Choate. *Sun*, March 29, 1859: James Gallagher, alias Capt. Green, charged with the robbery of a sum of money from the store of Peter Sauerwem & Son, N. Howard Street.

56. *Sun*, February 4, 18, 1859.

57. *Sun*, April 12, 1859. At that time, the County Commissioners of Baltimore County were Jonathan M. Hayfield (political affiliation unknown), Elisha S. Johnson (Know-Nothing Party), and Michael Wartman (Democratic Party). The mayor of Baltimore City was Thomas Swann, elected as the Know-Nothing Party candidate in 1856 and reelected in 1858. The members of the bicameral city council included: First Branch – First Ward : Caleb B. Hynes; Second Ward: Leonard J. Bandel; Third Ward: William J. Maddox; Fourth Ward: Silas Beacham; Fifth Ward: John Dukehart; Sixth Ward: C. A. Talbot; Seventh Ward: William E. Beale; Eighth Ward: John J. Staylor; Ninth Ward: George A. Cuningham; Tenth Ward: A. J. Hampson; Eleventh

Ward: Jehu Hamilton; Twelfth Ward: John T. Ford (President); Thirteenth Ward: Samuel Dunnock; Fourteenth Ward: Joshua Dryden; Fifteenth Ward: James H. Wood; Sixteenth Ward: John W. Glannville; Seventeenth Ward: William Addison; Eighteenth Ward: Amos McCommas; Nineteenth Ward: Daniel Harvey; Twentieth Ward: Charles H. Clark (Richard Battee, clerk, Thomas D. Sultzer asst. clerk, A. J. Bandel, door-keeper. Second Branch – First and Second Wards: Edward Horney; Third and Fourth Wards: George W. Herring; Fifth and Sixth Wards: Samuel Kirk; Seventh and Eighth Wards: John B. Seidenstricker (President); Ninth and Tenth Wards: Dr. F. E. B. Hintze; Eleventh and Twelfth Wards: Alexander B. Gordon; Thirteenth and Fourteenth Wards: John R. Kelso; Fifteenth and Sixteenth Wards: Joseph Simms; Seventeenth and Eighteenth Wards: Lemuel Bierbower; Nineteenth and Twentieth Wards: Robert Sullivan (Allen E. Forrester, clerk, John Kitts, door-keeper).

58. Retrieved from BALTIMORE CITY SUPERIOR COURT (Civil Court Papers) County Commissioners of Baltimore County v. Mayor and City Council of Baltimore, 1858, box no. 18, “Box R no. 17” [MSA T591-65, 2/19/8/27], October 15, 2011. The members of the jury included: Foreman Asa Higgins, William Weir, John Harrison, Lewis E. Fortier (?), Wilson Fuller (?), Nicholas N. Browns, Tilghman W. Sparklin, Garrett D. Johnson, Garrett J. (?) Emmard(?), Thomas Crocall, and Luther Fox.

59. Henry M. Fitzhugh would go on to exercise his own right to removal in September 1859 when he was charged in the Baltimore City Criminal Court with assaulting Paul D. Placide with the intent to kill. Placide was identified as a member of the Plug Uglies by author Tracy Melton in *Hanging Henry Gambrill: The Violent Career of Baltimore's Plug Uglies*. Fitzhugh was one of the editors of the “Exchange” at the time. Representing Fitzhugh in the criminal court was Severn Teackle Wallis, a prominent attorney and former Whig who became a Democrat after the rise of the Know Nothings in Maryland. Wallis requested that his client’s case be removed to the Baltimore County Circuit Court on the grounds that he could not have a fair trial in the criminal court, a point disputed by Judge Stump. Mr. Wallis responded that his client had “taken the liberty of entertaining a different opinion” (*Sun*, September 17, 1859). His legal matters notwithstanding, Fitzhugh remained involved in public affairs and was elected delegate to represent the Eighteenth Ward at a convention to reform the constitution in November 1859. In August 1860, he participated with a group of reformers meeting to identify suitable candidates for mayor and city council “to be chosen without reference to their political opinions, and pledged to retrenchment, economy and reform in the administration of our municipal affairs” (*Sun*, August 15, 1860). In the same month, he was found “not guilty” of the charge of assault with intent to kill Paul D. Placide after the evidence “very clearly exculpated Mr. Fitzhugh from all blame” (*Sun*, August 15, 1860).

60. “Resolution No. 249. Resolutions relative to paying the expenses of removed Criminal cases.” *The Ordinances of the Mayor and City Council*. <http://books.google.com/books?id=-UItAQAAAMAAJ&pg=PA178&lpg=PA178&dq=Lloyd+W.+Williams,+Baltimore+County&source=bl&ots=641z1NDnRX&sig=KsY2u3Ju9latlOhCJ1TfbeomGmo&hl=en&sa=X&ei=Le-VT6-gCKqH6QHNz8m7Dg&ved=oCGsQ6AEwCA#v=onepage&q=Lloyd%20W.%20Williams%2C%20Baltimore%20County&f=false>. Accessed April 15, 2012.

61. *Sun*, July 4, 1855

62. Charles King was eventually tried by Gittings in the Baltimore County Circuit Court before Judge Price in February of 1856. After a five-day trial involving testimony from numerous witnesses for both the state and the defense, the jury convicted him of burglary and attempting to kill a night watchman. On February 25 he was sentenced to over nineteen years in the penitentiary. *Sun*, February 19, 26, 1856.

63. Retrieved from EPCLIO. BALTIMORE CITY SUPERIOR COURT (Civil Court Papers)

County Commissioners of Baltimore County v. Mayor and City Council of Baltimore, 1858, box no. 18, "Box R no. 17" [MSA T591-65, 2/19/8/27]. Accessed October 15, 2011.

64. Act of 1852, chap. 315, Section 2. The third section was similar to the provisions in the first and second sections as to the costs of cases removed from the county to the city, requiring the costs to be levied by the Baltimore County commissioners and paid over to the city register. The fourth section provided for compensation to be levied, collected, and paid to the Baltimore City register, for the benefit of the Baltimore City state's attorney.

65. Act of 1854, ch. 269, sections 1–6.

66. *Sun*, April 13, 1859.

67. Retrieved from EPCLIO, BALTIMORE CITY SUPERIOR COURT (Civil Court Papers) County Commissioners of Baltimore County v. Mayor and City Council of Baltimore, 1858, box no. 18, "Box R no. 17" [MSA T591-65, 2/19/8/27]. Accessed October 15, 2011.

68. *Ibid.*

69. *Ibid.*

70. *Ibid.*

71. *Sun*, September 17, 1859 and March 3, 1860.

72. To reverse without procedendo is an exercise of a prerogative writ in which a court of superior jurisdiction sends a case back to a lower court with an order to proceed to judgment, without attempting to control that court as to what the judgment should be.

73. *The Mayor and City Council of Baltimore v. the County Commissioners of Baltimore County*, 19 Md. 554 (1863).

74. 19 Md. 554, 5 (1863).

75. Act of 1858, chap. 363, authorized the clerks of the state circuit courts to make certain entries and do certain acts in the absence of the circuit judge, including calling over of the civil appearance docket, taking the returns of the sheriff, and entering the appearance of the defendants.

76. Act of 1852, chap. 68, sec. 4.

77. Constitution of 1851, Article IV, Section 22.

78. 19 Md. 554, 7 (1863).

79. *Sun*, May 12, 1863.



President Abraham Lincoln in his office where in 1862 he, Secretary of War Edwin M. Stanton, and Secretary of State William H. Seward interviewed John Wesley Greene about an alleged peace offer from Jefferson Davis. (Courtesy, White House Museum.)

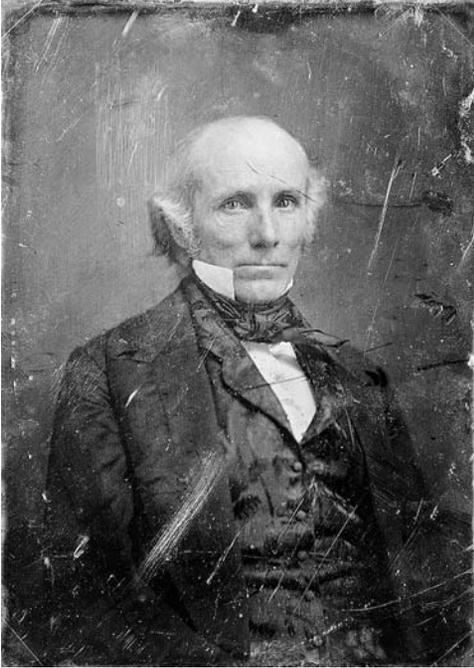
A “Shallow Attempt at Humbuggery”: Maryland and the Plot to Stop Emancipation

PHILIP R. ROYCRAFT

On September 22, 1862, Abraham Lincoln issued what was arguably the most significant presidential decree in the history of the republic, the Emancipation Proclamation, which would forever free all slaves in territory not under Union control on January 1, 1863. The preceding year had been among the most tumultuous for any American president since the inception of the nation. At war with the Confederacy, federal forces had suffered massive losses in battles around Richmond in the East and at Fort Donelson and Shiloh in the West. Although the Union navy had captured the key southern port of New Orleans and pushed down the Mississippi past Memphis, the army had gone nowhere in Virginia. In August, a Union army under the command of Maj. Gen. John Pope suffered an embarrassing defeat at Manassas, on almost the same ground where untried Union troops had been humiliated the year before in the first major battle of the war. Meanwhile, abolitionists urged President Abraham Lincoln to emancipate the slaves, a step he was reluctant to take in the wake of military defeat for fear the move would appear desperate.¹

Lincoln finally got his opportunity when the Army of the Potomac stopped Gen. Robert E. Lee’s Army of Northern Virginia at Sharpsburg, Maryland, on September 17, after the latter had crossed the Potomac River and carried the war to the North. Five days later, Lincoln issued the famous edict. Abolitionist supporters such as *New York Tribune* editor Horace Greeley welcomed the proclamation, exclaiming, “God bless Abraham Lincoln!” Others found it far less appealing. The reaction of Democratic papers across the country ranged from mild disdain to virulent outrage. “This new proclamation really amounts to little,” declared the *New York World*. “Its issue at this late day looks like concession to radical clamor.” In the Midwest, the proslavery *Chicago Times* questioned the legality of the document, arguing that Lincoln “has no constitutional power to issue this proclamation of emancipation—none whatsoever.” Similarly, the *Louisville Journal* provided a reaction typical of border states sympathetic to the South: “Kentucky cannot and will not acquiesce in this measure,” it declared. “Never!”²

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Confederate congressman Henry Foote of Tennessee envisioned a peace plan following the invasion of Maryland in September 1862. (Courtesy Library of Congress.)

In Baltimore, the papers were strangely silent on the proclamation, with virtually no editorials whatsoever—either for or against. Surrounded by thousands of federal troops, southern sympathizers or “Copperheads” there preferred to operate in the shadows rather than in the light. In fact, the city had long been known for its secessionist leanings. When Lincoln first journeyed to Washington to assume the presidency, his security chief had advised him to avoid Baltimore as “nearly all the wealthy and influential citizens are disunionists.” After riots swept the city in April 1861, federal troops arrested a number of residents for complicity and others for suspected secessionist activities, among them the marshal of police, George P. Kane. Despite the arrests and imprisonments, by September 1862 a sophisticated network of couriers and spies was operating between Baltimore and the Confederate capitol in Richmond.³

If Lee could not secure a clear military victory, at least one Confederate congressman, Henry Foote of Tennessee, had hoped the invasion could bring a negotiated peace. Toward this end, Foote floated a peace plan with his colleagues as Lee was moving north. Foote requested a meeting with Jefferson Davis on September 10, a meeting Davis declined, claiming he was “too busy.” Snubbed by the president, Foote instead proposed a resolution in the Confederate Congress to send peace ambassadors to Washington, but it, too, declined. Typical of his colleagues’ reaction was that of Mississippi congressman Ethelbert Barksdale, who argued that the best and only way to secure peace with the North was by “vigorous fighting.”⁴

Despite rejecting Foote’s peace initiative, some members of the Confederate

New York Tribune editor Horace Greeley ecstatically welcomed news of the Emancipation Proclamation. (Courtesy, Library of Congress.)



cabinet thought the plan had merit—at least as a ruse. According to Edward A. Pollard of the *Richmond Examiner*, the Davis administration prepared a peace mission to Washington, not with the intent of sincere negotiations, as Foote had intended, but to “furnish capital to the Democratic Party in the North, widen divisions there, and excite a political diversion in favor of the South.” Pollard recalled after the war that a peace ambassador was being groomed to go north during Lee’s invasion, but “while the Commissioner for Washington was being prepared . . . news came that Lee’s army had fallen back across the Potomac, having fought the unhappy Battle of Sharpsburg.”

Contrary to Pollard’s conclusion that Richmond abandoned the idea, letters to President Lincoln and reports in the northern press indicate that Confederate authorities proceeded anyway, secretly recruiting not just one, but two envoys with Maryland roots to Washington. The first, William Chase Barney, was the descendant of two prominent Maryland families—Chase and Barney. The second, John Wesley Greene of Pittsburgh, felt the influence of his wife’s family and friends.⁵

Barney and Greene were similar in many respects. Both men were in their mid-forties, well educated, and had served briefly in the Union army, though each had been dismissed after a short period of service. Additionally, each had the appearance of integrity accompanied by a long history of chicanery, suggesting that Confederate



Centreville, Virginia south of Washington, where Confederate cavalry “captured” William Chase Barney on September 21, 1862. (Courtesy Library of Congress.)

officials hoped to preserve slavery, if not by force, then indeed by means of a ruse. Although the Lincoln administration called it “a shallow attempt at humbuggery,” it nearly worked—even influential abolitionists such as Horace Greeley briefly believed in its veracity.⁶

The peace charade was set in motion on September 21 when rebels ostensibly captured William Chase Barney together with a Captain Young, who were riding on horseback near Centreville, Virginia, not far from Washington. The two surrendered themselves under circumstances suggesting complicity with the South. Their captors were members of the 13th Virginia Cavalry, commanded by Colonel John Randolph Chambliss, whose father was a member of the Confederate Congress. The two were taken to Richmond, after which Captain Young was released, reporting upon his return that he and “Major Barney of New York” had been treated “kindly and hospitably” by their captors. Young’s report to northern journalists was the equivalent of a Confederate press release. He described the notorious Libby Prison as “cool and pleasant” and claimed that Union prisoners received regular rations, sutler visits, and even a morning paper. Barney never admitted that their capture was staged, but he did acknowledge later that he had gone to Centreville with the “express purpose of being captured.”⁷



Confederate president Jefferson Davis and his cabinet. (Courtesy Library of Congress.)

The day after Young and Barney crossed the lines, Lincoln issued the Emancipation Proclamation. The announcement undoubtedly caused southern leaders to consider the fraudulent peace initiative with a new urgency; the proclamation threatened slaveholders in the border states regardless of Union success on the battlefield, for it guaranteed the freedom of slaves successfully escaping the South. Confederate authorities logically reasoned that emancipation must be stopped—or at least delayed—until either a clear rebel victory or Lincoln’s defeat in the next presidential election ended the war for good. The appearance of negotiations might also increase the chances that the European powers would recognize Confederate independence and intercede to stop the Union blockade of southern ports.

Rumors of a peace initiative soon circulated across the North, likely fueled by southern agents. Prominent Confederate officials signed letters suggesting negotiations and received them in Washington while Barney was still in Richmond. Only after comparison with actual signatures on record were the letters found to be forgeries. The *New York Times* concluded that it was the work of “an adroit and unscrupulous forger, who probably sought by this means to affect the markets.”⁸ Few suspected at the time that local Confederate operatives might actually be the source of the fraud.

Desperate for a political upheaval against the Emancipation Proclamation before January, southern agents apparently decided to recruit not just Barney, but John Wesley Greene of Pittsburgh—a tradesman and part-time clergyman with an oratorical flair. In a later affidavit, Greene claimed that a former Baltimore detec-



Post Office, Army of the Potomac. John Wesley Greene was a regimental postmaster at Tenallytown, Maryland in 1861. (Courtesy Library of Congress.)

tive, Horace N. Wilson, approached him in Pittsburgh on October 22. Alluding to Greene's supposed personal acquaintance with Jefferson Davis, made during the Mexican War, Wilson requested that Greene act as a peace envoy to Washington. This "former detective" may have been Confederate spy Thomas Henry Harbin, who was known to use the alias "Wilson" and regularly ran dispatches between Baltimore and Richmond, reporting directly to Jefferson Davis.⁹

Although Greene had no personal connection to either government, his in-laws were from Carroll County, some twenty-six miles from Baltimore. In a later affidavit, he complained that they were "almost to a man . . . for secession," a situation that created what he called "an open rupture" in his marriage. With the Virginia border not far away, one of every four soldiers from Carroll County fought for the South.¹⁰

Despite the differences with his wife, Greene joined the 10th Pennsylvania Reserves in the summer of 1861 as their regimental chaplain, and when the unit arrived at camp in Tenallytown, Maryland on August 5, 1861, was made regimental postmaster. But Greene's service to the Union was short-lived. On August 24, 1861, he was arrested after mail to his regiment, together with the money enclosed, turned up missing. Envelopes for the missing letters were found in a privy in Georgetown, where he was known to have stopped, and a search by the arresting officers found

mail concealed in his trunk back at camp, including mail from regiments other than his own.¹¹

With sufficient evidence against him, Greene was incarcerated at the Washington County Jail, thereby ending his career as a military chaplain. "A clergyman in prison on the Sabbath day, charged with a criminal offence, was a sad sight," wrote a correspondent to the *Washington Weekly Star*, who visited him there. Greene, he observed, was a "gentlemanly-looking person, dressed in black cloth, with a blue cord down the seam of his pantaloons," who, in a trembling voice "spoke in feeling terms of his wife and children in Pennsylvania and of the hardship of not being allowed to see any friends on this day (Sunday) who would interfere for his release."¹²

It is probable that southern sympathizers influenced Greene during his captivity. The overburdened federal prison system held political prisoners as well as Union men charged with various offenses. And when the county jail was full, authorities sent political prisoners to the Old Capitol Prison in Washington. Among these was "former detective" Tom Harbin's brother, George F. Harbin, arrested in September 1861 for writing letters denouncing the federal government. Whether Greene ever served time with Harbin is not known, but the March 1862 list of prisoners included as a "prisoner of state" one James Green, a name John Wesley Greene sometimes used as an alias. The prison thereafter became a place for detaining Confederate spies, including women such as Rose O'Neal Greenhow and Belle Boyd.¹³

It is altogether likely that Greene made an impression on his prison mates. One earlier acquaintance described him as "silver tongued, voluble, plausible in speech, of a highly imaginative turn of mind, and in his ecclesiastical exercises, very emotional," while another thought him "talented and fascinating." Confederates may well have overlooked Greene's indiscretions in the Union army and probably remembered him when news of a spurious peace offer to prevent emancipation surfaced in Baltimore the following year. According to Greene, the opportunity Wilson offered to help restore the Union was the perfect answer to his marital strife. Yet, money was the more obvious incentive, for he was supposedly paid for his expenses in gold. Greene claimed to have accompanied Wilson to Richmond from Pittsburgh via Wheeling, Staunton, and Charlottesville, returning by way of Harper's Ferry, Baltimore, and his in-laws' home in Carroll County. He testified that he met Confederate president Jefferson Davis personally on Sunday, October 26—the same day William Chase Barney was released and sent north after his meeting with Confederate officials.¹⁴

During his time in Richmond, Barney supposedly spoke with several members of the Confederate Congress and at least one member of the Davis cabinet, whom the *New York Tribune* reported to be Secretary of State Judah P. Benjamin. Outwardly, he had the perfect credentials for negotiating a reunion of the country. His maternal grandfather, Samuel Chase, had signed the Declaration of Independence; his paternal grandfather, Commodore Joshua Barney, had been a naval hero; and his father, William Bedford Barney, had been the chief customs officer for the Port of Baltimore.

When President Andrew Jackson removed Barney's father from his post, based on political patronage, his mother, Mary Chase Barney, retaliated by publishing in 1831 an anti-Jackson monthly magazine—*The National Magazine or Ladies Emporium*. She was said to be politically influential with every administration thereafter.¹⁵

Not only was William Chase Barney well connected in Washington, but he had served at the consulate in Paris before the war. He was close enough to the U.S. minister to France, former Virginia congressman Charles J. Faulkner, to request a loan of one hundred pounds and to ask that Faulkner intervene in a child custody dispute involving his brother, Lieutenant Samuel Chase Barney. Faulkner's reluctance to do so may have caused Barney to retaliate the following year, when he wrote to Secretary of State William Seward and accused Faulkner of treason. Supposedly, Faulkner had distributed Confederate cockades at the consulate when Virginia seceded. Regardless of the truth of these accusations, they undoubtedly contributed to Faulkner's arrest on his return to Washington in August 1861.¹⁶

Faulkner was imprisoned at Fort Lafayette and then Fort Warren, where he was joined by captured Confederate ambassadors James Mason and John Slidell and later released in exchange for New York congressman Alfred Ely, whom Confederates captured at the Battle of Bull Run. Whether New York politicians helped negotiate Faulkner's release from Fort Warren is unclear, but according to the *Richmond Examiner*, Congressman Benjamin Wood offered to travel to Richmond if necessary, to secure Ely's release. Wood's interest in negotiating a peace between North and South became evident when he published what is now recognized as the only pacifist novel of the War, *Fort Lafayette, or Love and Secession*. It is likely that William Chase Barney shared Wood's distaste for the imprisonment of political prisoners and that he regretted the accusations which had contributed to Faulkner's imprisonment in Fort Lafayette.¹⁷

Although there is no evidence that Barney knew the Wood brothers personally in 1861, his political connections in New York City became evident when he received a commission as an assistant paymaster for the 71st Regiment, New York National Guard, a militia regiment known for its "formidable political influence." The position carried a rank of major and seemed to assure a comfortable salary with limited action. The U.S. Senate, however, rescinded the commission in March 1862, in the same purge of political appointments that first denied Tammany Hall politician Daniel E. Sickles a brigadier general's commission.¹⁸

The loss of his commission may have pushed William Chase Barney closer to the Copperhead camp and freed him to pursue other endeavors, such as assisting his brother, who was still fighting for child custody in the Washington County courts. If Barney traveled to Baltimore that summer to help, he was vulnerable to the same Maryland-based agents who undoubtedly got to Greene. Such agents probably coordinated Barney's "capture" by Chambliss's cavalry at Centreville and his subsequent transport to Richmond. As a member of the Confederate Congress,

John Randolph Chambliss Sr. could then have arranged informal meetings between Barney and southern legislators eager to express their desire for peace in private while denying it publicly.¹⁹

After returning to New York from Richmond, Barney claimed to have written to Seward's son, Assistant Secretary of State Frederick W. Seward, on November 17 outlining his talks with southern leaders—all of which focused on the possibility of reuniting the country to its pre-war status. On hearing nothing from the administration, Barney then wrote to influential Democrats, recommending a general amnesty to southern leadership—an amnesty that he believed would allow southern legislators to rejoin the Congress when it reconvened in March, thus re-establishing what Barney called “the Union as it was.” Emancipation, of course, had to be stopped first.²⁰

If necessary, Barney saw a role for Europe in American diplomacy. “I am satisfied that the European powers intend to offer mediation and take all necessary means to compel cessation of hostilities,” he wrote on November 30. “The official dispatch of the present minister to England seems to me to be conclusive on that point.” Among the European powers, France was especially interested in influencing the conflict in America. Two days after Barney was released from Richmond, Emperor Napoleon III met personally with Confederate ambassador John Slidell and offered to mediate the conflict, together with England and Russia. But what Slidell really sought from France was not mediation, but official recognition of the new Confederacy. According to Slidell, “while the question of recognition was the topic of conversation, the Emperor said that he had seen a letter from a New Yorker. . . . The letter purported to be the expression of the opinion of many leading Democrats that recognition of the South would soon bring the war to a close.” Like the unidentified New Yorker, Barney may have seen a role for himself in independent negotiations between the Confederacy, the United States government, and the European powers.²¹

Although the Lincoln administration did not react to Barney's overtures, pro-southern Mayor of New York City Fernando Wood acted promptly on the information, announcing during a speech in late November that he had received a reliable report that the Confederates had offered terms “such as the South could honorably make and the North could honorably accept,” and which if successfully negotiated, “would restore the old Union.” The basis of Wood's speech was revealed to the public on December 4, when the *New York Daily Tribune* published a letter from its Washington correspondent, reporting that Barney, a “citizen of Baltimore,” had crossed the lines and was taken to Richmond, where he had “frequent interviews with members of the Confederate cabinet” regarding peace. Interestingly, he was no longer “Major Barney of New York,” as earlier press reports had stated, perhaps because Wood and Barney preferred that he be viewed as independent of New York City politics.²²

After delivering his speech on peace in New York, Wood followed up with a personal appeal to President Lincoln. “On the 25th of November last I was advised by an authority which I deemed likely to be well informed, as well as reliable and truthful



New York mayor Fernando Wood believed in a peace that would restore the Union to its 1860 character, slave and free. (Courtesy Library of Congress.)

that the southern states would send representatives to the next congress, provided that a full and general amnesty would permit them to do so,” he wrote Lincoln on December 8. “Has not the time arrived when to quote your own language we should ‘cease fighting’—at least long enough to ascertain whether the ‘identical questions’ about which we began the fight might not be amicably & honorably adjusted, and ‘the terms of intercourse’ be once more established?”²³

Whether Fernando Wood was aware of Barney’s staged capture beforehand or was otherwise complicit in its execution is a matter of speculation. In any case, Wood and Barney shared the same goal—to gain prominence by brokering a reunion of the states to their prewar status. Wood had toured the South in his youth and had operated a tobacco factory in Richmond in 1831. His principal biographer, Jerome Mushkat, reasons that “Wood banked that his prewar southernism made him invaluable as a potential mediator between Lincoln and Davis.”²⁴

Lincoln turned a blind eye to Fernando Wood’s correspondence, likely because he and his cabinet had already interviewed the other unofficial peace ambassador to the South, John Wesley Greene of Pittsburgh, who also claimed to have visited Richmond on the same mission. It is doubtful that Greene actually travelled to Richmond, but in a letter of introduction to President Lincoln he claimed he did and that he met twice with Jefferson Davis there. A likelier possibility is that he met with Wilson

and other Confederate agents at an intermediate location, such as his in-laws' home in Carroll County. He probably met again with those same agents in Washington to prepare the letter to Lincoln, for witnesses saw him there on November 8 "in the company of several ladies," noting that while there, he "lived rather fast."²⁵

In his letter of introduction, Greene provided few details of the peace offer, instead offering to come to Washington again to discuss the matter with Lincoln personally. The bait worked, for Greene soon received a telegram from Secretary of War Edwin M. Stanton, urging him to come for a meeting with the president. Upon his arrival, he took a room at Willard's Hotel, in the company of a man others described only as a "gentleman from Baltimore." Whether this man was the mysterious Wilson or another conspirator has never been ascertained, but after gaining an audience with Stanton, Greene presented a letter of recommendation, supposedly from Thomas Bakewell, an influential personal friend of Stanton's from Pittsburgh. This was probably the morning of November 19, for Stanton sent Lincoln a brief note that day, introducing Greene as "the man you wished me to telegraph."²⁶

Unfortunately, there is no official version of the conversation that day between the president and Greene, but according to Greene's later affidavit, he was ushered into the White House to present the peace offer to the president in all its detail. He was taken to a room Greene described as the "executive chamber," probably Lincoln's office on the second story of the White House, where the president greeted him "in an easy, affable manner." In a private, personal interview with Lincoln, Greene spelled out what he claimed were Davis's three conditions for restoration of the Union: universal amnesty, debt forgiveness, and finally—the restoration of all fugitive slaves to their former owners and strict enforcement of the Fugitive Slave Act.²⁷

Greene cited emancipation as the motivating force behind the Confederate proposal and relayed Davis's concern that the Emancipation Proclamation was the equivalent of a call for "general servile insurrection" that would result in "acts of barbarism having no parallel in the history of the civilized world." Further, he claimed, freeing slaves in the South would likely result in "the extermination of the colored population in the Confederate States, unless the European Powers interposed to prevent it." In that case, Davis supposedly warned, European intervention would produce "general warfare throughout the world."²⁸

Lincoln asked Greene to repeat the story in the presence of Secretary of War Stanton and finally that evening, the full cabinet. "A most searching inquiry then commenced," Greene recounted. "My birthplace; my relatives; my occupation . . . and every other conceivable question designed to arrive at as full a knowledge of my history and character as far as could be obtained by questioning." Stanton and Secretary of State Seward did most of the questioning, and Lincoln occasionally interjected. Greene claimed the meeting went on until eleven that night.²⁹

Greene claimed to have had several more meetings with Lincoln over the next three days, but they were short and, to his mind, trifling. By the time the president

and his cabinet ended their discussions on the issue, Greene concluded that the administration was not really interested in peace at all. He was, however, provided with \$100 to cover his expenses and transportation back to Pittsburgh. Before leaving Washington, Greene warned Lincoln of “treasonable communications” from Wilson to “parties in Baltimore.”³⁰

With no response from the administration, John Wesley Greene went to antiwar editor Wilbur F. Storey of the *Chicago Times* and was probably paid a third time for his cooperation. Based on his testimony, Storey ran an article entitled “Overtures for Peace.” “Of the precise terms of the propositions we are not at liberty to speak,” the *Times* revealed, “but they are such as the South could honorably make and the North could honorably accept,” adding that the terms were such as to “restore the old UNION.” Unlike Barney, John Wesley Greene prepared a detailed affidavit of his purported trip to Richmond before a Chicago attorney on December 8, a full copy of which was published by the *Times* on December 10. The affidavit, printed in the largest Copperhead newspaper in the country less than a month before emancipation was to take effect, presented an immediate crisis to the Lincoln Administration.³¹

The administration quickly issued a terse denial of Greene’s affidavit to the Associated Press, stating that President Lincoln had “ascertained that there was no grounds for his nonsensical statement.”³² Several hours later, they released another, more complete explanation:

After inquiry, I believe it is true that a man calling himself J. Wesley Greene, and professing to reside at Pittsburgh, Pa., called on the President some time in November, and stated to him that he had had two interviews with Jeff. Davis, at Richmond, Va. on the last day in October; and also related certain statements, which he said Davis had made to him upon the occasion. The President became satisfied that Greene had not seen DAVIS at all, and that the whole thing was a very shallow attempt at humbuggery. Jeff. Davis can redeem Greene’s character if he will, by verifying his statement.³³

Ironically, as the *Chicago Times* was running its article on December 4, a similar story ran in Horace Greeley’s *New York Tribune*, based on information about William Chase Barney from their Washington correspondent. The *Tribune* writer exaggerated the account, claiming that Barney had received written letters to prominent Democrats from the Confederate government and that he, too, had met personally with Lincoln on the matter. Although Barney himself had never made these claims, the facts had spun quickly out of control in the press. The *Tribune* printed a retraction to that part of the story, but by then the damage to Barney’s credibility had been done.³⁴

That the *Tribune* misunderstood the facts of Barney’s mission to Richmond is not surprising. Like Greene, Barney had a long reputation as a huckster, despite his

respected pedigree. His first embarrassment as a young man came in 1844 when his uncle, former congressman John Barney of Baltimore, accused him of “various dishonest and dishonorable acts,” including forging his mother’s name—allegations which led Barney to sue his uncle for libel. Although young Barney won the case, news reports of the incident did little for his reputation. When he eloped with Elizabeth Booth of New Castle, Delaware, later that year, her influential father, Delaware’s chief justice, James Booth, claimed no marriage had actually occurred.³⁵

Barney’s messy personal affairs did not dampen his ambition. The year after his divorce, he took a stab at publishing, starting a weekly called *The Aristocratic Monitor*—a magazine dedicated to following the social elite of New York. Barney charged what was then the exorbitant price of six cents per issue and filled the classifieds with notices for “foreign fiddlers and French dancing girls.” For a time, the magazine was all the rage. “I find the *Monitor*, ‘*The Aristocratic Monitor*,’ is everywhere,” noted one columnist. “If I go into a fashionable drawing-room, there is the *Monitor*; if I go into bank to have a check cashed, there is the *Monitor*; if I go into a store, there lies the *Monitor*; the people go through the streets reading—what? Why, ‘*The Aristocratic Monitor*.’” But as quickly as it rose to prominence, the magazine fell out of fashion, forcing Barney to find another means of support.³⁶

The 1850 federal census listed his occupation as “government agent” but Barney seems to have had his fingers in a variety of enterprises. He spent much of the decade embroiled in a lawsuit over whether he had fraudulently obtained several thousand dollars in promissory notes in 1844—apparently the same financial transaction his uncle had deemed “dishonest and dishonorable” at the time. He was also arrested in 1852, allegedly for defrauding some twenty or thirty Californians out of large sums of money by selling them spurious steamship tickets for San Francisco. Then in 1860 he became the subject of a congressional investigation on corruption in government for bidding on federal mail contracts to California, despite having no ability to deliver the mail—instead he intended to resell the contract to others at a handsome profit.³⁷

William Chase Barney liked to sell things with no means to deliver them—and in 1862 he was selling peace to a war-weary public. A man without a commission, Barney nevertheless used his title as a “Major” to his advantage upon his return from Richmond. His apparent military credentials combined with Greene’s skill with the written word left the public seriously pondering whether peace was actually possible. “Here then are three independent witnesses to the same story,” Horace Greeley’s *New York Tribune* mused on December 11. “Fernando Wood, in a public speech on the 20th of November; the *Chicago Times* on the 4th instant, which now gives this Mr. Greene as the source of its information; and Major Barney, as his story is told in our letter, as yet uncontradicted.”³⁸ Intrigued by the opportunity to end the war quickly, Greeley wrote to Lincoln the following day, “The Rebels are sick of their job and anxious to get out of it.” He advised the president that peace could be had if only

Lincoln would offer to absorb the Confederate debt and compensate slaveholders for the cost of emancipation.

But Lincoln was convinced that the peace plan Barney and Greene advocated was a fraud and wrote as much to Fernando Wood. "I strongly suspect your information will prove to be groundless," he advised Wood politely. "Nor do I think it proper now to suspend military operations to try any experiment of negotiations." In this regard, Lincoln, Stanton, and Seward proved astute, for despite a distinguished appearance and literary flair, John Wesley Greene was a prolific con man—far beyond the petty thefts he had perpetrated in Tennallytown while a chaplain in the Pennsylvania Reserves.³⁹

Greene was born on April 22, 1815, in Dublin, Ireland, but immigrated to the United States in 1834, where his family settled in western New York State. He later claimed to have attended Wesleyan College in Middletown, Connecticut, and earned several degrees there, but the Alumni Record of that institution has no record of his graduation. It does show the attendance of one James W. Green from New York in 1836, tersely noting that he dropped out during freshman year. Regardless of his formal education, Greene had been trained from an early age as an evangelist "exhorter" in the Methodist Episcopal Church and in this he excelled. Thus, despite his probable failure at Wesleyan College, Greene went into the ministry—a profession uniquely ill-suited to a man with an almost insatiable desire for high living and young women.⁴⁰

Despite these traits, Greene maintained a position in the ministry by constantly moving across the country to new towns and congregations. By 1861 he had become well practiced as a confidence man. Between 1840 and 1860 he married four different women, abandoned seven children, and served two lengthy prison sentences. The first of these incarcerations commenced in 1852, after he was arrested at the luxurious Barnum's Hotel in Baltimore and charged with obtaining money under false pretenses. It seems Greene had concocted a scheme whereby he claimed to be an official of the postal service, responsible for establishing a new postal route between New York and New Orleans. He advertised for route clerks in Philadelphia, promising them an excellent salary of \$1,500 a year if they were willing to pay a modest enlistment fee of twenty-five dollars. At least five young men traveled to Washington to start their job, only to find that it did not exist. Unfortunately for Greene, his disgruntled clients took their complaints to the police, who eventually found him at Barnum's, hiding under his wife's bed. Greene quickly confessed and was sentenced to twenty-one months in prison, despite an "eloquent appeal" for leniency.⁴¹

But prison time did not stop his behavior. He moved to New York and embarked on a series of scams on Broadway in 1855. One was to claim he had just arrived from the California gold fields with a lock box full of bullion, on which he took loans which he never repaid; another was to write false checks to merchants under a variety of aliases; and a third was to falsely represent himself as an employee of the *New York*

Times, selling subscriptions which he never intended to deliver. “We have reason to believe that a person, calling himself J. Wesley Greene, is obtaining money in various ways under pretence of being connected with the DAILY TIMES;” the paper advised its readers on December 6, 1855. “No such person has ever been connected with this establishment in any capacity. If the person whom he may next accost will put him in custody of a Police officer, and inform us of the fact, we will endeavor to secure him such board and lodging at the expense of the State as he justly deserves.”⁴²

Eventually a man recognized him and reported him to the New York police, who promptly arrested him. As he had in Philadelphia, Greene pled guilty to one of many charges against him and in March 1856 was sentenced to five years in the state prison at Ossining. Despite the stiff sentence and his attempted escape, he served only six months. As the *National Police Gazette* later explained, he avoided more time by “practicing his arts upon the officers of the prison.” The prison chaplain in particular thought him a reformed man, as did the New York police, who hired him after his release. Based on these and other exploits, the *National Police Gazette* later called Greene a “master-hand” at the confidence game, and declared him “the king of confidence men.”

Although Lincoln and Stanton never believed John Wesley Greene’s claim of a southern peace offer, others did, as evidenced by Horace Greeley’s letter of December 12, suggesting that Lincoln forgive the South’s debt and grant them reparations in order to restore the Union. Cracks soon appeared in Greene’s story as information came in from Cincinnati, Philadelphia, New York, and even Cedar Rapids, Iowa—as old acquaintances around the country contacted their local papers regarding their knowledge of his past crimes and misadventures. Ironically, having been paid by Confederate agents, the Lincoln administration and probably the *Chicago Times*, he had made no effort to hide his identity or use an alias, as he had in past escapades.

In Pittsburgh, Thomas Bakewell denied ever providing a letter of introduction to Secretary of War Stanton. Greene’s employer there, John Dunlap, also provided damaging testimony. He swore that Greene was at work on October 26, the day he supposedly met with Jefferson Davis, although he admitted that Greene was away for five days the week before, supposedly in Buffalo but more likely for meetings with Wilson and other Confederate agents.⁴³ In Cincinnati a witness claimed Greene was not in Mexico serving with Jefferson Davis in 1847 but in Cincinnati scamming his mother-in-law out of valuable downtown property to cover his business expenses. In New York, the *National Police Gazette* wrote to Horace Greeley, disclosing that Greene “served prison time in both New York and Philadelphia in the 1850s for crimes both bold and slick.”⁴⁴

Overwhelming evidence proved Greene was not a legitimate peace advisor and led to a rash of scathing headlines across the nation. Those of the *Pittsburgh Gazette* screamed, “The Knave Unmasked! A Career of Crime and Hypocrisy!!” In Washington, the *Daily National Republican* concluded that Greene was the “consummate



Barnum's Hotel, Baltimore, where police arrested Greene in 1852 for selling postal jobs that did not exist. (Maryland Historical Society.)

villain,” while the *Chicago Tribune* described him as a “bigamist, forger, convict and swindler.” An Iowa paper may have summed it up best. “The man who took in and ‘did’ the *Chicago Times*—J. Wesley Greene, we mean—seems to have had more acquaintances than any man we ever heard of. He has doubtless married more women, galled more credulous men and gone through more infamous adventures than any man in America.”⁴⁵

It was not long before Chicago issued a warrant for Greene. On December 12, the *Tribune* reported his arrest at the City Hotel, the same day Horace Greeley wrote to Lincoln urging that he offer peace to the South. Greene attempted to deny his identity to Chicago police until a search of his person found papers verifying his name and address. Oddly enough, the warrant was not for trying to defraud the government. To the contrary, it was for obtaining goods under false pretenses—a fur cape worth \$175 that he had scammed from a retailer named Steinmetz while in Washington. Supposedly, Greene had stopped in at the store on several occasions to look at the cape. On November 22, after agreeing on the price, Greene asked the clerk to accompany him to the War Department for payment. There, on War Department letterhead, he boldly wrote a requisition to the furrier. But to Steinmetz’s dismay, the note was worthless when he tried to cash it at the War Department, despite its official looking appearance on government stationery.⁴⁶

Fortunately for Greene, the Chicago police were unable to hold him, because obtaining goods under false pretenses was not a felony in Illinois. Upon his release, he quickly left the city and fled to Canada, where he was sheltered by southern sympathizers, for most of the war. Despite the *Times*' promise that the public would hear from Greene again, it did not, and no new peace claims emerged at the close of 1862, except one sarcastic tale from Lincoln's favorite humorist, Orpheus C. Kerr. "Hostilities shall at once cease, and the two armies shall be consolidated under the title of the confederate states forces," went the joke. "The war debts of the North and South shall be united that the North may be able to pay them without confusion."⁴⁷

The casual observer might be inclined to dismiss the actions of Barney and Greene as independent actions by two individuals rather than a coordinated effort by the Southern Confederacy to stop emancipation. However, the timing of their actions and similarity of their purported terms for peace argues against such a theory. Greene first met with President Lincoln on or about November 19, 1862, but at that point Barney's story had not yet been made public. Therefore, the detailed peace plan each presented could only be the result of a conspiracy larger than either of them. Barney's orchestrated trip to Richmond in September, Greene's escape to Canada and the apparent involvement of Confederate operative Thomas Henry Harbin as the man Greene knew only as "Wilson" supports the theory.

Assuming Barney and Greene were simply pawns in the conspiracy to stop or delay emancipation, who were the instigators? In the North, Ben and Fernando Wood are the obvious culprits. Although they may have sincerely sought peace, Ben Wood's links to the Confederate underground were revealed later in the war when rebel agents were found to be sending coded messages in the columns of his *New York Daily News*. In the South, suspicion must rest on the network of rebel spies in Maryland and northern Virginia that aided General Stonewall Jackson in the Shenandoah Valley throughout 1862. Among these, suspicion must primarily rest on the vivacious Belle Boyd.

Originally from Martinsburg, Virginia, in the Shenandoah Valley, Boyd had spent four years at Mount Washington Female College in Baltimore before the war. According to one observer in 1862, "her acknowledged superiority for machination and intrigue has given her the leadership and control of the female spies in the Valley of Virginia." Charged with espionage and incarcerated for several months that year at the Old Capitol Prison, she may have met John Wesley Greene while serving her sentence. If so, she easily could have recruited him to her cause. According to one wartime account, "every inmate of the Old Capitol tried to procure some remembrance from Belle and there was scarcely one who did not bestow to her some mark of regard, esteem, or affection." She was officially released on August 29, 1862, and permitted to go to Richmond, where according to her own account she met with "notorieties of Richmond" at the same time Henry Foote proposed to the Confederate Congress that peace ambassadors be dispatched to Washington.⁴⁸



Confederate spy Belle Boyd. A graduate of Mount Washington Female College in Baltimore, she may have initiated the fraudulent peace plan after visiting Richmond in September 1862. (Courtesy, Library of Congress.)

If the Davis administration decided to launch a fraudulent peace initiative, as Edward Pollard later claimed, Belle Boyd was the perfect courier. According to her own biography, she left Richmond that September for her home in Martinsburg and arrived shortly after the Battle of Antietam. While there she also met with General Jackson in the field and could have arranged for Barney's staged capture.⁴⁹ An integral part of Boyd's plan would have involved her cousin, Mary Boyd Faulkner. "She is more dangerous than Belle Boyd," one northern journalist opined of Faulkner in 1862, "because she is more adroit and has larger social influence and greater means of accomplishing her purpose." Most importantly, she was the wife of Charles J. Faulkner, the former Virginia congressman and minister to France—and the one man who seems to have had the knowledge, experience, and connections to extend a fraudulent peace proposal to the Lincoln Administration.⁵⁰

A political moderate, Charles Faulkner was a man of contradictions. A slaveholder himself, he had proposed the gradual freedom of slaves in Virginia three decades earlier, bluntly calling slavery "an evil." In 1862 he reportedly made a speech in Martinsburg deploring secession as a "costly failure" but then wrote the *Richmond Dispatch* denying he had ever made such a speech. One northern newspaper claimed that after returning home from Fort Warren, Faulkner helped Stonewall Jackson's forces in the Shenandoah and was "the most energetic and zealous guide a rebel



The Old Capitol Prison, Washington D.C., held both political prisoners and Union soldiers guilty of civilian offenses. It is likely that John Wesley Greene first impressed Confederate agents with his oratory skills behind these walls. (Courtesy, Library of Congress.)

leader could have.” There is little hard evidence of such espionage, but in November, Faulkner was made Jackson’s chief of staff, ostensibly to write up his battle reports, but more likely as a reward for intelligence work during the previous months and for his potential usefulness in a second invasion of the North, for Jackson had sought him out as an officer long before the battles of that summer.⁵¹

Regardless of their role, the Faulkners seem instrumental in the plot to stop emancipation as the apparent link between Belle Boyd and William Chase Barney. But if Belle Boyd, Mary Faulkner, and Charles Faulkner helped organize the fraudulent peace initiative, they never admitted to it—and for good reason. Despite its temporary success, the plan to stop emancipation backfired. Not only did the revelations regarding John Wesley Greene hurt the credibility of the *Chicago Times* and other Copperhead newspapers, but Jefferson Davis himself finally rejected the subterfuge. Emboldened by the lopsided rebel victory at Fredericksburg, Virginia, and only a week before emancipation became effective in states under rebellion, Davis issued a retaliatory proclamation, declaring that all slaves captured under arms, together with their officers, be treated as if they were in insurrection, a crime typically punishable by death. Reportedly, Davis later announced that the southern people would rather “unite with a nation of hyenas than with the detestable Yankee nation.”⁵²



William Chase Barney (1814–1892) is buried at New Cathedral Cemetery, Baltimore. (Photograph by Nancy Bramucci Sheads, Maryland State Archives.)

Lincoln steadfastly denied that he ever received a peace proposal directly from the Confederacy or any of its legitimate representatives. “Now, allow me to assure you that no word or intimation from the rebel army, or from any of the men controlling

it, in relation to any peace compromise, has ever come, to my knowledge or belief,” Lincoln wrote the Springfield Convention in 1863. “All charges and intimations to the contrary are deceptive and groundless.” Reluctantly, even most Democrats came to agree that continued prosecution of the war effort was the only viable alternative to restore the Union. Prominent New Yorker John Van Buren, the son of former president Martin Van Buren, abandoned hope of a negotiated peace in early February, when in a speech to fellow Democrats he professed that he always knew that Jefferson Davis and other Rebel leaders were opposed to reunion, and that until those leaders were put down, “the war must go on.”⁵³

Ironically, there was no emancipation in border states such as Maryland that January, for the president’s proclamation was only effective in states under rebellion. But the war for the Union and full emancipation took a turn for the better when the rebel bastion at Vicksburg was taken that summer, and Robert E. Lee was defeated at Gettysburg. More importantly, newly formed regiments of U.S. Colored Troops, whose ranks included numbers of former slaves, were proving their courage at places along the Mississippi River, like Milliken’s Bend and Port Hudson—fighting with a ferocity fueled by the knowledge that surrender meant death. It soon became apparent that the Emancipation Proclamation the Copperheads had fought so hard against now brought results in the field. Still, as late as October 1863, plantation owners in Maryland wrote to Lincoln, complaining that Union officers were recruiting slaves to the army, and thus “depriving our fellow citizens of their property.”⁵⁴

Slavery in Maryland ended on November 1, 1864, and with it went any remaining hope of returning to the nation of 1860—that tenuous, unstable balance of free and slave states that Barney had wistfully called “the Union as it was.” Instead, the nation would eventually become what many thought it always should be—the home of the free, everywhere. Even former Copperheads had to agree that Lincoln had been right. “So then, slavery could be abolished and the nation preserved,” John Wesley Greene mused from his self-imposed exile in Canada, “Glory! Hallelujah!”⁵⁵

NOTES

1. John G. Nicolay, John Hay, “Abraham Lincoln: A History, the Announcement of Emancipation,” *Century Magazine*, vol. 37 (New York: Century Company, 1889), 442.
2. “News of the Day,” *New York Tribune*, September 23, 1862; “The Latest News by Telegraph,” *Pittsburgh Daily Gazette and Advertiser*, September 24, 1862; “The Proclamation, The Sentiments of the Press,” *Detroit Free Press*, September 26, 1862; “The Louisville Journal on the President’s Proclamation,” *Detroit Free Press*, September 26, 1862.
3. “The Latest News by Telegraph,” *Pittsburgh Daily Gazette and Advertiser*, September 24, 1862; George W. Hazzard to Lincoln, January 1861, Abraham Lincoln Papers, Library of Congress, located at <http://www.memory.loc.gov> (hereafter cited as Lincoln Papers); William A. Tidwell, *Come Retribution: The Confederate Secret Service and the Assassination of Lincoln* (Jackson: University Press of Mississippi, 1988), 87.
4. *The Papers of Jefferson Davis*, vol. 8 (Baton Rouge: Louisiana State University Press, 1995),

384; "Gen. Foote as a Peacemaker," *New York Times*, September 29, 1862; "The Peace Propositions," *Clearfield [Pennsylvania] Democratic Banner*, October 8, 1862.

5. Edward A. Pollard, *Life of Jefferson Davis, With a Secret History of the Confederacy* (Philadelphia: National Publishing, 1869), 238–39.

6. Roy P. Basler, ed., *Collected Works of Abraham Lincoln* (New York: H. Wolff, 1953), 5:517.

7. "From Washington," *Pittsburgh Gazette and Advertiser*, October 10, 1862; "Important from Washington, Rebel Overture for Peace," *New York Tribune*, December 5, 1862.

8. This paragraph is based on articles that appeared in the *New York Times* and *New York Tribune* on October 22, 1862. Neither paper identified the "Confederate official" or who received the letter(s). The *Tribune* suggested it was based on a letter from a Confederate general, possibly one sent to the *Louisville Democrat* addressed to the "People of the Northwest" by Confederate general Braxton Bragg, appealing for peace. It was initially reported by the *Philadelphia Press* on October 11, 1862, in an article entitled "Bragg's Address to the People of the Northwest."

9. "The Southern Peace Proposals," *New York Times*, October 22, 1862; "Another Peace Canard," *New York Times*, December 11, 1862; Maryland State Archives, Biographical Series located at <http://www.msa.md.gov>.

10. "Another Peace Canard"; "Trials of the Rev. J. S. Green, alias Cullison," *Hartford Courant*, December 13, 1870; Frederick Shriver Klein, *Just South of Gettysburg: Carroll County, Maryland in the Civil War* (Westminster, Md.: Newman Press, 1963), 3–6; Mary Ann Ashcraft, "Secession Spilled Over to County," *Carroll County Times*, April 24, 2011. Among those arrested for disloyalty in 1861 was Dr. Bernard Mills, a physician and state legislator from Uniontown, who was arrested on September 17, 1861, taken to Fort Lafayette, New York, and thence to Fort Warren in Boston Harbor before being released in April 1862.

11. Greene is listed on the muster roll of the 10th Pennsylvania Reserves as John N. Green or James N. Green, but the history of the Pennsylvania Reserves lists him as J. L. Greene, see Soldiers and Sailors Database, located at <http://www.itd.nps.gov/cwss>; J. R. Sypher, *History of the Pennsylvania Reserve Corps* (Lancaster: Elias Barr and Co., 1865), 87, 101; "Arrest of a Chaplain," *Philadelphia Press*, August 27, 1861.

12. "The Rev. John Green," *Philadelphia Press*, August 29, 1861.

13. Robert N. Scott, ed. *The War of the Rebellion: A Compilation of the Official Records of the War of the Union and Confederate Armies*, series 2, vol. 2 (Washington, D.C.: Government Printing Office, 1897), 272, 368, 857.

14. "Toby of Typee," *Chicago Tribune*, December 16, 1862; "The Democratic Peace Envoy," *Chicago Tribune*, December 16, 1862; J. Wesley Greene to Abraham Lincoln, November 11, 1862, Lincoln Papers; "The Peace Proposals," *New York Times*, December 13, 1862.

15. "Important from Washington, Rebel Overture for Peace," *New York Daily Tribune*, December 5, 1862; Jonathan Daniel Wells, *Women Writers and Journalists in the Nineteenth Century South* (New York: Cambridge University Press, 2011), 97–99; Memorial for Mary Chase Barney, located at <http://www.findagrave.com>; Nicholas Brewer Jr., *Maryland Reports: Cases Adjudged in the Court of Appeals of Maryland*, vol. 19 (Annapolis, 1864), 24; 1870 United States Federal Census, database online (Provo, Utah: Ancestry.com Operations, Inc., 2009).

16. Donald Rusk McVeigh, *Charles James Faulkner: Reluctant Rebel* (Morgantown: West Virginia University, 1954), 92, 128; *Official Records*, series 2, vol. 2, 464–65.

17. Wood was editor of the *New York Daily News* and brother of New York City mayor Fernando Wood. Alfred Ely, *Journal of Alfred Ely: A Prisoner of War in Richmond* (New York: D. Appleton & Company, 1862), 46; Menahem Blondheim, *Copperhead Gore: Benjamin Wood's Fort Lafayette and Civil War America* (Bloomington: Indiana University Press, 2006), 1.

18. George Edward Lowen, *History of the 71st Regiment, N.G., N.Y. American Guard* (New York: Eastman Publishing, 1919), 227, 306. Sickles' commission was later reinstated. *Official Records*, series 2, vol. 2, 464–65; *The Official Army Register for August, 1862* (Washington, D.C.: Government Printing Office, 1862), 88.
19. Biographical Directory of the United States Congress, 1774–Present, located at www.bioguide.congress.gov.
20. William Chase Barney to unknown, November 30, 1862, Lincoln Papers.
21. "The Correspondence, The Proposal for Mediation from France," *New York Times*, November 27, 1862; William Chase Barney to unknown, November 30, 1862, Lincoln Papers; Howard Jones, *Blue and Gray Diplomacy* (Chapel Hill: University of North Carolina Press, 2010), 257, 349.
22. "The Overtures of Peace," *Detroit Daily Tribune*, December 14, 1862; "Important from Washington, Rebel Overture for Peace," *New York Daily Tribune*, December 5, 1862.
23. Basler, ed., *Collected Works of Abraham Lincoln*, 5:517.
24. Donald MacLeod, *Biography of Hon. Fernando Wood: Mayor of the City of New York* (New York, 1856), 36, 45; Jerome Mushkat, *Fernando Wood* (Kent, Ohio: Kent State University Press, 1990), 125.
25. William Chase Barney to Lincoln, December 24, 1862, Lincoln Papers; "J. Wesley Greene—How He Got the Furs," *Pittsburgh Gazette*, December 17, 1862.
26. J. Wesley Greene to Lincoln, November 11, 1862, Lincoln Papers; "Another Peace Canard," *New York Times*, December 11, 1862; "J. Wesley Greene—How He Got the Furs"; Edwin M. Stanton to Lincoln, November 19, 1862, Lincoln Papers.
27. "The Peace Proposals," *New York Times*, December 13, 1862.
28. *Ibid.*
29. *Ibid.*; *New York Herald*, November 18, 1862. Since Mary Todd Lincoln was in New York City that week, Lincoln was unencumbered by family obligations and evidently took the time necessary to vet the matter in its entirety.
30. "The Peace Proposals," *New York Times*, December 13, 1862; J. Wesley Greene to Lincoln, November 22, 1862, Lincoln Papers. The ominous note from Greene proved prophetic, for Thomas Henry Harbin—if he was the man Greene knew as Horace Wilson—was eventually linked to the plot to assassinate Lincoln eighteen months later.
31. "Overtures of Peace," *Chicago Times*, December 4, 1862.
32. Today, media consultants teach managers in business, industry, and government that the key to effective crisis management and rumor control is to deliver facts and conclusions with "speed, accuracy, credibility and constancy." In this, Lincoln excelled, even without a dedicated press secretary or a large staff. Allan J. Kimmel, *Rumors and Rumor Control* (Mahwah, N.J.: Lawrence Erlbaum Publishing, 2004), 161; "Another Peace Canard," *New York Times*, December 11, 1862.
33. Basler, ed., *Collected Works of Abraham Lincoln*, 5:517.
34. "Peace Rumors," *New York Tribune*, December 8, 1862.
35. "Things in Baltimore," *New York Daily Tribune*, June 18, 1845; "Editorial Summary," *Racine Advocate*, July 29, 1845. *Laws of Maryland*, Chapter 45, enacted January 30, 1846, Maryland State Archives, located at www.msa.md.gov. Rumors quickly spread that Barney was influenced less by love than by the fact that she was heiress to considerable property and that he had tricked her into the marriage by using a Roman Catholic priest, who mumbled vows she failed to understand. By some reports, a minor riot broke out in New Castle and the military had to be called out to prevent retribution against Catholics. Barney disputed the allegations of impropriety, but in the end, the girl went home to her father and the State

of Maryland formally granted her a divorce, ruling simply that Barney had not properly obtained a marriage license before the wedding.

36. *Milwaukee Sentinel and Gazette*, December 18, 1847; J. Thomas Scharf, *The Chronicles of Baltimore* (Baltimore: Turnbull Brothers, 1874), 93.

37. "Things in Baltimore," *New York Daily Tribune*, June 18, 1845; 1850 United States Federal Census, database online (Provo, Utah: Ancestry.com Operations, Inc., 2009); *Maryland Reports*, vol. 19 (Annapolis, 1864), 24; "The Ticket Frauds of Pride & Co.," *New York Times*, April 6, 1852; U.S. Congress House Select Committee on Alleged Corruptions in Government, *The Covode Investigation*, 36th Cong., 1st sess., June 16, 1860.

38. "The Overtures of Peace," *New York Daily Tribune*, December 11, 1862.

39. Horace Greeley to Lincoln, December 12, 1862, and Lincoln to Fernando Wood, December 12, 1862, Lincoln Papers.

40. Alfred T. Andreas, *History of Chicago* (Chicago, 1886), 3:788–89; Joseph Chester Burke, "Record of Graduate Alumni of Wesleyan University," *Alumni Record of Wesleyan College* (Hartford, 1883), 365.

41. *New York Times*, March 18, 1852.

42. "Police Intelligence," *New York Times*, January 17, 1856; "Caution," *New York Times*, December 6, 1855.

43. "The Democratic Peace Envoy," *Chicago Tribune*, December 16, 1862.

44. "J. Wesley Green," *New York Tribune*, December 13, 1862.

45. Ibid.; "Editorial Summary," *National Republican*, December 15, 1862; "Who is J. Wesley Greene?" *Chicago Tribune*, December 13, 1862; "Ubiquitous," *Burlington [Iowa] Weekly Hawk-Eye*, December 17, 1862; "Editorial Summary," *National Republican*, December 15, 1862.

46. "J. Wesley Greene—How He Got the Furs."

47. "Trials of the Rev. J. S. Green, alias Cullison"; "A New Peace Proposition," *Grand Traverse Herald*, January 2, 1863.

48. "Southern Female Spies: Miss Belle Boyd," *Richmond Dispatch*, July 26, 1862; "Belle Boyd," *Clearfield [Pennsylvania] Democratic Banner*, June 10, 1863; Belle Boyd, *Belle Boyd in Camp and Prison* (New York, 1865), 206.

49. *Belle Boyd in Camp and Prison*, 208.

50. "Mrs. Charles J. Faulkner," *National Republican*, July 29, 1862.

51. McVeigh, *Charles James Faulkner: Reluctant Rebel*, 23, 137; "Letter From Charles J. Faulkner," *New York Times*, February 27, 1862; "An Impudent Traitor," [Washington, D.C.] *Weekly National Republican*, April 28, 1865. Faulkner spent a week with General Jackson in January 1862, during which time Jackson insisted on addressing him as a "Lieutenant Colonel." McVeigh, *Charles James Faulkner: Reluctant Rebel*, 136.

52. "Retaliatory Proclamation of Jefferson Davis," *Philadelphia Press*, December 27, 1862; Edward McPherson, *The Political History of the United States of America During the Great Rebellion* (Washington, D.C., 1865), 293.

53. "The President's Letter," *New York Times*, September 3, 1863; "John Van Buren on the War," *Huntingdon [Pennsylvania] Globe*, February 25, 1862.

54. Hondon B. Hargrove, *Black Union Soldiers in the Civil War* (Jefferson, N.C.: McFarland, 2003), 139, 141; Maryland citizens to Abraham Lincoln, October 23, 1863, Lincoln Papers.

55. Ira Berlin, *Freedom: A Documentary History of Emancipation 1861–1867*, series 2 (New York: Cambridge University Press, 1982), 186; "Trials of the Rev. J. S. Green, alias Cullison."

“That Unhappy Division”: Reconsidering the Causes and Significance of the James O’Kelly Schism from a Statistical Perspective

ELIZABETH A. GEORGIAN

In a forgotten graveyard in Chatham, North Carolina, stands a weathered obelisk, marking the grave of James O’Kelly.¹ The inscription reads “Erected by his Christian friends to the memory of James O’Kelley of N.C. The southern champion of Christian freedom 1738–1826.”² In pursuit of his vision of Christian freedom, O’Kelly left the General Conference of the Methodist Episcopal Church in November of 1792 after decades of quarreling with its leader, Bishop Francis Asbury. He and his followers walked twelve miles to where their horses were stabled, carrying “their saddle-bags, great coats, and other bundles on their shoulders.”³ They mounted their horses and rode straight to Virginia, and over the course of the next decade they proceeded to draw away around one-fifth of the members from the fledgling church, halting its previously tremendous growth. Two years later, O’Kelly formed the Republican Methodist Church, an aggressively egalitarian denomination, very different than the hierarchically organized Methodist Episcopal Church. Beginning in 1798, O’Kelly and Asbury’s appointed defender, Nicholas Snethen, exchanged caustic published attacks—*The Author’s Apology for Protesting Against the Methodist Episcopal Government* and *A Reply to An Apology for Protesting Against the Methodist Episcopal Government*.⁴ Finally in 1801, the Republican Methodists left the Methodist fold to become the Christian Church, although at least a few former members and preachers stubbornly clung to the older name.⁵

O’Kelly’s admirers, like many historians today, remembered the schism primarily as a regional event.⁶ And indeed, much, although not all, of the archival evidence points to O’Kelly’s substantial influence in Virginia, the Carolinas, and even Kentucky.⁷ But a careful examination of the membership data from the time period reveals that the schism had a national effect, reaching far beyond O’Kelly’s supposed southern power base and deeply damaging the entire denomination.

After the O’Kelly schism, nearly a dozen others followed, culminating in the

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1844 split, when the church tore itself asunder over slavery, dividing into the Methodist Episcopal Church and the Methodist Episcopal Church South. Yet O’Kelly has received relatively little attention from many modern historians.⁸ Among those who have considered the schism at greater length, there are two schools of thought concerning the 1792 division and O’Kelly’s motivations. The first sees the conflict between Francis Asbury and James O’Kelly as a personal one, born out of either frustrated ambition on O’Kelly’s part or hatred between the two men.⁹ Undoubtedly, after decades of quarreling, they came to dislike each other intensely. But this view downplays other serious factors—disagreements over the right to ordination by lay preachers, John Wesley’s place in the American church, control of church property, and most importantly, the structure of the newly formed denomination’s government. O’Kelly’s decision to reject power and prestige when offered them also undermines this argument. In 1789 he fought Asbury’s institution of a powerful governing council that would rule the church between quadrennial General Conferences. Rather than accepting the proffered seat on the council, a position of considerable power, O’Kelly instead persuaded the Virginia Annual Conference to reject the proposal and found himself expelled from the church for his pains.¹⁰

The newer school of thought looks to structural issues in Methodism, not personalities, to explain the O’Kelly schism. As several historians have argued, the conflict arose out of political disputes about the structure of the new denomination—federalism versus republicanism or local versus centralized government.¹¹ These historians have seized on important facets of the schism. While Asbury quietly organized his new church along federalist lines, the Irish O’Kelly openly used the language of republicanism to criticize his British opponent, who refused to support the American Revolution, even as O’Kelly served in the militia. And the division between local preachers, who lacked voting rights and the itinerants who gathered regularly in the annual and General Conferences, fueled O’Kelly’s dissatisfaction with the emerging episcopalian system of governance. Indeed, the schism can be seen as a Methodist referendum on the secular politics of the day, or at least a vote on their applications in the religious realm. And Asbury’s church, which so many people abandoned, grew more hierarchical by the minute and denied the laity voting rights.

This article seeks to further this emerging consensus—that real issues, reflecting America’s increasingly republican attitudes born out of the revolution, led to the damaging divide in 1792. As others have noted, the words of O’Kelly and Asbury and their followers support this conclusion. And the constant strife between the two men about the powers of the bishops and the structure of the church from 1777 through 1792 also testify to the schism’s grounding in an actual conflict, not just personal hatreds and loyalties.

For the first time, though, this article looks to quantitative evidence, based in the analysis of membership trends and patterns of clerical service, to prove that

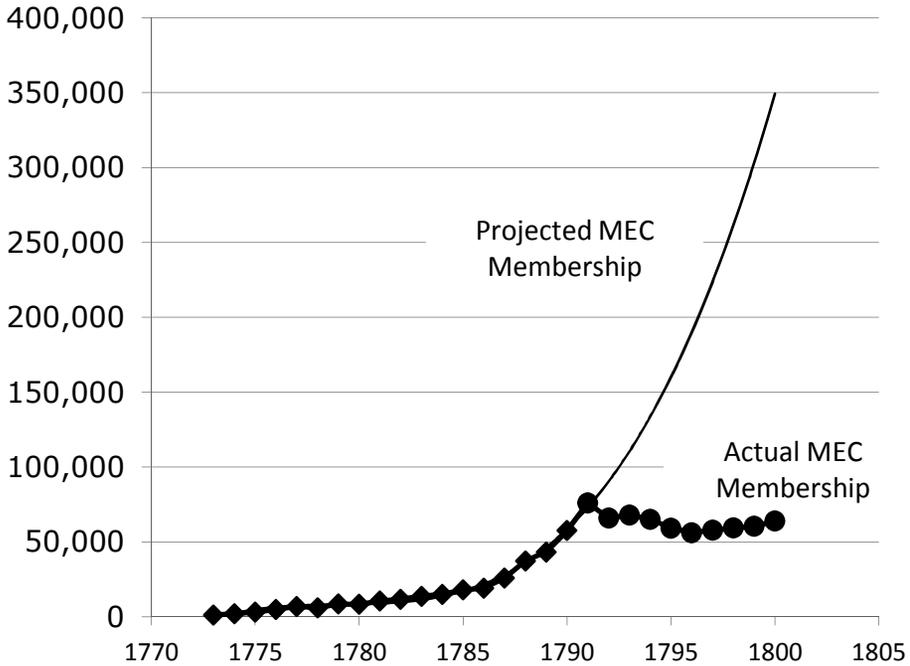


Figure 1: Projection based on rate of membership growth before the 1792 schism.

the division was national, not regional in scope, suggesting that something beyond loyalty to O'Kelly led so many people to abandon their church. O'Kelly remained in his southern stomping grounds for the rest of his life and yet thousands of northerners fled the Methodist Episcopal Church in the wake of the schism. Not knowing O'Kelly, they were most likely persuaded by his arguments and the simple church he created rather than by his charisma or friendships. A careful analysis of the patterns of itinerant service also suggests that the church misunderstood the cause of the schism, thus undermining efforts to prevent a reoccurrence. And by examining the reasons why the church finally stopped losing members in 1800, it seeks to explain why, in such republican times, Methodists eventually rejected an egalitarian church in favor of the nation's most hierarchical protestant denomination, run by increasingly powerful bishops.¹²

THE O'KELLY SCHISM seriously injured the Methodist Episcopal Church, and it took the denomination years to heal. In February of 1795, Stith Mead, a loyal itinerant, went to Rough Creek, Virginia, "to Preach to the starving Republicans (O'Kellyeans) and to pick up and class the few scattering sheep, the wolves did not devour."¹³ The success of James O'Kelly and the Republican Methodists necessitated this journey, one undertaken by dozens of Methodist itinerants. Throughout the country, Francis Asbury's men struggled to retain members and to regroup those whose churches

had been devastated by the schism. Despite all their efforts, they utterly failed to persuade the Republican Methodists to return to the fold.

The events of the General Conference of 1792 triggered a membership decline that continued unabated for five years. Even after its reversal, the church continued to lose both members and prospective members to the Republican Methodists into the nineteenth century. Historians usually cite the figure of 20,000 lay members lost to O'Kelly, but this number proves difficult to substantiate.¹⁴ In 1810 Methodist historian Jesse Lee first reported losses of 10,979 members between 1794 and 1796 and substantially lower growth overall (compared to previous years) from 1792 to 1800.¹⁵ The accounting of membership figures recorded in the annual conference minutes reveals a net loss of 13,260 members over the same time period.¹⁶ Of course, the church records only reveal the actual membership—undoubtedly people continued to join the church throughout the 1790s, meaning that more members must have left than the records indicate. Overall, it is impossible to tell how many people followed O'Kelly out of the church, but his general impact can be gauged by looking at the net changes in membership.

Given the exponentially high growth rates in membership during the previous years, these losses do not reflect the true damage done to the church. If the growth rate before 1792 had continued unabated, by 1800 the Methodist Episcopal Church would have consisted of nearly 350,000 members instead of its much smaller actual size of 64,894 (see Figure 1).¹⁷

In addition to these losses, the O'Kelly schism set off nearly a decade of intense volatility in membership in the denomination as a whole. Total membership shifted dramatically from year to year, shrinking and growing by the thousands, making collecting funds and supplying pulpits an ongoing challenge. Although scholars have assumed the membership losses largely affected Virginia and North Carolina, which both experienced significant decreases, the denomination as a whole suffered even more (see Figure 2).

No evidence exists to decisively prove that all of these former members were O'Kellyites who joined the Republican Methodists; some may simply have grown disillusioned with the behavior of the church in general and abandoned either Methodism or formal church membership altogether. Others did leave to join different denominations because of the schism. Itinerant Jeremiah Able briefly joined the Republican Methodists before changing his mind and returning to the Methodist Episcopal Church, where he tried to institute the types of reforms he admired in O'Kelly's denomination. After failing, he left again, this time for the Presbyterian Church, taking several of his congregation's key members with him.¹⁸ But the timing of the collapse in membership, along with the absence of other major divisions or issues during this time period, and the accounts of frustrated, loyal ministers about O'Kelly's tremendous success, undeniably implicate the O'Kelly schism in the damage done to the church.

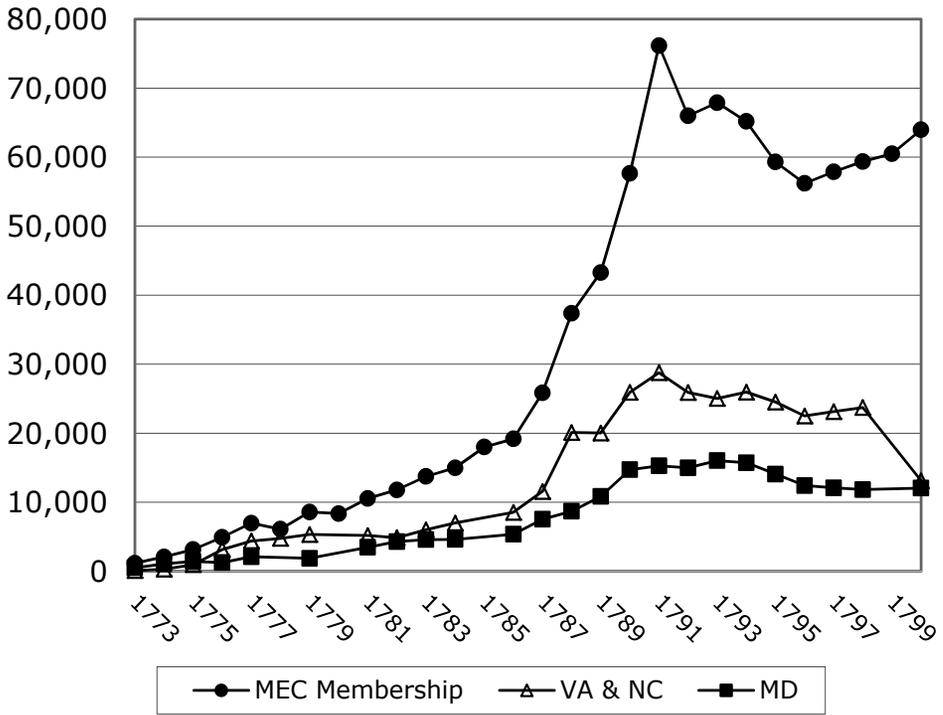


Figure 2: Methodist Episcopal Church membership 1773–1800

The intense focus, both by eighteenth-century Methodists and modern-day scholars on the loss of lay members overshadows another real harm done to the church by the schism. Beginning in 1793, the bishops struggled for years to retain enough clergy to keep their circuits supplied with itinerants. Although Nicholas Snethen would write in 1800 that preachers would never leave the church due to disaffection with its ecclesiastical government, the clerical losses of the 1790s suggest otherwise.¹⁹ O'Kelly reported that itinerant clergy sometimes located to avoid conflicts with the tyrannical government—writing that “Edward [Morris] signified to me, that he would not travel under such a government, and went straightaway and married a virtuous damsel, and located himself, as others have since done.”²⁰ By locating, itinerants ceased traveling while continuing to preach unofficially, but they lost their right to stipends from the church and their right to participate in the General Conferences. Throughout the 1790s, for the first time, the bishops struggled to recruit as many new preachers as they lost to retirement, death, withdrawal from the denomination, or expulsion, a pattern that would not reverse itself until the nineteenth century. Up to 1790, the growth rates of the societies and the itinerancy kept pace with each other, but after that, the two separated with the proportion of clergy to laity varying dramatically in different directions (see Figure 3).

In the year following the schism, the bishops could not fill all of the Maryland

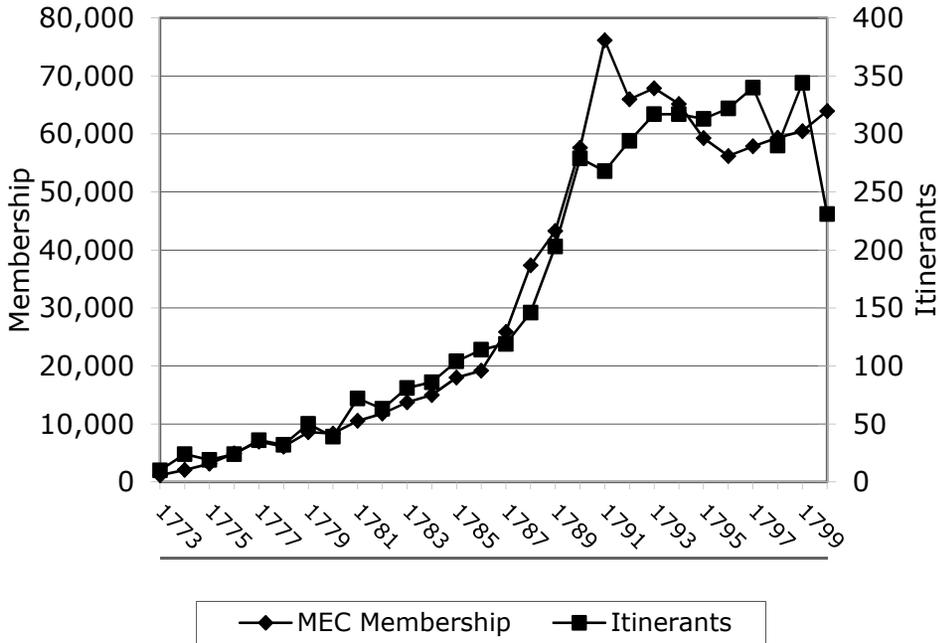


Figure 3: Methodist Episcopal Church, Membership vs. Itinerants

circuits by the time of the General Conference; for the first time minutes reported circuits lacking itinerants. Believing they faced a southern problem and hoping to prevent further losses, the bishops fully filled the Virginia and North Carolina posts, a feat accomplished in part by the reassignment of Maryland clergy to southern circuits, which decreased the ratio of members to itinerants in the south despite the significant loss of clergy there. Likely worsening the situation, in their attempt to stabilize the South, they let the number of itinerants in the Maryland Annual Conference shift drastically from year to year, causing wide swings in the ratio of members to itinerants (see Figure 4). But given the plummeting membership in Maryland, this proved an unwise decision, based on a misunderstanding about the regional nature of the schism.²¹ Membership in the Maryland societies declined from 16,035 to 11,835 in the years after the schism, and it only began to recover in 1800.

Officially, as late as 1798, the General Conference continued to deny any negative effects from the schism, “observing, that there is no ground to believe that the work of God has been injured, or the numbers of the society diminished.”²² Asbury and Coke pointed to the growth in membership from 14,000 in 1784 to 56,000 in 1798, claiming a twelve-fold increase, to support their assertion that the church remained unaffected. (Their numbers indicate the actual increase was four-fold). Though these membership figures are close to correct, they ignore the serious decline in the 1790s but also how much larger the church might have grown if the schism had not occurred.²³

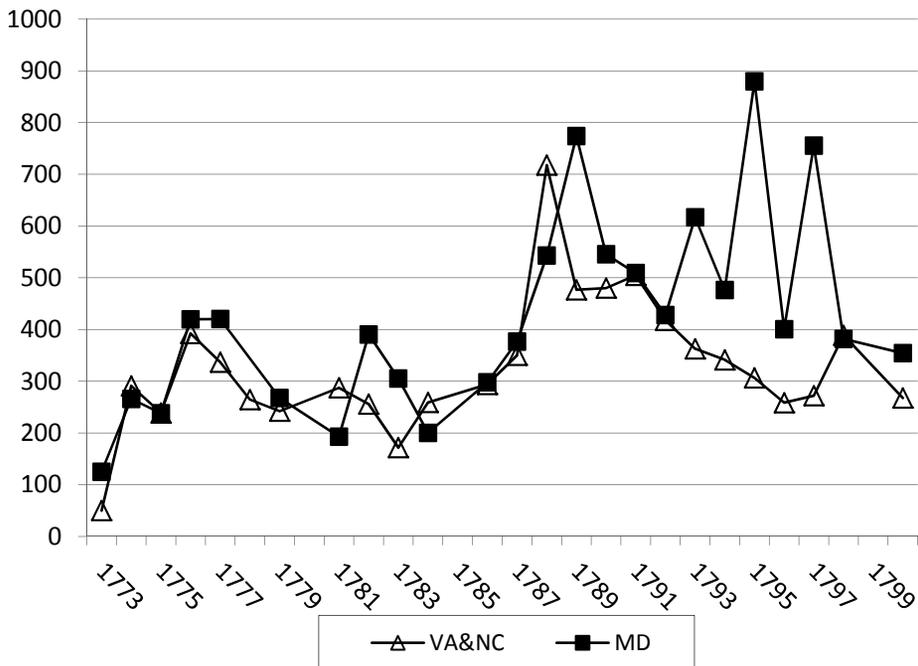


Figure 4: Ratio of members to itinerants by region.

Privately many itinerants acknowledged the serious loss of members and their ongoing struggle to minister successfully in the wake of the schism. In 1802, local preacher Edward Dromgoole wrote to Nicholas Sneathen of the continuing loss of ministers to O’Kelly.²⁴ And as late as 1810, Methodist itinerant John Early boasted in his diary that he had given “the O’Kellyites a drubbing,” although the crowd did not receive him well. The itinerants still resented O’Kelly’s success among the laity nearly two decades later.²⁵ And in his unpublished autobiography, Bishop M’Kendree, who as a young man had briefly joined O’Kelly before returning to his mother church, lamented that “Mr. O’Kelly had made a considerable breach in the church, many societies were divided, and some whole societies followed him.”²⁶

O’Kelly’s relationship to slavery further complicates our understanding of the schism. Unlike many Methodists, O’Kelly possessed solid antislavery credentials.²⁷ He entered the church a slaveowner, although the reason remains a mystery. Perhaps he inherited his only slave Dianna or acquired her when he married his wife Elizabeth. In his deed of manumission he referred to her only as a slave he had “now in my possession.”²⁸ Although the Quakers persuaded the state of Virginia to permit manumission in 1782, he waited three years before freeing her. In his formal deed of manumission, filed in Mecklenburg, Virginia, he referenced the law, explaining that he had waited until manumission was legal to act, although he provided no reason for his further delay. He wrote that he freed Dianna because of the mandates of his

own conscience—suggesting that a recent conviction led to his decision—and he expressed his hope for her future material and spiritual prosperity.²⁹ Dianna obviously held no ill will toward the O’Kellys for she moved with the family to North Carolina, and remained with them until after O’Kelly’s wife Elizabeth’s death in 1832. And the family did not leave her economic future solely in God’s hands; when Elizabeth died, having inherited her husband’s estate after his death in 1826, she left Dianna \$200, to be invested for her by the executor, along with pots, pails, tubs, flat irons, a coffee mill, and other household items, which suggests the family viewed her as much as a daughter as a servant.³⁰

O’Kelly took a far more public anti-slavery stance in 1789 when he published his first work, *Essay on Negro Slavery*, in which he railed against the evils of the institution. It was the first book of its kind written by an American Methodist.³¹ Both Asbury and Coke claimed they declined to publish it because of its poor writing, not due to their personal issues with the author, a claim O’Kelly denied.³² But given many Methodists’ lack of education, a trait O’Kelly shared with his followers, it may have struck at least some people as more sincere for its faults, not less. Devereux Jarratt, wrote admiringly of O’Kelly and his book. Although he called it “a jumbled spot of work” with little understanding of scripture, he believed that “it may not be the less efficacious on that account.”³³

At the 1792 General Conference, and in later writings, O’Kelly and his supporters used the language of slavery to present their grievances against the church and Bishop Asbury. “O Heavens! Are we not Americans!” cried one of O’Kelly’s supporters Hope Hull. “Did not our fathers bleed to free their sons from the British yoke? and shall we be slaves to ecclesiastical oppression?”³⁴ Hull, like so many Americans who used the rhetoric of enslavement to protest their dissatisfaction with their treatment by the British government, obviously did not intend to claim that they feared physical enslavement at the hands of their British bishops. But he and others, particularly O’Kelly, did intentionally argue that the Methodist Church’s long, complicated, and often-sordid history of dealing with ministers and members who actually owned slaves proved that the Methodist leaders were no lovers of liberty, granting it only when it proved convenient, and snatching it away when it seemed inexpedient.³⁵

Logically, then, O’Kelly should have drawn disproportionate support from black Methodists, given his unusually firm anti-slavery stance and his southern base, but the evidence says otherwise. In 1786, the records of the annual conferences began to separate out members by race. From that date through the O’Kelly schism, the proportion of black members across the nation varied greatly year by year, ranging from a low of 4.5 percent in 1786 to a high of 22.3 percent in 1792. In the South, black membership was even more unstable. While black membership did decline substantially during the 1790s, in neither the national church nor in the South did it decrease in a greater proportion than white membership. In fact, after a brief setback in the years immediately following the O’Kelly schism, the proportion of black

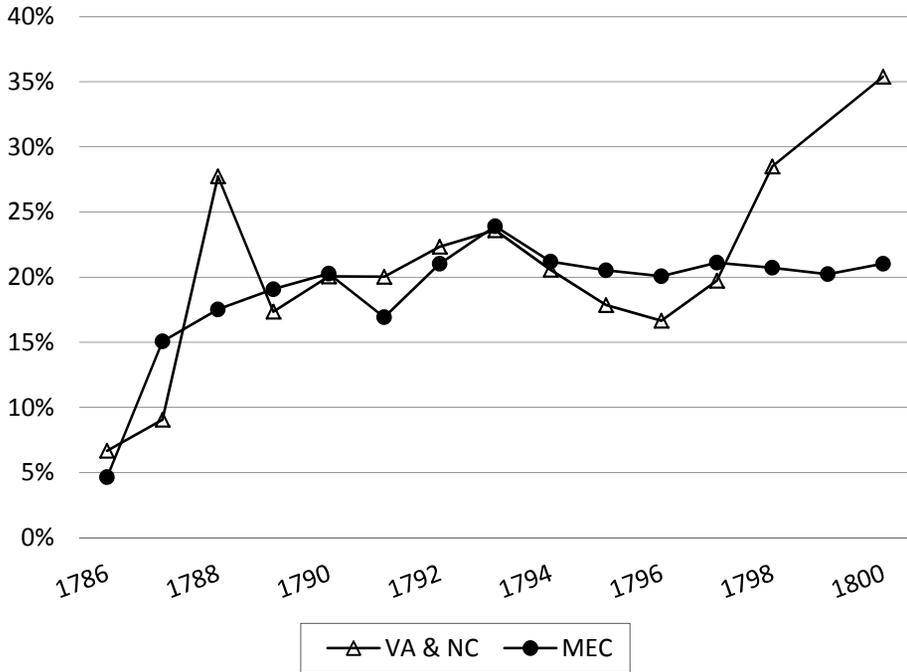


Figure 5: Blacks as a percentage of total members.

members in the south climbed dramatically to more than a third of the Methodist Episcopal membership there in 1800, a figure at odds with what was happening in the rest of the church (see figure 5).

Nationally, blacks were about as likely as whites to leave their church, but in the south they were far less likely to depart. One might attribute the larger loss of black members nationally to the actions of men like Richard Allen and Absalom Jones, who drew blacks in Philadelphia into separate churches in protest over racism within the main denomination. Because Allen's followers did not succeed in officially separating themselves from the Methodist Episcopal Church until 1816, they would have remained on the main church's rolls in the 1790s.³⁶ But Jones's followers formed St. Thomas, a Protestant Episcopal Congregation, in 1794, so their departures would have been recorded.³⁷ Yet black membership in Philadelphia did not consistently decrease during the 1790s either, leaving the question of the racial nature of changes in membership unanswered. Perhaps southern blacks detected a hint of insincerity in O'Kelly's rhetoric about slavery. Or more likely, masters were reluctant to allow slaves to join a church led by a man who opposed slavery and promoted equality.³⁸ Black membership began to increase proportionally only after 1794, when the O'Kellyites formalized their radical egalitarianism as they established their new church, and took the name Republican Methodists, perhaps frightening masters. Former itinerant Edward Dromogool, a wealthy southern slaveholder, may

serve as an example. He remained loyal to the Methodist Episcopal Church even as he testified to the sincerity of O’Kelly’s beliefs and urged the church leaders to avoid responding harshly to his *Apology*.³⁹ Possibly his concerns about his slaves trumped his religious inclinations. In any event, it appears that whites, not blacks, flocked to the Republican Methodist Church.

Understanding the implications of the O’Kelly schism for the Methodist Episcopal Church is only the first step; the church leaders’ reactions also mattered greatly to the future of the main denomination. In hindsight, it would have behooved Asbury to explore the causes of the schism more thoroughly as he struggled to cope with its aftermath, and historians need to think the question through more clearly as well. For whatever reasons, perhaps personal, perhaps political, Asbury could not accept responsibility for the schism. Nor could he acknowledge its deep roots in the preceding decades, years in which he and O’Kelly repeatedly clashed over issues such as the power of ordination, the control over church property, the structure of the government. Prior to the 1792 conference Asbury merged the writings of Richard Baxter and Jeremiah Burrough and added his own introduction to produce *The Causes, Evils, and Cures, of the Heart and Church Division*. The work, which laid the groundwork for his defense against O’Kelly, clearly conveyed the message that malcontents, not disagreements over serious issues. In his introduction, Asbury wrote of his distress over existing divisions in the church, obliquely referring to the decades of struggle with O’Kelly and his followers. He found in Baxter and Burrough’s writings not only consolation for a troubled soul—adding that “feeling at the time the pain of a partial separation in spirit and practice, from some who were my brethren and sons in the gospel, that book proved as a balm and blessing to my soul,”—but also proof that he was in the right and O’Kelly in the wrong. According to Baxter and Burroughs, pride lay at the heart of all divisions, as some men demonstrated not the fruits of the spirit, but “the fruits of the flesh [which] are hatred, variance, emulation, wrath, strife, seditions, heresies, envyings. All these are the cause of divisions.”⁴⁰ In other words, one sinful party, not both, bore responsibility for the constant strife. The original authors also strongly suggested that selfishness, not a desire for spiritual purity, inappropriately motivated the men who caused divisions in the church. The members of the 1792 General Conference echoed Asbury’s views, concluding their discussion about the “Necessity of Union among ourselves” by recommending to all a “serious perusal” of Asbury’s edited work. The *Book of Discipline* produced by that conference also warned the preachers, to “beware of *schism*; of making a rent in the church of Christ.”⁴¹

Unable to acknowledge the role that questions about power and church governance played in the division between Asbury and O’Kelly, the church needed another explanation. The leaders turned to what they saw as Asbury’s kind, but ultimately misguided, decision to allow O’Kelly to serve continuously in a relatively narrow geographic area. But this view of the cause of the schism also overlooked the facts.

Snethen attributed O'Kelly's success in drawing people away from the Methodist Episcopal Church to his too-lengthy service on the Virginian–North Carolina border, where he had presided over “the very best circuits in the connection.”⁴² According to Snethen, because he remained so long in one area, O'Kelly became incredibly popular, and the majority of Methodists within Virginia and North Carolina trusted him more than Asbury, and so deserted their church.⁴³

In response to this perception and Asbury's urging, the 1796 General Conference changed the itinerancy rules, prohibiting presiding elders from remaining in any one district for more than four years. But this rule would not have affected O'Kelly; districts had not yet been clearly defined by 1792, but he presided over a wide variety of circuits—thirty-five—during his eight years as a presiding elder alone. Moreover, given his expulsion from the church in 1789, O'Kelly did not serve more than four consecutive years as a presiding elder. According to Methodist historian, John Atkinson, writing in 1892, both Snethen and Jesse Lee confessed that this rule was aimed at preventing the likes of O'Kelly from rising again.⁴⁴ Over the next two decades the General Conference would continue to struggle to balance the power of the bishops and the presiding elders.⁴⁵

While O'Kelly may or may not have presided over the best circuits, he did travel in Virginia and North Carolina from 1778 to 1792, a relatively long term of service. But others, including Philip Bruce in the South, and Nelson Reed in Maryland, both loyal itinerants, served in their areas for longer.⁴⁶ None of this suggests that O'Kelly was not a beloved figure, one who served as a spiritual father to many men as they progressed from young men on trial to full itinerants, but he was hardly unique in playing that role. In hindsight, changing the rules only deprived a church in disarray of a potential source of stability. And such an explanation failed to account for the schism's national impact. If O'Kelly's personal ties drew in southern Methodists, why did northern Methodists leave their church?

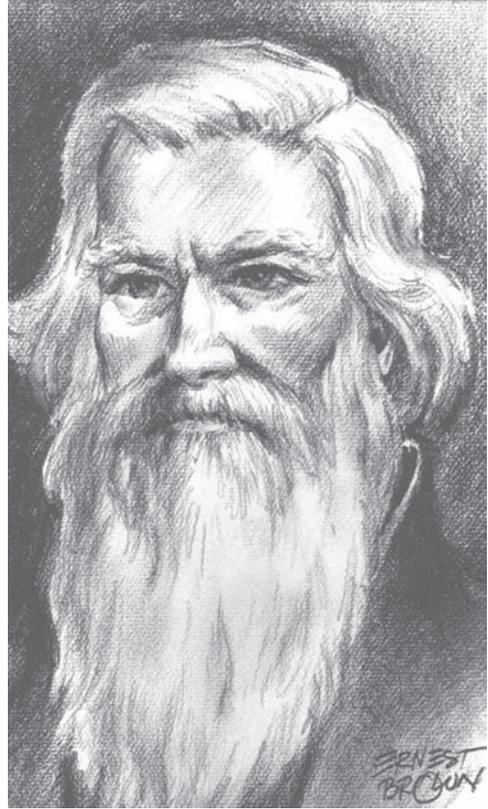
Other evidence supports the conference's contention that at least some of O'Kelly's success may have been attributable to the stability of the southern conferences, even if they were wrong about the specifics and whether their solution would address the problem they perceived. Perhaps it was not O'Kelly himself that drew in followers but a tight network of long serving itinerants, the men who presumably had the most influence among the laity. A comparison to the Baltimore Annual Conference reveals that the Virginia and North Carolina Annual Conferences were approximately twice as stable.⁴⁷ In Maryland, only 9 percent of clergy began their trial period, completed it, and went on to itinerate within the conference, compared to 22 percent of preachers in Virginia and North Carolina. Yet the evidence does not support the church's claim regarding the most experienced preachers. A comparison of the number of clergy serving in the annual conference for five or more years as full itinerants reveals a much smaller difference, 9 percent in Maryland and only 11 percent in Virginia and North Carolina, suggesting that the southern itinerancy

was not exceptionally interconnected. Coupled with the new knowledge about the national impact of the division, this data suggests that actual issues, not just personal relationships, substantially contributed to the membership losses. While most modern scholars have generally accepted the theory of a regional power base, the reality, like virtually all of the story, now seems far more complicated.

These decisions ultimately proved unhelpful in warding off future schisms because they ignored the deeper cause of the division—an undercurrent of dissatisfaction with the evolving system of church governance among an influential minority of members. Four decades later, this unrest culminated in another schism. In 1830 in response to their failure to persuade the General Conference to admit lay representatives, a group of 5,000 itinerants, local ministers, and lay people broke away and formed the Methodist Protestant Church. The majority of the supporters of lay representation looked to O’Kelly as their spiritual ancestor—the first man to resist the ever increasingly autocratic and ecclesiastical nature of the church governance.⁴⁸ Although the church emerged unscathed from this later division, as future schisms occurred, their leaders often looked back to O’Kelly as a model for expressing their arguments and justifying their protests. For better or worse, he lived on as a force that the Methodist Episcopal leadership could not ignore. Poignantly, as Francis Asbury lay dying in 1816, he devoted much of his final address to the General Conference to a discussion of O’Kelly—clearly the division still weighed heavily on his mind.⁴⁹

Differences between Asbury and O’Kelly’s supporters may have played a role in the outcome of the schism. Historian Christine Heyrman attributed the division to a generational conflict focused on the elder O’Kelly, nicknamed “the old man” by his followers and the far younger Asbury, supported by his “boys.”⁵⁰ If age played a role it only applied to the leaders of the movements—no significant age difference existed between the followers of the two men. But on the whole, O’Kelly’s clerical supporters did differ from their opponents in several distinguishable ways. They had far less education—perhaps causing them to overlook the poorer quality of O’Kelly’s writings when compared to other Methodists. And they were far more likely to be married, a status that the forever celibate Asbury abhorred. Their marriages likely grounded them more in their local communities compared to their unmoored brethren, even as they changed circuits, perhaps contributing to the support they garnered from the people.⁵¹ As Dee Andrews notes, O’Kelly likely referred to Francis Asbury’s “boys” not because of their age—on average they were in their mid-twenties—but because their celibacy meant they had not yet assumed the adult responsibilities that accompanied wives and families.⁵² Certainly one woman, Sarah Jones, yearned to follow O’Kelly not only because of their relationship but due to her deep friendship with his wife, Elizabeth.⁵³ Rightly or wrongly, in the years following the schism, each side would continue to develop arguments against the other and offer different explanations for the division. But by the nineteenth century, however, the disputes grew largely historical as the Methodist Episcopal Church recovered.

This pencil sketch of James O'Kelly was recreated by Ernest Brown. There appear to be no extant contemporary portraits of O'Kelly, but there are other similar sketches. (Photograph courtesy of Belk Library Archives and Special Collections, Elon University, Elon, N.C.)



ONCE JAMES O'KELLY and his followers had left the Methodist Episcopalians, they faced the challenge of all schismatic groups: how to form their own church, complete with a structure, government, and theology. By 1793, they established new societies, and had begun taking over church buildings and chapels left empty as the laity deserted the Methodist Episcopal Church.⁵⁴ O'Kelly and his supporters met at Manakin Town on Christmas 1793, where they took the name of the Republican Methodists and agreed to equality among all ministers (local and traveling, with no higher levels of presiding elder, or bishop). They also “gave the lay-members a balance of power in the legislature.”⁵⁵ They met again in conference on 4 August 1794 in Surry County, Virginia. A minority in attendance objected to the proposed organization of the church, and so a committee of seven drew up a new plan, and presented it to the conference.⁵⁶ Failing to come to consensus, the church took only the New Testament as their guide, agreeing that all elders (pastors) were equal, and that any gathering of believers made the true church.⁵⁷ According to later historians, they burned their conference minutes at the end of their proceedings to prevent them from being used as precedents for the young church, so concerned was O'Kelly not to bind future Christians with mere traditions.⁵⁸

This stone marker on James O’Kelly’s grave in Chatham County, North Carolina, includes the inscription: “ERECTED by his Christian friends to the memory of JAMES O’KELLEY of N.C. The southern champion of Christian freedom 1838–1826.” The exact date of O’Kelly’s birth remains in question. (Photograph courtesy of Belk Library Archives and Special Collections, Elon University, Elon, N.C.)



By abandoning Methodism’s complicated hierarchical structure in favor of a simple church, organized along the lines of the primitive church, O’Kelly’s movement surrendered its Methodist identity. Not only did the structure vanish, but the itinerant system also began to fade away because of the decision to treat all clergy as equals. Those drawn largely to Wesley’s theology—a simplified but transforming Arminianism—could choose from a wide array of American churches. They had no reason to remain Methodist. O’Kelly acknowledged this reality in 1801 when he and his church abandoned the name Republican Methodist to embrace the ecumenical title, the Christian Church. O’Kelly’s message of religious equality still drew in post-Revolutionary Americans and the church continued to grow, but it largely ceased to appeal to Methodists. O’Kelly’s choices, and those of his followers, staunched the Methodist Episcopal Church’s bleeding wound, not the actions of Asbury and his supporters. Not coincidentally, membership in the Methodist Episcopal Church finally began to grow again the same year that O’Kelly abandoned the name Methodist.

The Methodist Episcopal Church was, in many ways, lucky to have survived the O’Kelly schism and eventually to have recovered and thrived. In the years after 1792 the church faced schismatic groups furious about racial discrimination and the tacit acceptance of slavery, the lack of lay representation, and other less clear issues. While the church eventually tore itself apart over the question of slavery in 1844, in

the intervening years it emerged from these schisms virtually unscathed, with its membership almost entirely intact. Despite Asbury's obviously federalist bent and the church's decision to become even more hierarchical, Americans continued to flock to the Methodist Episcopal Church, even as the Federalist Party faltered and faded away to be replaced by Jacksonian democracy.⁵⁹ Perhaps in an unfamiliar, changing world Americans actually preferred a more structured church, complete with a complicated hierarchy. Certainly when given a choice, Richard Allen established in his new denomination, the African Methodist Episcopal Church, an equally hierarchical episcopal system of governance. Perhaps for blacks, respect for their male leaders meant more to them than equality among the people. Religious voting rights probably meant little to a people who could not vote in the secular realm.⁶⁰ Or perhaps, as Lynn Lyerly argues, the greater space for women's spiritual participation and leadership that Methodism provided due to its itinerant structure, attracted women who then brought in their husbands and sons.⁶¹

Whatever the cause, the outcome is clear: the Methodist Episcopal Church grew into America's largest denomination by 1840, surpassing their Protestant Episcopalian brethren, who permitted equal lay representation from the very beginning, and their congregationalist Baptist competitors. Although O'Kelly's challenge to the Methodist hierarchy threatened the church's very survival, his decision to abandon it entirely may have proven its salvation.

NOTES

1. This article first appeared in the *Virginia Magazine of History and Biography*, vol. 120, no. 3: 212–235. I am grateful to the Virginia Historical Society for the Mellon Research Fellowship that supported part of the research for this article, to Christine Leigh Heyrman and Lily Santoro for their thoughtful comments on earlier drafts, and to Katie Nash, Special Collections Librarian and Archivist at Elon University, for all her assistance over the years in my quest to understand James O'Kelly.
2. Photograph of James O'Kelly's Grave Marker, James O'Kelly Papers, Belk Library Special Collections, Elon University, Elon, N.C. (cited hereafter as EU).
3. Jesse Lee, *A Short History of the Methodists, in the United States of America; Beginning in 1766, and Continued till 1809. To Which is Prefixed, A Brief Account of Their Rise in England, in the Year 1729, &c.* (Baltimore, 1810), p.180. The General Conference minutes from 1792 are not extant—perhaps they were lost in a recorded incident where a bottle of ink was spilled in a chest of important documents (Lewis Curts, *The General Conferences of the Methodist Episcopal Church from 1792 to 1896* [Cincinnati, 1900], 90). But multiple sources, aside from O'Kelly and Sneathen, attest to the events of that conference, and to the circumstances of O'Kelly's departure (see William Colbert, "A Journal of the Travels of William Colbert Methodist Preacher thro' parts of Maryland Pennsylvania New York Delaware and Virginia in 1790 to 1838," 73, William Colbert Journals, United Methodist Church Archives—GCAH, Madison, N.J.; Lee, *Short History of the Methodists*, 178; and William M'Kendree, "Undated Autobiography of M'Kendree from his birth through 1800," 10, William M'Kendree's Papers, 1790–1855, Manuscript, Archives and Rare Book Library, Emory University).

4. O'Kelly, *The Author's Apology for Protesting Against the Methodist Episcopal Government* (Richmond, 1798) and Nicholas Snethen, *A Reply to An Apology for Protesting Against the Methodist Episcopal Government* (Philadelphia, 1800). They followed with another round, James O'Kelly, *A Vindication of the Author's Apology: with Reflections on the Reply, and a Few Remarks on Bishop Asbury's Annotations on his Book of discipline* (Raleigh, 1801) and Nicholas Snethen, *An Answer to James O'Kelly's Vindication of His Apology, &c. and an Explanation of the Reply* (Philadelphia, 1802).

5. For example, John Robertson, one of O'Kelly's original supporters at the 1792 General Conference, refused to join the Christian Church.

6. For examples of historians' portrayal of the schism as an entirely regional, southern event, see J. Timothy Allen, "A Man of Some Means: Ambitious Values, Evangelical Theology, and the Reverend James O'Kelly" (Ph.D. diss., The Graduate Theological Foundation, 2004); Elizabeth Conner, *Methodist Trail Blazer, Philip Gatch, 1751-1834, his life in Maryland, Virginia, and Ohio* (Cincinnati, 1970), 160; David Hempton, *Methodism: Empire of the Spirit* (New Haven, 2005), 100; Durward T. Stokes and William T. Scott, *A History of the Christian Church in the South* (Burlington, NC: Southern Conference of the United Church of Christ, 1976). To a certain extent, Stokes and Scott place the O'Kelly Schism in a national context by comparing him to other democratic schismatic figures, but they still associate O'Kelly himself with the South. A few years later, Nathan Hatch took a similar tact as he focused less on the Christian Church and more on national political trends (see Nathan O. Hatch, "The Christian Movement and the Demand for a Theology of the People," *Journal of American History*, 67 [1980]: 547).

7. The evidence for the impact of the O'Kelly schism and the Republican Methodists in Virginia and North Carolina is far too extensive to enumerate. For examples see James Meacham, *A Journal and Travel of James Meacham*, ed. [William Boyd], (Durham, N.C., 1912-1914), 99; Stith Mead, Letter Book, 100, Virginia Historical Society, Richmond (cited hereafter as VHS); and Sarah Jones, "Sarah Anderson Jones diary, 1792-93, Special Collections Research Center, SWEM Library, College of William and Mary, Williamsburg. The references to an effect on Kentucky Methodism are substantially fewer, but include Barnabas M'Henry and Thomas S. Hinde, "Contributions," *Western Christian Advocate* (cited hereafter as WCA) 7.4 (1840): 12; and Peter Cartwright, *Autobiography of Peter Cartwright: The Backwoods Preacher*, edited by W. P. Strickland (Cincinnati, 1856), 31-32.

8. For examples of significant Methodist works that discuss only O'Kelly briefly, see Charles W. Ferguson, *Organizing to Beat the Devil: Methodists and the Making of America* (Garden City, N.Y., 1971), 178-81; Nathan O. Hatch, *The Democratization of American Christianity* (New Haven, Conn., 1989), 103; Hempton, *Methodism*, p. 101; Christine Leigh Heyrman, *Southern Cross: The Beginnings of the Bible Belt* (Chapel Hill, 1997), 102; and Russel Richey, *Early American Methodism* (Bloomington, Ind. 1991), 88-91, 93. For example of works that ignore the schism altogether, see Gregory Schneider, *The Way of the Cross Leads Home: The Domestication of American Methodism* (Bloomington, Ind. 1993) and Cynthia Lynn Lyerly, *Methodism and the Southern Mind, 1770-1810* (New York, 1998).

9. William MacClenny, the first person to write at length about O'Kelly and the division, belonged to the Christian Church. His work was an uncritical, loving chronicle of its history, and of course, he had only praise for O'Kelly and his followers (see W. E. MacClenny, *The Life of Rev. James O'Kelly and the Early History of the Christian Church* [Raleigh, 1910]. In the first modern work devoted entirely to O'Kelly, Charles Kilgore treats the schism largely as the product of a personality clash between Asbury and O'Kelly (see Charles Franklin Kilgore, *The James O'Kelly Schism in the Methodist Episcopal Church* [Mexico, 1963]. J. Timothy Allen

situates the conflict firmly in the ethos of southern manhood, arguing that Asbury and O'Kelly faced off in the spiritual equivalent of a duel and that changes in O'Kelly's beliefs "centered around the personal ambition of Reverend James O'Kelly" (Allen, "A Man of Some Means," 3). In the most recent biography of Asbury, John Wigger takes a similar tact to Allen's, although he goes further and attributes the schism to O'Kelly's frustrated ambition and maligns O'Kelly along with Asbury's other competitors as power-hungry men. Although acknowledging that O'Kelly's plan would have diminished the itinerancy in favor of local preachers, he still focuses largely on O'Kelly's personality: "O'Kelly's writings convey a deep sense of personal grievances long nurtured" and "for all of his populism, O'Kelly craved personal recognition" (John Wigger, *American Saint: Francis Asbury and the Methodists* [New York, 2009], 211–19, [quotations from 214–15]).

10. O'Kelly, *Apology*, 12 and Dee E. Andrews, *The Methodists and Revolutionary America, 1760–1800: the Shaping of an Evangelical Culture* (Princeton, 2000), 202.

11. In his earlier work, Wigger called on historians to appreciate "the tension between O'Kelly's concept of local sovereignty on the one hand and traditional Methodist connectionalism on the other" (John H. Wigger, *Taking Heaven By Storm: Methodism and the Rise of Popular Christianity in America* [New York, 1998], 39–41 [quotation from 40]). Dee Andrews contends that Asbury and O'Kelly used the language of federalism and republicanism as they fought over the Methodist system of governance (Andrews, *Methodists and Revolutionary America*, 202–7). Allen expands on Andrew's argument in his more recent publication (J. Timothy Allen "Religion and Politics: James O'Kelly's Republicanism and Francis Asbury's Federalism," *Methodist History*, 44 [2006]: 153–65). Historian Russel Richey makes essentially the same argument concerning the schism. Foreshadowing later works, including his own, in his 1991 book he and his co-authors place the schism firmly within the post-Revolutionary context, although he underestimates by half the number of people who left the church after the schism. In his article, Richey agrees that O'Kelly "self-servingly" used the language of republicanism in his published works to attack "the tyrannical behavior of Asbury" but suggests that in reality, O'Kelly "preached a radical Whiggery," against "kingly" authority" (see Russel Richey, *Early American Methodism*, 13–20; Russel Richey, "Francis Asbury, James O'Kelly, and Methodism's Growing Pains," *Virginia United Methodist Heritage* [cited hereafter as *VUMH*] 27 [fall 2001]: 30–31 [quotations]; James Kirby, Russel Richey, and Kenneth Rowe, *The Methodists* [Westport, Conn., 1996], 84–85).

12. Even the Protestant Episcopal Church allowed equal lay participation at its General Conventions, the highest body in the church, from its inception in 1787, incorporating revolutionary ideals into a hierarchical church (Mark A. Noll, *A History of Christianity in the United States and Canada* [Grand Rapids, 1992], 150) and Donald S. Armentrout, "Episcopal Church in the South," in Samuel S. Hill ed., *Encyclopedia of Religion in the South* [Macon, Ga., 1994], 226). The overwhelming success of the Methodist Episcopal Church, America's largest church by 1840, despite decades of schism beginning in 1792, calls into question the contention of Hatch and his later supporters that America's preferred democratic Christianity (Hatch, *Democratization of American Christianity*). Certainly many did—those who joined the rapidly growing, Baptists, those who remained faithful to Quakerism, and those who remained in O'Kelly's church, to give examples. But the plurality of Americans made a dramatically different choice.

13. Stith Mead letterbook, 130–131.

14. The 20,000 figure seems to have first appeared in Alexander M'Caine's study of the Methodist Episcopacy, which he wrote to defend the movement for lay representation in the 1820s (Alexander M'Caine, *The History and Mystery of the Methodist Episcopacy, or, A*

Glance at “*The Institutions of the Church, As We Received them from our Fathers*” [Baltimore, 1827], 48–70. Nathan Hatch, seems to be the source of this figure in more recent secondary literature (Hatch, “Christian Movement,” 545–67, 549).

15. Lee, *Short History of the Methodists*, 358–59.

16. Unless otherwise indicated, all membership figures, circuit assignments, and records of clerical service and positions in this article are drawn from *Methodist Episcopal Church Minutes of the Annual Conferences of the Methodist Episcopal Church, v.1 for the years 1773–1828* (New York, 1840). This work is a compilation of the records from the various annual conferences. Analysis is based on the author’s various compiled databases of Methodist membership, circuits, clergy, patterns of cleric service, and more.

17. At the General Conference of 1784, the itinerants established a system for recording extensive data on all facets of the Methodist Episcopal Church, including membership and the number and types of preachers (Methodist Episcopal Church, *Form of Discipline for the Ministers, Preachers, and Members of the Methodist Episcopal Church in America* [New York, 1787], 5). These numbers must be taken with a grain of salt, not because the bishops deliberately sought to deceive—otherwise why would they have continued to document the serious membership declines during the 1790s—but because reports presumably did not always appear on time, or necessarily capture correctly the size of the individual societies. The societies (groups of all Methodists within an area and the basic unit of measurement) were living bodies, not static institutions, making it difficult to capture their sizes as members came and went throughout the year; the reported membership statistics captured at best a moment in time, and at worst, mistakes. But even if some itinerants inflated their numbers, the compilations probably did correctly capture the rough size of the church, and more importantly, the direction and approximate size of membership changes from year to year.

18. Thomas Ladley, “To the Western Methodist Historical Society,” *Western Christian Advocate* 6.43 (1840): 169.

19. Snethen, *Reply*, 58.

20. O’Kelly, *Apology*, 18 and MacClenny, *Life of Rev. James O’Kelly*, 64.

21. Asbury later pointed out that this tactic would be unavailable if the right to assign preachers did not remain in the hands of the bishops (Methodist Episcopal Church, *The Doctrines and Discipline of the Methodist Episcopal Church in America with Explanatory Notes, by Thomas Coke and Francis Asbury* [Philadelphia, 1798], pp. 40–41).

22. *Ibid.*, 53.

23. The actual figures are 14,988 members in society in 1784, and 60,169 members in 1798, which represents a four-fold increase (*ibid.*, 53).

24. Edward Dromgoole to Nicholas Snethen, 24 Feb. 1802, Edward Dromgoole Papers, Southern Historical Collection, University of North Carolina Library, Chapel Hill.

25. John Early, diary, 1 April 1810, VHS.

26. M’Kendree, “Undated Autobiography.”

27. In a unique interpretation, Allen argues that O’Kelly never truly opposed slavery and that his abolitionist stance weakened or vanished by the 1820s (J. Timothy Allen, “‘Some Expectation of Being Promoted’: Ambition, Abolition, and the Reverend James O’Kelly,” *North Carolina Historical Review*, 84 [2007]: 59–81).

28. James O’Kelly, Deed of Manumission—James O’Kelly to Dianna, 5 March 1785, James O’Kelly Papers, EU.

29. *Ibid.*

30. Wills of Elizabeth O’Kelly and James O’Kelly, James O’Kelly Papers, EU.

31. James O’Kelly, *Essay on Negro-Slavery* (Philadelphia, 1789).

32. Snethen, *Reply*, 43 and O'Kelly, *Vindication*, 32. Allen argues that the work was of an extremely poor quality, suggesting that the poor writing and inferior scriptural exegesis indicates a lack of sincerity on O'Kelly's part. Although one might imagine that an uneducated Methodist preacher—who served in a church that hardly encouraged vigorous biblical exegesis—might simply have done a bad job with his first book. Allen, "Some Expectation of Being Promoted," 65–75.
33. Devereux Jarratt, *Life of the Reverend Devereux Jarratt: Rector of Bath Parish, Dinwiddie County, Virginia* (Baltimore, 1806), 79.
34. O'Kelly, *Apology*, 38.
35. For the most comprehensive study of the subject, see Donald Mathews, *Slavery and Methodism: A Chapter in American Morality, 1780–1845* (Princeton, 1965).
36. For the best treatment of Allen's struggles to break away from the white Methodist Episcopal Church in Philadelphia, see *Freedom's Prophet: Bishop Richard Allen, the AME Church, and the Black Founding Fathers* (New York, 2008). Also see Richard Allen, *The Life Experience and Gospel Labors of the Rt. Rev. Richard Allen; To Which is Annexed the Rise and Progress of the African Methodist Episcopal Church in the United States of America...* (Philadelphia, 1880).
37. Andrews, *Methodists and Revolutionary America*, 147.
38. By 1800 Southern Methodists and Baptists were reluctant to admit slaves into membership without their masters' permission (Heyrman, *Southern Cross*, 69). Perhaps masters even more fiercely resisted attempts by a man like O'Kelly to convert their slaves, or perhaps he feared violence if he did so. John Wigger attributes the drop in southern membership (race unspecified) in part due to Methodist anti-slavery attitudes (Wigger, *Taking Heaven by Storm*, 5). Although no records exist to testify to Republican Methodists' attitudes towards racial equality, unlike other schismatic Methodist churches, such as the Methodist Protestant Church, they did not institutionalize support for slavery or racial divisions within the church. Likely masters found this lack of support for slavery frightening, even if the church did not actually treat blacks and whites equally.
39. Edward Dromgoole to Nicholas Snethen, 24 February 1802, Dromgoole Papers.
40. Francis Asbury, *The Causes, Evils, and Cures, of the Heart and Church Divisions: Extracted from the Works of Mr. Richard Baxter and Mr. Jeremiah Burroughs* (Philadelphia, 1792), 3 (first quotation), 8 (second quotation).
41. The Methodist Episcopal Church, *The Doctrines and Discipline of the Methodist Episcopal Church in America, Revised and Approved at the General Conference Held at Baltimore, in the State of Maryland, in November, 1792: In Which Thomas Coke, and Francis Asbury, Presided* (Philadelphia, 1792), 37–38, 147.
42. Snethen, *Reply*, 30.
43. *Ibid.*, 52–53.
44. John Atkinson, "General Conference of 1792," *Christian Advocate* (cited hereafter as CA) 67. 17 (28 April 1892): 290.
45. At the 1808 General Conference, Ezekiel Cooper made the first of many calls for the election of the presiding elders by the annual conferences, a privilege eliminated in 1796 in response to the O'Kelly schism. The fight continued until 1824 when the proponents of election finally suffered a decisive loss.
46. O'Kelly served one year on trial, six years as an itinerant, and seven years as a presiding elder; Phillip Bruce served two years on trial, four years as an itinerant, and nine years as a presiding elder; and Nelson Reed served five years as an itinerant and eight years as a presiding elder.

47. The Baltimore Annual Conference was chosen for comparison because, like the Virginia Conference, it is as old as Methodism in America, and data is available for same period. The Virginia and North Carolina Annual Conferences are considered together for two reasons. First, O'Kelly spent his career in both places, and had many followers in both states. Second, many of the circuits that were in North Carolina by 1800 were originally part of the Virginia Conference, and between 1774 and 1800, many circuits passed back and forth between the two conferences.

48. See, for example, [Alexander M'Caine] Nehemiah, "On the Expediency of Allowing to the Local Ministers and Laity, a Representation in the General Conference," *Mutual Rights* 1 (1825): 474 and J.S. Smart, "Providential Presiding Elders," *CA* 4 (27 Jan. 1876): 25. Snethen, on the other hand, never changed his opinion of O'Kelly, who he had fiercely opposed earlier in his career (Nicholas Snethen, *Snethen on Lay Representation, or Essays on Lay Representation and Church Government...* [Baltimore, 1835], 79–82.)

49. Elmer T. Clark et al., eds., *The Journal and Letters of Francis Asbury* (3 vols.; London, 1958), 3:534.

50. Heyrman, *Southern Cross*, 102.

51. These statements are based on the author's study of Methodist preachers and demographic information available in a variety of published and unpublished sources.

52. Andrews, *Methodists and Revolutionary America*, p. 209 (quotation) and Horace M. Du Bose, *Life of Joshua Soule* (Nashville, 1911), 47.

53. While her diary has been mistakenly labeled as having been kept by an O'Kellyite, Sarah Jones never actually joined the movement, but found herself torn between her love and support for both the O'Kellys and her loyalty to the bishop, or more precisely, to his institution, not to the man (Sarah Anderson Jones diary, 25 September 1792).

54. James M. Becker, "The Old Brunswick Circuit, 1772–1800," *VUMH* 28 (fall 2002): 20.

55. O'Kelly, *Apology*, 47

56. Kilgore, *James O'Kelly Schism*, 32.

57. O'Kelly, *Apology*, 48–49.

58. Or perhaps, his wife, fed up with religious quarreling in the church, burned them after his death to put an end to the fighting (Frederick Abbott Norweep, "James O'Kelly—Methodist Maverick," *Methodist History* 4 [1966]: 19). Whether either explanation is true or not is difficult to say, but certainly no minutes have ever been found

59. In 1808, the General Conference voted to switch to a delegated General Conference. As a result, after 1809 only select itinerants could participate, which represented a controversial change.

60. Newman, *Freedom's Prophet*, 158–182.

61. Lyerly, *Methodism and the Southern Mind*. Andrews also notes the central role that women played in eighteenth-century Methodism (Andrews, *Methodists and Revolutionary America*, 241).

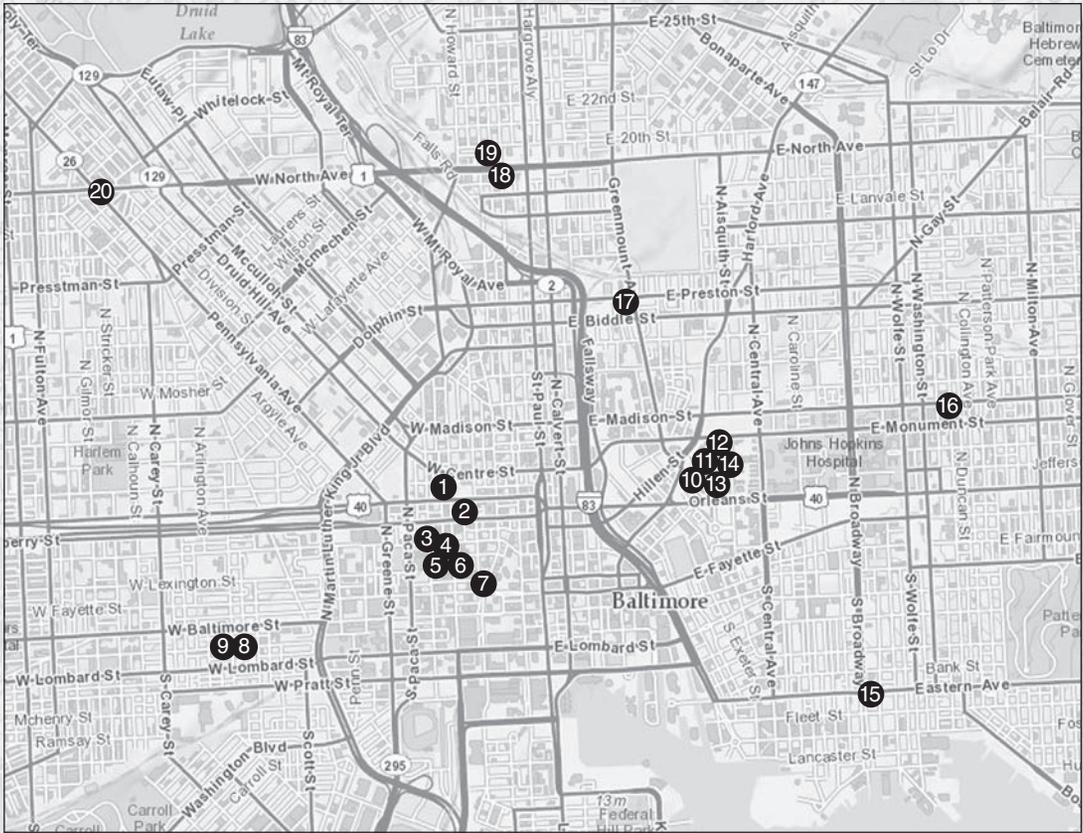
Baltimore: A History, Block by Block

A Portfolio of Photographs by
JAMES SINGEWALD

IN 2011, I launched a successful Kickstarter campaign to fund a project I titled, Baltimore: A History, Block by Block. It's a continuation of my thesis work at MICA where I photographed every building on an isolated two blocks in East Baltimore called Old Town Mall. Formerly Gay Street, these two blocks were closed to street traffic and converted into a pedestrian walkway in the 1970s as part of what became a failed urban renewal project. I was initially drawn to this place when I went looking for the Wells-McComas Monument, for which my great-great grandfather was the volunteer caretaker. He also had a cigar shop across the street from the monument at Aisquith and Gay Street called the Ashland Cigar Emporium. What I found was that the monument was still standing, his shop long gone, and the thriving marketplace that had always existed there was now a mostly vacant ghost town with a very long and rich history and one of the oldest parts of Baltimore. I photographed every building using a large format 4x5 view camera and Fujichrome Velvia slide film, which over saturates the colors and highlights the potential in these places. I combined all the photos and research into a self-published book and included it with sixteen 30x40 inch prints for the exhibition.

This set the stage for what I've been working on since the beginning of 2012. I've chosen to document ten other main streets in Baltimore similar to Old Town Mall: Howard Street, Eutaw Street, Lexington Street, Fayette Street, North Avenue, Greenmount Avenue, Broadway, East Monument Street, Pennsylvania Avenue, and Baltimore Street. I've managed to document at least one block from each of the ten. I've photographed most of Howard Street from Lombard to Madison and almost the entire stretch of West Baltimore Street from Martin Luther King Blvd. to Fulton. I ran out of film (200 sheets) a few months ago, but there is still a lot more shooting I need to do. I would also like to publish another book or series for this work as well as a series of exhibitions. It's a long term and ambitious task, but an important one for the city. My photography is meant to leave you not only with a sense of the condition of our cities, but also a feeling of urgency to see that they are improved and preserved and that the rich history behind the architecture and the community is not lost, but rather embraced. These images represent pieces of our history and the changes that continue to shape our future. The images may be viewed in full color at:

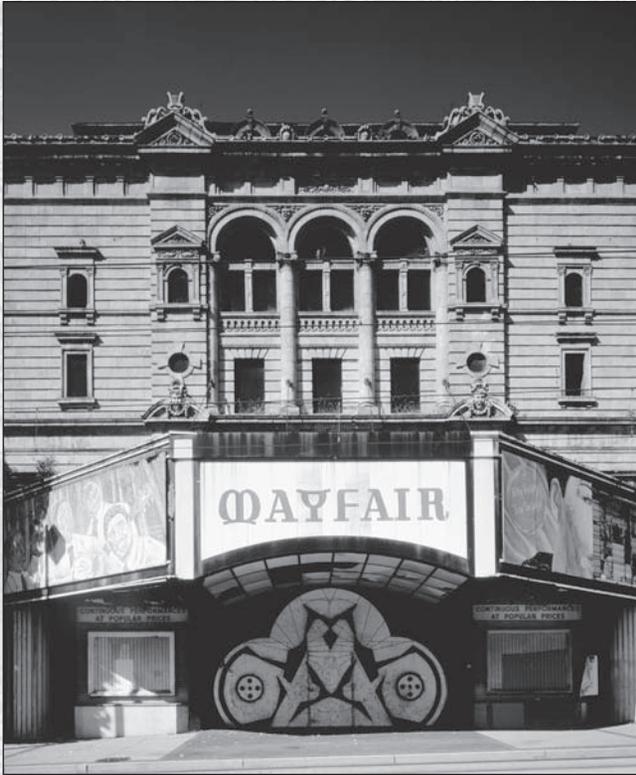
www.jsingewald.com
bmoreblockbyblock.tumblr.com



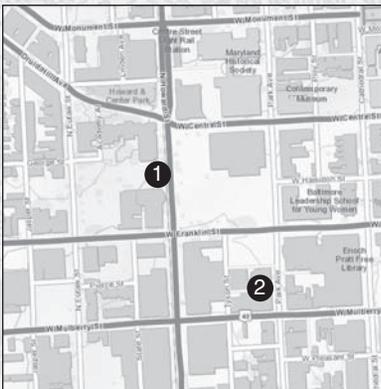
Locations of sites photographed

1. 508 N Howard St.
2. 406–408 Park Ave.
3. 308 N Eutaw St.
4. 288 N Howard St.
5. 121 Eutaw St.
6. 201–205 W Lexington St.
7. 228 W Fayette St.
8. 1001 W Baltimore St.
9. 1120–1112 W Baltimore St.
10. 442–426 Old Town Mall
11. 516 Old Town Mall
12. 517–515 Old Town Mall
13. 531–529 Old Town Mall
14. 555–549 Old Town Mall
15. 513 S Broadway
16. 2112–2116 E Monument St.
17. 1238 Greenmount Ave.
18. 1 North Ave.
19. 30–16 W North Ave.
20. 2426 Pennsylvania Ave.

Map images courtesy of Baltimore Cityview • <http://cityview.baltimorecity.gov>
100 N. Holliday Street, Room 632 Baltimore, MD 21202



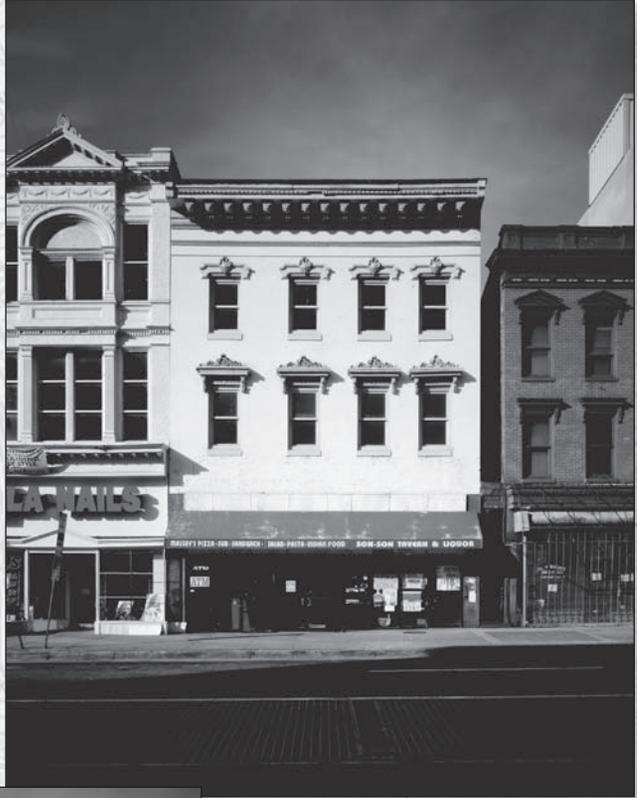
1. 508 N Howard St.



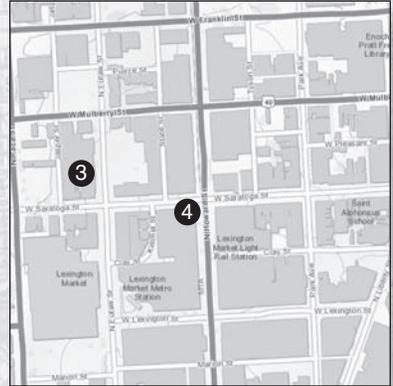
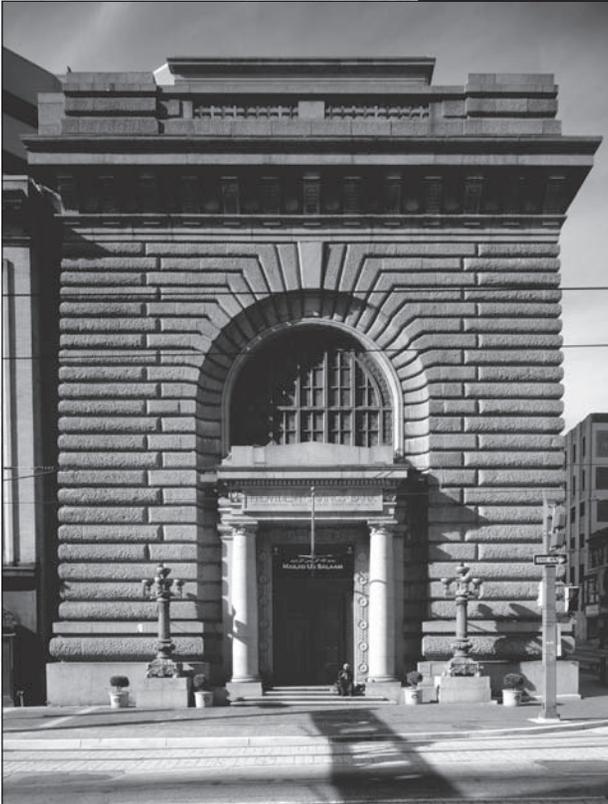
2. 406-408 Park Ave.



3. 308 N Eutaw St.



4. 288 N Howard St.





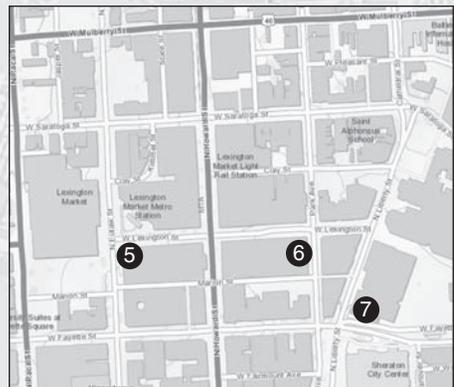
5. 121 Eutaw St.



6. 201-205 W Lexington St.



7. 228 W Fayette St.

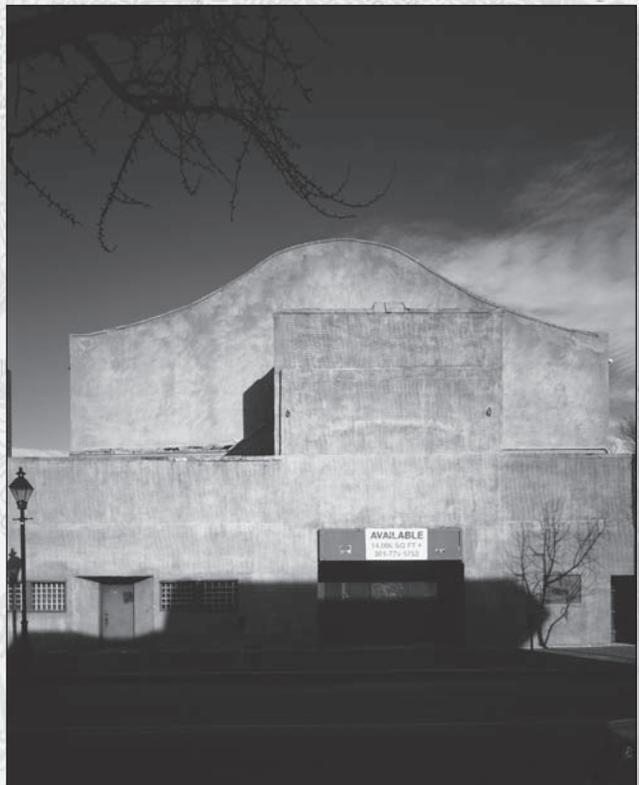




8. 1001 W Baltimore St.

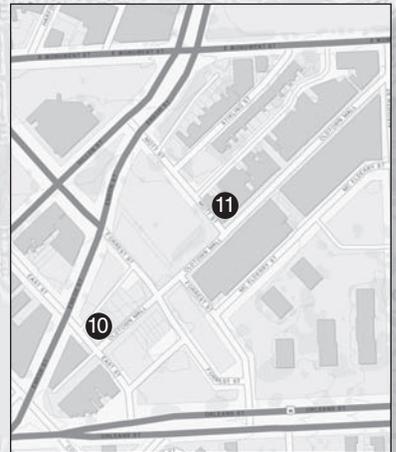
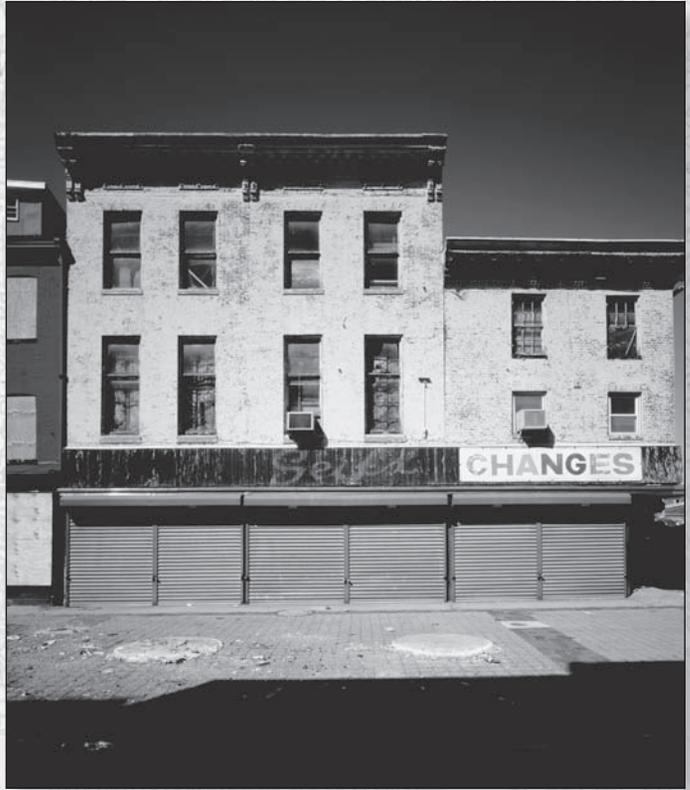


9. 1120-1112 W Baltimore St.



98

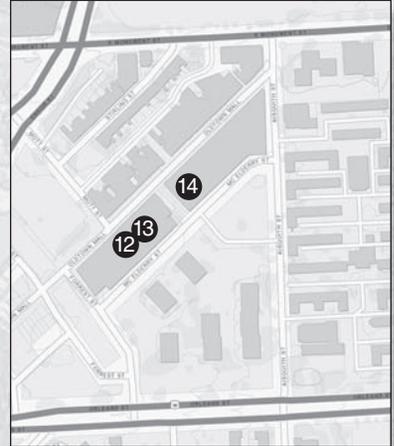
10. 442-426 Old Town



11. 516 Old Town Mall

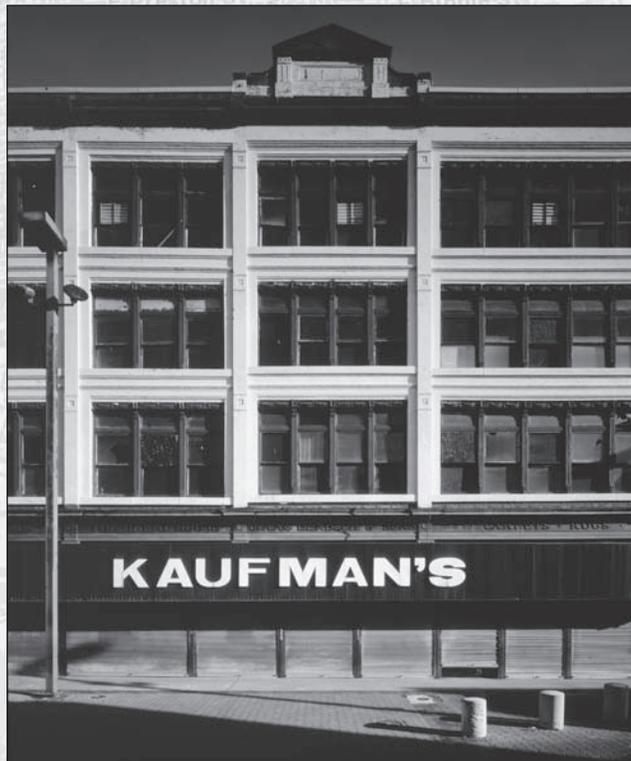


12. 517-515 Old Town Mall



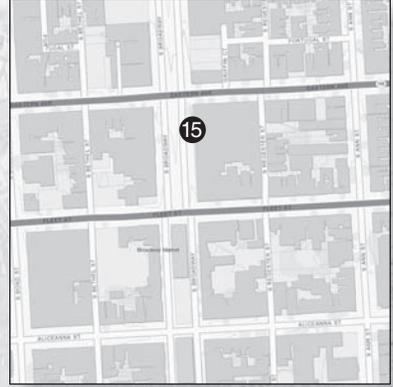
13. 531-529 Old Town Mall

14. 555-549 Old Town Mall

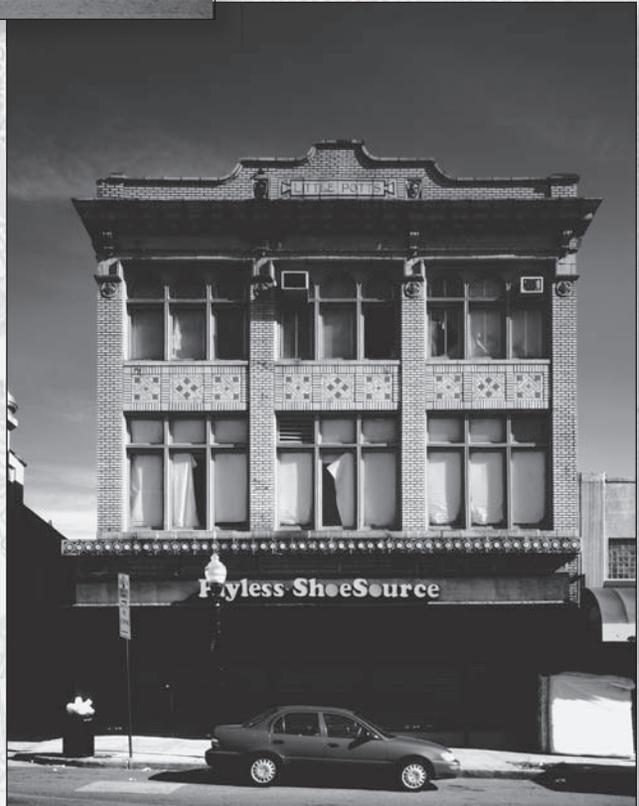
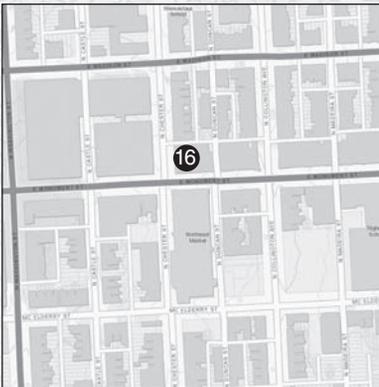


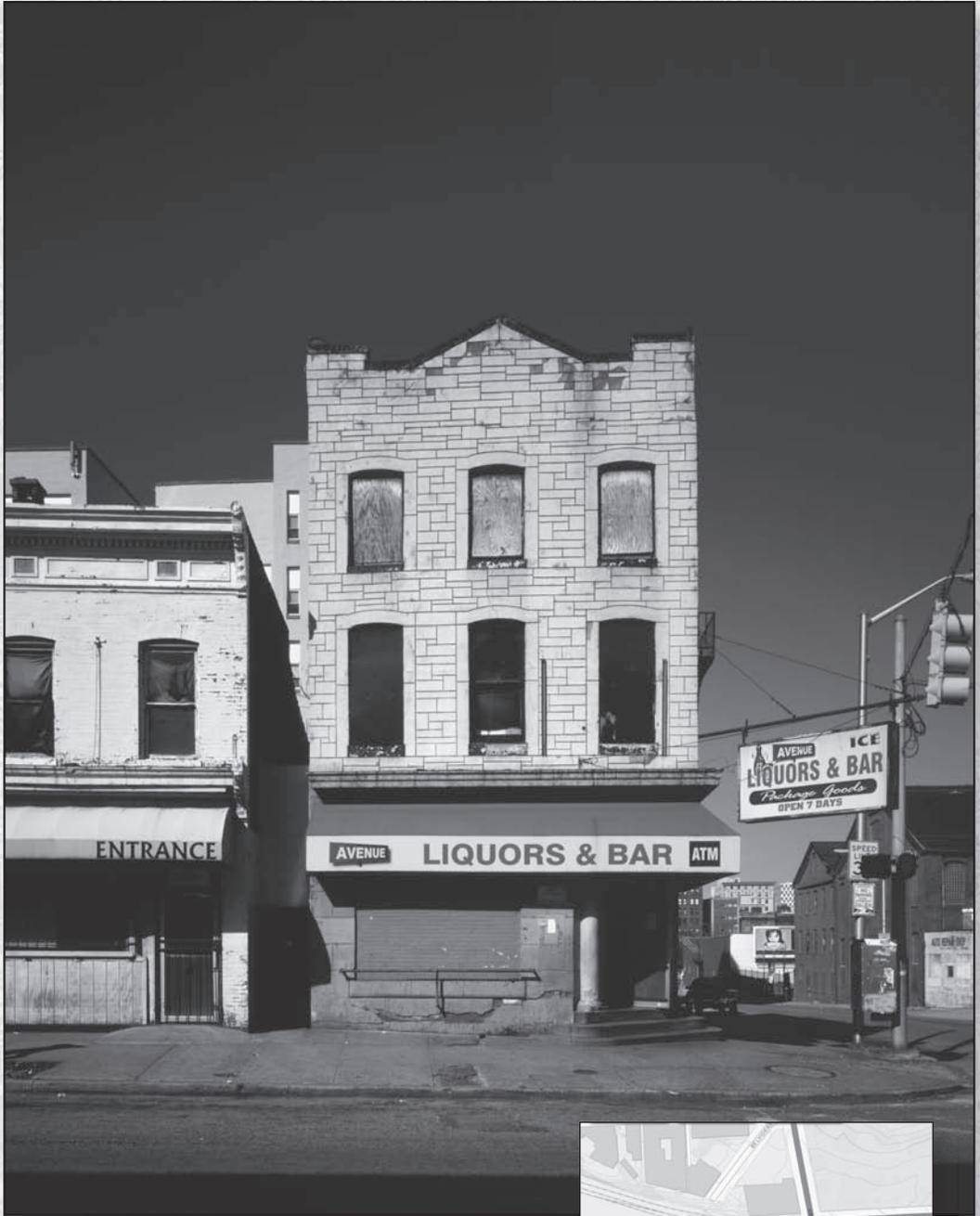


15. 513 S Broadway

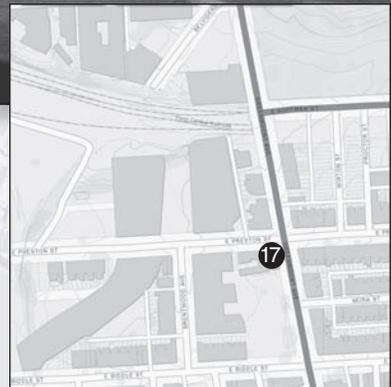


16. 2112-2116 E Monument St.



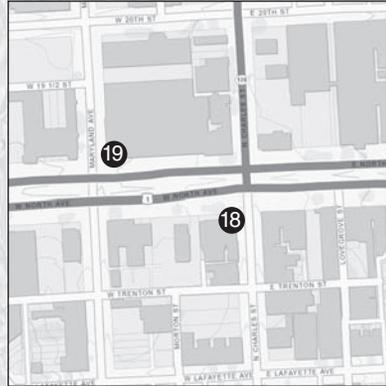


17. 1238 Greenmount Ave.

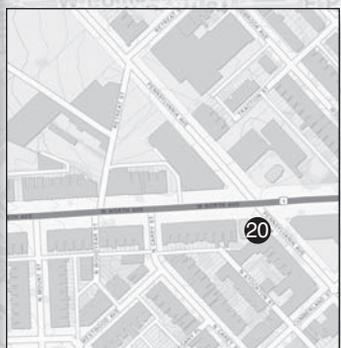




18. 1 North Ave.



19. 30-16 W North Ave.



20. 2426 Pennsylvania Ave.

Maryland History Bibliography, 2012: A Selected List

ANNE S. K. TURKOS and JEFF KORMAN, Compilers

From 1975 on, the *Maryland Historical Magazine* has published regular compilations of books, articles, and doctoral dissertations relating to Maryland history. The following list includes materials published during 2012, as well as earlier works that have been brought to our attention.

Bibliographers must live with the fact that their work is never finished. Please notify us of any significant omissions so that they may be included in the next list. Send additional items to:

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