2015

Poor and Dead and Much Involved: The Afterlife of Private Debt in Post-Revolutionary Virginia.

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College of William and Mary

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Poor and Dead and Much Involved: 
The Afterlife of Private Debt in Post-Revolutionary Virginia

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A Dissertation presented to the Graduate Faculty
of the College of William and Mary in Candidacy for the Degree of
Doctor of Philosophy

American Studies Program

The College of William and Mary
August 2015
This Dissertation is submitted in partial fulfillment of
the requirements for the degree of

Doctor of Philosophy

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ABSTRACT

Around the turn of the nineteenth century, Special Agents of the United States canvassed their fellow Virginians about their still unpaid pre-Revolutionary debts to British merchants. This dissertation tells the previously untold story of the thousands of tales they collected. Although abstracted in the *Virginia Genealogist* between 1962 and 1989—more than 1,000 magazine pages worth of reports were reproduced—the Reports on British Mercantile Claims and the process that inspired their collection have been all but overlooked by professional historians. These conversations between debtors and special agents, and the reports that resulted, represent a narrative and memory project broad in scope and rich in detail. The dissertation argues that an idiom of debt, and a hook for the rising Democratic-Republican Party—the “Virginia party”—emerges from the reports when viewed as a whole.

The special agents’ investigations were intended to support the United States’ arguments before a bilateral arbitration commission created by the sixth article of the Jay Treaty. A novel turn in international adjudication, the commission was charged with settling the millions of pounds of individual debts that had gone untouched since the Revolution. This dissertation explains the commission’s work from 1797 to 1800 and situates it in a quarter-century of legislative, constitutional, judicial, and diplomatic disagreements over Virginia’s immense pre-Revolutionary debts. Though a spectacular, even dramatic, failure, the commission also produced an unexpected success: the Reports on British Mercantile Claims.

These stories of Virginia’s pre-Revolutionary debtors—many, by 1800, “poor and dead,” almost all with finances “much involved”—are untouched treasures. This dissertation follows the work of historian Natalie Zemon Davis in examining both the tales and their tellers. The Special Agents of the United States, and their primus inter pares William Waller Hening, were Virginians who themselves knew debt on intimate terms. Their conversations with thousands of their neighbors, most of whom were indebted to Scots storekeepers in Virginia’s Piedmont, deserve our close attention. In addition to telling the previously obscure history behind these stories and mining their narrative possibilities, this dissertation aims to persuade scholars of these unique sources’ rich potential.
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ACKNOWLEDGEMENTS

There is a good bit of talk in the pages that follow about debts that are beyond folks' means to repay, little of it uplifting. My huge debts are a joy to acknowledge.

I have been extraordinarily fortunate to work with a brilliant, supportive, and steadfast committee through my comprehensive exams, colloquium, and now dissertation. Scott Nelson's broad-minded support for my work over many years now has meant more than I can easily say. Suggestions at several key moments kept this project off the shoals. Scott's gift for writing and editing deserves all the colloquialisms he thinks I know, and his unfailing kindness is an example I shall not forget. Having a handful of students commute from his class to mine (or the reverse, which I much prefer) every so often is a real honor.

Charlie McGovern taught one of the best classes I've taken and has been an instrumental part of my progress since. His generosity of spirit typifies, for me, a program that welcomed a student differently situated than most. I am grateful for his guidance and several lines he seared into my consciousness. Put down that racing form and pay attention, indeed. Dave Douglas affirmed my deep interest in our country's effort to grapple with race and taught me several new ways to understand it. His welcome into a seminar at the William and Mary Law School has paid, for me, manyfold: The best moments in my own classrooms have occurred while replicating his course in my idiosyncratic way. I am also grateful for Dave's mentorship and support in several critical moments. Being in traces with Chris Némacheck for six years now has been nothing short of a thrill. Her welcome into the government department, her unflagging support ever since, and her friendship are in a category of one. Having taught in a department with carefully policed borders, I am all the more grateful that she has invited me to teach her classes—as I think of them still—in my own way.

Woody Holton's keen advice bookended this project. I hope I've done right by his timely suggestion to consider the Reports on British Mercantile Claims on their own terms. I'm grateful, too, to Professor Holton (and to his family) for interrupting their vacation to join my defense. His scholarship had added to my teaching before we were introduced, and I still look forward to trying the gambit with which he begins Unruly Americans.

Two others have contributed significantly to this project, but should—like my intrepid committee—be held harmless for any faults that remain. Some graduate
students, I'm told, have a “cohort”; I have a comrade in Jennifer Blanchard. Again and again her support and input remind why I got the better deal. She read every word of what follows—to say nothing of most of the other words I've written that have mattered. I convey my thanks and beg her pardon for whatever permanent damage such duty hath wrought. I might be tempted to call Bryan Casey a classic case of the student from whom a teacher learns. But there is nothing classic about Bryan Casey. I appreciate the opportunity to be surprised by him for several years now.

Some of this project's best moments emerged from conversations with archivalists and librarians. I had a number of good talks with Kay Domine, who introduced me to archives when she hired me to work in the basement of Swem more than twenty years ago. Archives has since moved to other quarters, and so, soon, will she. Congratulations on your retirement.

More recently her colleagues Alan Zoellner and Martha Higgins were a real boon to my efforts. Martha in particular was kind to respond to any query I could generate. She also put me in touch with Steve Davenport, who provided a warm welcome to the Library of Congress and remained a resource for other federal repositories, too. Connie King could not have been more helpful to my research at the Library Company of Philadelphia. She was also kind to suggest several other opportunities. Closer to home, Frances Pollard helped me scour the Virginia Historical Society's collections and put me in touch with one of their denizens, Neil Hening. Neil was kind to introduce me to his ancestor William Waller Hening, after a fashion; I look forward to finally getting to read that biography.

Several members of William and Mary's staff helped me navigate the details that attach to an endeavor such as this. I appreciate the help and good cheer of Jean Brown and Wanda Carter over many years. Betsy Croswell made a critical, late-inning save for which I'm grateful. Sarah Taylor was also a great help, and Joe Cunningham did what he always does, which is more than anybody should ask. Thanks to you all.

I came to William and Mary thinking I might try my hand at early American history. It is no reflection on the fine teaching of John Selby and Jim Whittenburg that I've considered a few other angles since. I've been exceptionally fortunate to study with splendid teachers over the years. Bryan Borah, Joanne Braxton, Susan Donaldson, Mel Ely, Arthur Knight, Rich Lowry, Ted Ownby, Cam Walker, and Charles Reagan Wilson avoided affiliation with this project but have nonetheless added much to my thinking over the years. Teaching at William and Mary for the last several years has been more fun and more rewarding—for me,
at least—than I would have ever thought possible. I'm grateful to John McGlennon and his colleagues for giving me the opportunity, and to so many students for locking arms with me in ennobling ways.

I'm blessed to have an array of friends whose interest in this project has been encouraging. Beth Barrett is first chair in this section, but she is joined by Michael Fox, Jeff Hockaday, Phylis Milloy, Charles Poston, Joel Schwartz, and Danny Yates. I appreciate my fellow travelers David Kidd and John Miller holding a place for me in their elite company, where War Eagle is spoken and Kentucky Country Boogie, sung. Their example, like that of Susan Glisson, who I was fortunate to watch run these traps many years ago, has been a great help. Thanks, too, to those like Tim Sullivan, Gene Nichol, and Debbie DiCroce who've abided and even encouraged my graduate work while I was in their employ.

Layne and Jackson Sasser, educators both, loved me up and put me in countless positions to succeed during my first twenty years. Their most significant material gift to me—William and Mary—has been at the center of the twenty years since. Thank you for showing me work worth doing and helping me pursue it. Without a second set of parents I would not have been able to do that work for the last couple of years, to say nothing of complete this research and writing. This is Linda and Dave Johnson's accomplishment nearly as much as anyone else's.

Perhaps only some of the more benighted eighteenth- or nineteenth-century debtors in my story sacrificed more than C.J. Sasser to bring it about. Her courage, understanding, and love during the years just past are a marvel. Thank you for letting me join your team. Barrett and Price Sasser have made us both immeasurably proud while this dissertation developed. The most important thing it will ever do is allow me to watch you grow into beautiful people at close hand. I wrote some of this in your midst, but your laughter and love made every page possible. Thanks for helping me with the big kids.

A good bit of this dissertation, like some of the debates and interviews it examines, was created out of doors. On one such occasion, and at a relatively late hour, I was asked for a loan by a fellow Virginian fallen on hard times. The request came complete with a story that many pre-Revolutionary debtors would have recognized: a gentleman displaced from home facing bad luck beyond his means. The story he shared with me was a potent reminder of how wrong the following reports were to equate solvency and character. The notion has special appeal to one with debts as considerable as mine.
This Dissertation is for my family.
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Introduction

“The Object of My Appointment”

In June of 1801, in Campbell County, Virginia, Christopher Clark paid a call on Sackville King. It was an unexpected visit, but perhaps not an unwelcome one. Clark was probably well known to King. The son of longtime justice of the peace James Clark, Christopher Clark was commonwealth’s attorney for neighboring Bedford County, which he also represented in the House of Delegates. Their paths would have crossed on either of their county’s court days; Bedford and Campbell share an arrow-straight border that runs thirty miles southwest of Lynchburg. Perhaps King, like so many of his neighbors, even sought out Clark for legal advice. His caller was, after all, a confederate of new president and soon-to-be part-time Bedford County resident Thomas Jefferson. King probably appreciated that Clark’s professional and political fortunes were rising with the Democratic-Republican tide then sweeping Virginia.

Clark was not there to talk politics, at least not officially. He visited to ask King about a £1.3.7 debt accrued at Thomas Snodgrass & Co.’s store in Goochland a generation earlier. Like Clark, Jefferson, and countless other late-eighteenth-century Virginians, King owed money to a Scots merchant. In 1800, as in 1775, King was “very able to pay.” Many more of his fellow Virginians would have been better described by a phrase Clark applied to Benjamin McCraw: “He stands with the doubtful.”1 The doubt, like the debt, predated the Revolution but long survived it.

1 Christopher Clark, Report on Sackville King, “British Mercantile Claims, 1775–1803,” in The Virginia Genealogist 21, no. 3 (July–September 1977), 200; Clark, Report on Benjamin
The £1.3.7 ¼ King had spent on nails or linsey-woolsey or ribbon was, at the turn of the nineteenth century, among $25,000,000 claimed by British merchants through a new process to reckon such debts: a bilateral arbitration commission established by the Jay Treaty. Clark was one of nineteen Virginians hired by the United States to research claims presented to that commission.² And so he confirmed the details of King’s pre-Revolutionary obligation: where he’d done business with the Snodgrass firm and for how much; his solvency or lack thereof in 1783, when the Revolutionary War was concluded by the Treaty of Paris; and whether Snodgrass had sued or otherwise sought payment in the years since. King responded to Clark’s queries with little hesitation. He “recollect[ed] dealings with the company” but long ago lost “particular knowledge of the balance.” The Snodgrass firm had not sought payment in the intervening years. Finally, perhaps as Clark was taking his leave, King emphasized that “he abhor[ed] the idea of the government paying his debts.”³

But only so much. What King did not do—indeed, what almost none of the debtors whom special agents interviewed around 1800 did—was reach for his purse to square the account. If he had, Clark’s response would have been simple. He was not there to collect the debt. He was after the story. That, as Clark’s fellow Special

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Agent William Waller Hening explained to another Virginia debtor, was “the object of my appointment.”

Clark and Hening’s assignment sounds like one fit for a grammar school history class: Ask your family, and your family’s friends, how they’ve spent the last quarter century. Ask your neighbors, and your neighbors’ neighbors, and folks from different walks of life. Compare what they’ve told you with what you’ve learned through your own experience. Confirm what you can through a bit of research. Finally, write a simple report—something from a single sentence to a well-fed paragraph, say—that distinguishes one of your family, friends, or neighbors from the next.

This, in simplest terms, was the task embraced by the nineteen Special Agents of the United States who reported on Virginians’ private, pre-Revolutionary debts still sought by British merchants around the turn of the nineteenth century. Their reports ultimately constituted the Reports on British Mercantile Claims, a collective account of Virginians’ experiences with debt as the colony became a Commonwealth. Though abstracted at impressive length and detail in the *Virginia*

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4 In a response that may be unique in the Reports on British Mercantile Claims, Robert Sharp Sr. *did* remit a £10.7.4 debt to Special Agent William Waller Hening. When Hening ran into Sharp’s son on 22 April 1801, he mentioned the claim Donald Scott & Co. had lodged against his father. “The next day the old man sent up the principal of the debt, supposing I was authorized to receive it,” Hening wrote. Though he explained “the object of my appointment,” Hening also “told him as the agent for the creditors was on the spot I would hand him the money as a friend.” As we shall see in Chapter Five, Hening’s intimate knowledge of three generations of Sharps and two representatives of the Scott firm exemplified his deep knowledge of the Virginia way of debt. V29:N4:300.
Genealogist more than 150 years later, professional historians have all but overlooked the reports.5 This dissertation seeks to tell the story of these stories.

During its nearly two centuries as a British colony, Virginia’s way of debt was its way of life. The tobacco culture that dominated within years of Jamestown’s settlement, long credits required to provision planters between harvests, the home government’s mercantile policy—all led Virginians into a cycle of debt with the London- and Bristol-based firms who consigned their crops. When Virginians pushed west past the fall line around 1740, opening a new frontier for tobacco in the Piedmont, a new commercial model followed. Scots shopkeepers and factors now bought Virginia tobacco directly and sold every ware imaginable on credit. Within a generation the Scots “houses,” as contemporaries called these firms, dominated trade in Virginia.6 They held debts accrued by all sorts of Virginians, but the majority—as the Reports on British Mercantile Claims make clear—were modest sums accrued by middling women and men. My first chapter tells the story of Virginia’s seventeenth- and in particular its eighteenth-century way of debt.

The Revolution redoubled Virginia leaders’ commitment to passing increasingly creative debtor relief laws. Courts were closed to creditors during the war and open afterward in name only. When statutory bars to collection failed, judges and juries could be counted on to show lenience to their fellow Virginians and fellow debtors. Debt was so pervasive in Virginia—and common in other states, to be sure—that it had a demonstrable effect on the drafting and ratification of the

5 The Virginia Genealogist’s expansive reprinting of the reports, together with its wider availability to future scholars than the Colonial Records Projects microfilms, explains my decision to use these versions of the reports as my principal sources.
6 See, for example, the report on James Shaw, an “agent for British houses.” V20:N3:220.
Constitution, the opening of the new nation's federal courts, and the timbre of early American diplomacy with Great Britain. Each of these conversations dealt, in its way, with Virginia's crushing, and lasting, pre-Revolutionary debts. My second chapter situates Virginia's pre-Revolutionary private debt as a principal character in the new nation's legislative, judicial, and diplomatic affairs during the last two decades of the eighteenth century. Understanding debt's outsized role helps us connect several of the era's key episodes. It also gets us closer to understanding how the special agents and debtors who spoke around 1800 thought, felt, and talked about their pre-Revolutionary obligations. My first two chapters are together a primer they would have deemed beyond obvious.

The Treaty of "Amity, Commerce, and Navigation" struck with Great Britain in 1794, more commonly known by the family name of the Federalist chief justice who negotiated it for the United States, was the most domestically controversial of these international doings. Signed in 1794, ratified in 1795, and funded by a reluctant House of Representatives in 1796, the Jay Treaty addressed, among other things, matters yet outstanding from the 1783 Treaty of Paris. For Great Britain, and in particular her influential merchant class, pre-Revolutionary debts were key. The treaty's sixth article designed a novel bilateral arbitration William Cobbett aptly described as "a radical remedy for an old sore." 

And so twenty-two Aprils after the Revolution's first shots rang, two British commissioners landed in Philadelphia to attempt an arbitration of pre-Revolutionary debts. Together with two Americans, and a fifth member determined

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by drawing names from an urn, these diplomats would attempt during the next two years to settle debts that had gone unpaid for a generation. Though it was the treaty’s longest provision, the sixth article’s abstract instructions left the commission rudderless. Tainted by Philadelphia’s riven political culture and undermined by personal enmity among its members, the Article Six Commission was little more than a new forum for the political debate that had long surrounded Virginia’s pre-war debts. My third chapter tells the story of the commission’s spectacular failure.

Before the commission to settle pre-Revolutionary debts ran aground, the United States authorized thousands of interviews with which it intended to respond to, and to refute, the claims of British merchants. Nineteen Virginians reported on at least 7,500 debts between 1798 and 1800, often speaking with debtors directly just as Clark did with King. These Special Agents of the United States were mid-career professionals, by and large, and most were neither common folk nor elites: the kind of Virginians connected enough to secure the government’s short-term piece work but in a financial position tenuous enough to covet it. Indeed, these nineteen Virginians well understood the reach of debt in their neighborhoods. Each had his own complex relationship with debt, many of which ended tragically during the early nineteenth century. Most of those who served as special agents also had a close professional affiliation with debt through their work as surveyors, sheriffs, or, most

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8 About 7,500 reports were abstracted during the *Virginia Genealogist*'s twenty-seven year serialization. Though beyond my project’s scope, some future scholar may wish to compare this number with the full Colonial Records Project abstracts. A still further comparison with the Treasury Office’s papers could confirm whether those Colonial Records Project microfilms are comprehensive.
commonly, attorneys. When the special agents knocked on a neighbor's door to talk
debt they knew of what they spoke.

While in the employ of the United States as the eighteenth century closed,
the special agents fulfilled a fascinating, liminal role. Unmistakably Virginian in
outlook, they stood briefly in the shoes of the new national government. Democratic-
Republicans, in the main, they viewed this government with suspicion. Still, it was
poised to fulfill the obligations so long avoided by Virginia debtors and their
representatives. A government not in existence when debts were contracted was
seeking to enforce them for a government with whom bonds were severed. My fourth
chapter ventures a prosopography, or group biography, of these Special Agents of the
United States: the fifth explores about half of their individual stories in more
searching detail.

Not all special agents were created equal. William Waller Hening, in
particular, was born to the task. The author of more reports on Virginia debts
abstracted by the *Virginia Genealogist* than any of his colleagues—and reports that
were markedly better researched and written, and more likely to convey a
considered perspective, than others'—Hening is the indispensable voice on prewar
debts. He approached them after a decade of legal practice steeped in debt. By 1800
he was the authority, literally, on the practice of law in Virginia. The texture of his
reports reflects this predisposition. My sixth chapter explains how Hening's career
as an attorney, author, court administrator, and legislator uniquely prepared him to
emit rich reports on his fellow Virginians' pre-Revolutionary obligations. We leave
him as he left so many of his overburdened neighbors, dying penniless on the charity
of his children.
Virginians' pervasive and lasting debts to Scots storekeepers, most in the
Virginia Piedmont, inspired the agents' reports. But many of the reports, and most
of those valuable to historians, only begin with debts. They are more like an
improvisational troupe's "open offer," giving the debtor, the agent, or some
combination of the two the occasion to spin a story of their own making. And as
Hening told Robert Sharpe, Jr., it was stories—not debts—that the special agents
collected. Their reports tell of flight, fraud, murder, suicide, poverty, strong drink,
and, occasionally, strong opinions—much of it, like the interview itself, springing
from Virginia's lasting debts.

Though kaleidoscopic in detail, the 7,500 reports abstracted by the Virginia
Genealogist approach uniformity in structure. Most include the debtor's name; the
county in which he or she resided; the location of the store to which he or she had
become indebted; the amount of the debt, and whether it was secured by account or
by bond; the firm to which the debt was owed; and a brief summary of the debtor's
comings and goings since the Revolution. These narratives, which usually run from
a phrase to several sentences, note whether the debtor has died, and, if so, to whom
his or her estate conveyed; discuss whether the debtor has moved out of the area,
and often, any family or friends who accompanied him or her; and detail the status
of the debtor's past or present capacity to satisfy the debt—an understandable
focus.9

9 When debtors' accounts reached a threshold merchants were uncomfortable continuing to
the following year, they would often secure the debt with a bond—little more than a promise
to pay in a given period of time, usually up to a year. This action also stopped, for the period
designated, any collection activity on the part of the creditor. Peter J. Coleman, Debtors and
Creditors in America: Insolvency, Imprisonment for Debt, and Bankruptcy, 1607–1900
These reports, which are the heart of my final chapter, deserve analysis for their compelling individual stories but also for their collective commentary on Virginia during the last quarter of the eighteenth century. I offer a close reading of one report and a description of several themes that emerge in others. These convey several lessons about Virginia in both 1775 and 1800. Even the details we know well—that debt, reputation, and slavery were matters that obsessed late-eighteenth-century Virginians, for example—read differently in the voice of indebted Virginians and the special agents who called on them. A new nation’s new politics also shine through episodically. How often did a debtor, when answering the door and ruminating over antique obligations, wonder too about the fate of his or her new country? And how did agents, when retelling these stories, venture their own opinions about personal debt in years when Virginia was bound to Britain? To borrow a phrase that appears often in the reports, there was “much involved” in the narratives they convey.

And the reports are, fundamentally, efforts at storytelling. Though modern scholars and genealogists have occasionally called on the reports to support this argument, flesh out that biography, or fill in still another family tree, no one has interpreted them on their own terms—that is, in toto. I argue that the reports are a collective attempt to reframe Virginia’s prewar debts and the Revolution that preserved them in amber. In their common details and trajectory, and in the voices of debtors and agents who collaborated to craft the narratives, we can divine a Virginian idiom of debt.

I follow the exceptionally creative work of historian Natalie Zemon Davis in mining the Reports’ narrative possibilities. As we shall see, Davis’s work with
applications for royal pardon in early modern France provides an interpretive model for understanding the Reports on British Mercantile Claims and their moment. Her pardon-seekers collaborated with notaries—sometimes adding an attorney into the mix—to craft a tale that would win reprieve. My special agents and debtors marshal stories in a somewhat similar spirit. "The notary gives the document its frame," Davis explains, "and writes the king and the supplicant into the narrative, but collaborative product though it is, the letter of remission can still be analyzed in terms of the life and values" of the condemned. Details differ with my stories, of course; any of my subjects would hope to "sav[e] his neck by a story" only figuratively, and they describe not one ill-fated day but often their family history over a quarter-century or more. Still, my analysis of the Reports on British Mercantile Claims' storytelling owes much to Davis's broad-minded approach.

I also analyze the reports as a public memory project the likes of which come along but rarely—a kind of StoryCorps for its time. To ask a Virginian about swollen and superannuated accounts around 1800 was to put him or her in mind, naturally, of the War for Independence. Such conversations occurred at almost the precise moment of triumph for Democratic-Republicans, which was known in many places.

11 Another set of sources even more focused on memory are the applications for Revolutionary War pensions, which historian Caroline Cox rightly calls "one of the great oral history projects of all time." Those applications were still arriving when the special agents began their work. "Public Memories, Private Lives: The First Generation Remembers the Revolutionary War," in Michael A. McDonnell, et al., eds., Remembering the Revolution: Memory, History, and Nation Making from Independence to the Civil War (Amherst: University of Massachusetts Press, 2013), 113. Now in its thirteenth year, StoryCorps has archived personal interviews of nearly 100,000 storytellers. The non-profit organization partners with National Public Radio to broadcast selected interviews and the Library of Congress to archive them in toto. http://storycorps.org/about/faqs/, accessed 1 May 2015.
quarters as the "Virginia party." Concern about the influence of Great Britain and
debt—broadly understood—were among the new party's core principles. I argue that
the Reports on British Mercantile Claims are best understood through the two
triumphs that bookend their narratives. To tell stories of debts in 1800 was to tell, at
least implicitly, the story of commonwealth and country alike.

For example, the interviews refer to the experience of the Revolutionary War
tacitly but with real nuance. Though the debts at issue may have given Virginians
reason to be elated with Independence, their thoughts of the Revolution ran to trial
as often as triumph around 1800. Historian Michael A. McDonnell reminds us that
those who experienced the War would have struggled with our modern
understanding of it as a "nation-building" enterprise. Instead, the new states were
riven by sectionalism, loyalism, taxes, and impressment into the ranks—it was "a
Revolution divided against itself." The middling folk who owed modest debts to Scots
merchants' Piedmont stores knew this ambivalence particularly well, since the
hardships that interest McDonnell disproportionately upended their lives and
finances.12

Though compelling, the thousands of conversations like Christopher Clark's
and Sackville King's remain elusive. What thoughts would have flooded the minds of
debtors when queried about their debts of yesteryear and the last twenty-five years
of their lives—the first twenty-five years of their new country's life? The Reports on
British Mercantile Claims they left provide good clues, but beyond the corners of
their pages the debtors and special agents who interviewed them are silent. The

12 "War and Nationhood: Founding Myths and Historical Realities," in Michael A. McDonnell,
et al., eds., Remembering the Revolution: Memory, History, and Nation Making from
Independence to the Civil War (Amherst: University of Massachusetts Press, 2013), 30.
circumstances of their obligations' births and lives—and the sustained controversy they inspired after the Revolution—give us the vocabulary and grammar of these conversations. More recent philosophers, theorists, and social historians can also help us further unlock these Virginians' processes of looking back.

Economic anthropologist David Graeber might argue that the Reports on British Mercantile Claims exemplify his view of debts since time immemorial. In his telling, outlined in the modestly titled *Debt: The First 5,000 Years*, the struggle between rich and poor has largely taken the form of conflicts between creditors and debtors—of arguments about the rights and wrongs of interest payments, debt peonage, amnesty, repossession, restitution, the sequestering of sheep, the seizing of vineyards, and the selling of children into slavery.¹³

Indeed, Virginians' pre-Revolutionary obligations to British merchants embody several of the details about debts that most interest Graeber. Merchants and Virginians alike conflated debts with moral failure—"rights and wrongs." This persistent and faulty thinking is all too common, in Graeber's view. Too, political debates about whose debts would be excused raged both before and after the Revolution. These debates, in different forms, form a significant throughline of the story that follows.

Graeber would almost certainly view conversations between debtors and special agents as—at bottom—debates about who is empowered, and who is controlled. Those active in the United States' first party system, in particular the Democratic-Republicans that so thrived in late-1790s Virginia, would have little

trouble embracing this argument.14 And Graeber's earlier description of politics, in a very different context, "as mainly about the circulation of stories" also has appeal for an analysis of the Reports on British Mercantile Claims.15

Finally, my project is informed by Bruno Latour's Actor Network Theory. Latour challenges scholars to "reassemble the social" on its own terms, that is, through painstaking observation and description. Well-wrought descriptions are "incredibly demanding," he emphasizes, and unsurprisingly rare in the literature. Latour warns against blithely taking too much for granted, specifically decrying facile assumptions that often surround groups, actions, objects, facts, and empirical research—the very building blocks of most social science and humanities research.16 When a framework, theory, or argument becomes a crutch, Latour argues, apt description suffers. Instead, "the talk of defining and ordering the social should be left to the actors themselves, not taken up by the analyst."17 It oversimplifies—but does not betray—Latour's thinking to say that it resonates with the advice given to writers in newsrooms and classrooms alike: Show, don't tell.

How might Latour's charge apply to an American studies project, and mine in particular? Latour's warnings can be read as a caution to historians and Americanists to avoid fetishizing argument. Indeed, he might respond to the

14 Graeber's analysis here approaches the thesis of T.H. Breen: While it is too much to argue, as some of his predecessors had, that debts caused the Revolution, their escalation after 1750 and the crash that transpired in 1772 unmoored leading Virginians. A feeling that their (financial) independence was in the balance, then, opened them to the notion of a break with the home government. *Tobacco Culture*, 23–30, 133–141.
16 "To describe, to be attentive to the concrete state of affairs, to find the uniquely adequate account of a given situation, I myself have always found this incredibly demanding." Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network-Theory*. (New York: Oxford University Press, 2005), 144, 22.
17 *Reassembling the Social*, 24.
perceived call to “intervene in the literature,” as it’s said, with something like this:
“Deploy the content with all its connections and you will have the context in
addition.” The approach holds special promise in a field as laden with competing
interpretations as Revolutionary and early national Virginia. To choose one apposite
eexample, while nearly endless arguments have been ventured about what Virginia's
pre-Revolutionary debts caused or meant, a “simple” description of how they worked
and their afterlife in post-Revolutionary affairs is harder to find. (Latour would
emphasize that a well-crafted description is no simple thing at all.) My first and
second chapters attempt to fill this omission in the literature.

My final chapter further describes the associations (again, as Latour would
have it) that surrounded the debts themselves by reading closely the documents that
resulted from these conversations about pre-Revolutionary debts. The approach may
lead some to say, with the exasperation Latour allows a loyal dissenter in an
imagined debate over his theory, “You and your stories.” In my view, the stories
deserve no less than our careful attention.

* * *

All the more since the British Mercantile Claims have been neglected by
scholars. When the negotiations of the Article Six Commission meeting in

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18 Latour is winningly unafraid to go his own way both in his arguments and expression. *Reassembling the Social*, 147.
19 *Reassembling the Social*, 154.
Philadelphia failed, and a lump sum payment substituted for their analysis in 1802, the thousands of interviews special agents conducted became moot. The commission's failure orphaned the special agents and their work, at least from a United States perspective. Historians have seldom made more use of the interviews than the commissioners; they are lacunae in our story of the Jay Treaty, wells plumbed mainly by genealogists. I am grateful that Woody Holton first noticed their importance as social history documents and passed that tip to me.

In keeping with their relevance for genealogical researchers, the stories collected from Virginia debtors served as the mainmast of the Virginia Genealogist for more than twenty-five years.21 Only thirteen issues of the privately published quarterly appeared without them between 1962 and 1989. In total the magazine printed more than 1,000 pages of reports on Virginia's prewar debts. The Genealogist's editor, John Frederick Dorman, lived with these debts nearly as long as they were on the books of British merchants before the special agents began tracking them down. Not improperly, then, I call on a number of publications initially intended for a given family's "edification"—the "self-publication" of a century ago. The special agents who worked on pre-Revolutionary debts, for

Maryland: Rowman & Littlefield, 1993). Richard Sheridan ventures a statistical analysis based on claims presented in his "The British Credit Crisis of 1772 and the American Colonies" Journal of Economic History 20, no. 2 (June 1960), 161–186. Michael L. Nicholls's "Competition, Credit and Crisis: Merchant–Planter Relations in Southside Virginia" incorporates a few of the claims' details. In Rosemary E. Ommer, ed., Merchant Credit and Labour Strategies in Historical Perspective (Fredericton, New Brunswick, Canada: Acadiensis Press, 1990): 273–289. None of these treatments approaches the reports as a collective set of sources. Other references are truly sporadic: treatments of the Jay Treaty's Article Six Commission, for example, for which the reports were prepared, uniformly overlook them. For more on these analyses, see Chapter Three.

21 Abstracts of the reports debuted in the October–December 1962 issue of the Genealogist; they last appeared in the October–December 1989 issue. The four-paragraph essay that introduced the reports in 1962 may yet be the fullest treatment they have received as a collection. V6:N4:147; V33:N4:294.
example, have largely remained opaque to historians in the two centuries since their work. Several of their families, in the meantime, have stepped into the breach.\textsuperscript{22}

Finally, I’ve called on the advice and publications of more recent relations of the folks in my story. Historians and what archivists call—mostly fondly, I think—“genies” have more in common than scholars often allow. I’ve welcomed the research and conclusions of both.

“I remember well enough that I am in Virginia,” William Wirt wrote in his 1803 serialized work of fiction \textit{The Letters of the British Spy}, “that state, which, of all the rest, plumes herself most highly on the democratic spirit of her principles.”\textsuperscript{23} The self-regard Wirt diagnosed had deep roots in the Revolutionary generation. So, too, did the debts investigated in the years before he wrote. My study is driven by these stories and looks to understand them in several lights. Their individual narratives provide new, untapped detail on indebtedness in pre-Revolutionary Virginia that I hope will prove useful to future scholars.\textsuperscript{24} But they also offer a new, richer texture to the stories we think we know best—including the story of the Jay Treaty’s ratification and the party system then aborning. When Virginia Democratic-Republicans spoke of debts in the 1790s, they had in mind the countless stories soon to be collected by the special agents. An appreciation for these varied

\textsuperscript{22} The superbly named Onward Bates described his \textit{Bates et al. of Virginia and Missouri} in this fashion. “It is published by me for my own purposes,” he wrote, “and will be distributed to a limited number of people whom I will select as likely to be interested in its contents.” This seems, to me, to have much in common with how modern writers approach dissertations. “[E]dification” appears in the dedication to Bates’s volume. (Chicago: P. F. Pettibone & Company, 1914), 7.

\textsuperscript{23} The conceit of William Wirt’s widely read work of fiction, \textit{The Letters of the British Spy}—a Briton reporting on Virginian ways and mores—is particularly apt in the context of unpaid pre-Revolutionary debts. (1803; Upper Saddle River, N.J., 1970 reprint, from 8th ed.), 9.

\textsuperscript{24} One can imagine, in particular, any number of statistical analyses that could inform our understanding of Virginia’s way of debt.
experiences adds much to the stories we think we know well. And it reminds us that
debt was not only a character in the stories of late-eighteenth-century Virginians.
Debt was the story.
Chapter One

Debt in an “Independent Dominion”

“I have exclaimed against all taxes, advised the people to pay no more debts; I have promised them . . . an independent dominion.”

Mr. Tackabout, “The Patriots”

Many Virginians were in a bad way during the last quarter of the eighteenth century. They drank when they should have worked, growing “poorer and poorer every day,” wrecking fortunes and families alike. They hired out their young children or “brok[e] up house keeping [sic] and lived alternately” on their adult children’s charity. They held fraudulent straw sales to escape their creditors, their own idleness or, in Patrick Michie’s case, both. They dodged and dared collectors, keeping close to home or arming themselves, as William Johnson did, with a “brace of pistols.” They stole their neighbors’ horses and their fathers’ slaves. They stole...

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1 Written in 1777 by Robert Munford, who himself served in the House of Burgesses before the Revolution and in the House of Delegates from 1779 to 1783, “The Patriots” was not published until 1798, when his son William Munford brought it out in A Collection of Plays and Poems (Petersburg, Virginia: William Prentis, 1798), 76.

2 Thomas Bolkham, V28:N 1-52-53; William Turner, V28:N2:114; Each of these anecdotes is detailed—often rather elaborately—in the Reports on British Mercantile Claims. These interviews were conducted by Special Agents of the United States in support of the arbitral commission established by Article Six of the Jay Treaty. Theirs are the stories told in Chapter Five.

3 William Brown of Culpeper “made himself insolvent by fraudulently conveying his property to his children with a view, as it was generally said, to defeat the claims of his creditors.” V31:N1:53–54; V30:N4:280–281.

their own slaves, attempting a nighttime escape very different from any their enslaved women and men might have imagined.⁶

They suffered maladies mental and physical. They killed themselves,⁷ their spouses, and luckless strangers. They were in turn killed by the British, Native Americans, or their own kin.⁸ They died under myriad accidental circumstances, swallowed by swollen rivers, like William Horrell, who "[b]eing about to cross the river while drunk, placed a vessel of whiskey under his head, and in that situation suffered his canoe to float down the river, in which posture he was found dead."⁹

Others were simply lost. Not long after John Claybrook moved from Albemarle to Henry County, he “wandered into the woods in one of his paroxisms [sic] of insanity was never afterwards heard [sic] of.”¹⁰ Many left Virginia but not this world, heading for points west or south, sometimes with another’s spouse or enslaved young woman. For many, their last act in Virginia was borrowing the money to leave it.¹¹

⁵ Reuben Burnley had been conveyed several slaves lately owned by his uncle, Richard Burnley; as was often the case, this transaction was thought a fraudulent attempt to avoid the slaves’ sale to pay Richard Burnley’s debts. Reuben’s father Zachariah seemed to view it that way; he ultimately sold the slaves again, and “upon this a violent quarrel ensued [sic] between father and son and the latter repossessed himself of the slaves by force.” V31:N3:210.
⁶ John Evans “went off in the night with all his property” and several slaves, bound for Kentucky; a creditor followed him some eighty miles, where he obtained a court order to prevent Evans absconding with his slaves. They were arrested, only to be returned to Evans when the county court dismissed the attachment. V26:N2:99–100.
⁷ William Houston was led to suicide by thoughts of “dissipation and idleness.” V28:N1:50.
⁸ Owen Frankland was thought killed “by the Indians on the western frontier.” V8:N2:78
⁹ John Johnson was killed by his brother-in-law in 1797. V7:N4:177.
¹⁰ William Waller Hening wrote with characteristic reserve that “There was something so very singular in the mode of his death that the circumstance has made a lasting impression on his acquaintances.” V6:N4:147. Joseph Graves drowned in the “Kappaohannock [sic] River early in the Revolution.” V15:N1:57.
¹¹ John Simpson, Jr. moved to Kentucky with “two old horses not worth five shillings” and the help of neighbors who “assisted him with the means of bearing the expenses of his journey, which form his own insolvency he was unable to do himself.” V26:N4:276. Others’
Not every Virginian was a "drunken worthless blackguard person" or a
template for tragedy. Others experienced a slow atrophy in their circumstances.
Alexander McDaniel was not alone in watching Virginia currency "die upon his
hands." Some were simply poor: "as poor as poverty itself"; they "just made out to
keep body and soul together"; they were "worse than nothing," even "refused a half-
pint of spirit." Some were "insolvent and hath been so time whereof the memory of
man knoweth not to the contrary." Others kept a step ahead of the sheriff by
teaching school or keeping a roadside "tippling house," professions held in equal
estee around the turn of the nineteenth century. Philip Breedlove's tiny grog
shop on the Fredericksburg Road probably helped others put aside their problems.
But his own sustained, as William Waller Hening reported a generation after the
Revolution.

He was not only among the poorest men in the world but was provably
[sic] one of the most indolent. I never in my life saw him have on any
other outward upper dress than a thin linen [sic] hunting shirt, not
even in the coldest day in winter. I do not know what has become of him,
and it is of but little importance to inquire.16
Breedlove, like many Virginians, was destined for the most banal end of all: "poor and dead." But the debt he had amassed before the Revolution ensured that he would be inquired after; Hening's report was inspired by the claim of the largest firm trading in eighteenth-century Virginia, William Cunninghame & Co., to whom Breedlove owed £5.12.0. Even Virginians who had paid what one contemporary writer called "the debt of nature" would not rest undisturbed. And all Virginians—like those at the heart of the foregoing narratives—were in debt. Their debts had an afterlife nearly as fascinating as any of the individual stories that brought them about.

Late-eighteenth-century Virginians believed that the stories mentioned above and other tragedies besides sprang from their debts. So they maintained to the Special Agents of the United States who visited to discuss pre-Revolutionary accounts around the turn of the nineteenth century. The drunk, the adulterer, the thief, the suicide, the pauper, the president—all were driven by debt. Their specific obligations, certainly, but also the notion of debt. Particularly as practiced with their transatlantic creditors, it challenged what Virginians held dearest—indeed, independence, honor, and "interest," a term broad enough to capture their financial and political well-being. A self-respecting Virginian pursued each with "manly firmness." \(^{19}\)

\(^{17}\) "Poor and dead" was the sum total of Edmund J. Lee's report on William Turley's £0.10.0 debt to William Cunninghame & Co. V23:N4:272. John Hightower was described in similar terms in a report that also used Virginia's debtor relief laws as a date stamp: "Dead and insolvent ever since the paper money ceased and before 1783." V19:N3:173.


\(^{19}\) The phrase appears in the Declaration of Independence in a context Virginians well understood: "He has dissolved," Jefferson wrote in the fifth of twenty-seven charges leveled against King George III, "Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people." It also appears often in the correspondence of contemporary Virginians; see, for example, *see* p. 111 *infra*. Jack N.
Debts were a drag on this spirit, written of much as one would chronicle an ominous forecast or a dread disease. Philip Ludwell's seventeenth-century debts were "a great trouble upon my spirits"; by the middle of the eighteenth century some described the troubles collectively.  

"Poor Virga., what art thou come to sued & held in Derision by the Merch' ts of Great Britain," John Taylor of Caroline County wrote in the early 1760s.  

A generation later Jefferson reflected on his obligations while the Constitutional convention was at work. "The torment of mind I endure till the moment shall arrive when I shall not owe a shilling on earth is such really as to render life of little value," he wrote to Nicholas Lewis, then managing Monticello.  

"[T]hat it"—debt—"was anything but an evil," historians Stanley Elkins and Eric McKittrick have written, "an evil that led to countless other evils, and that this was its overriding feature, few Virginians were capable of imagining." 

To understand that evil—and the stories Special Agents of the United States collected around the turn of the nineteenth century—we should first work to understand the origins of debt in eighteenth-century Virginia. We should, in other words, rewind the clock much in the way agents asked of their subjects. This chapter examines how debt

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21 Mays, Edmund Pendleton, I:145.  

22 Papers of Thomas Jefferson, 29 July 1787 11:640.  

affected the lives and the livelihoods of all sorts of Virginians during the eighteenth century.24

We begin with a concise look at the Virginia way of debt's long first century from 1607 to 1730. Details of agronomy, geography, and colonial policy are key here. After reviewing each in turn, we explore the consignment trade they helped bring about. Tobacco is the unmistakable protagonist throughout our story, but around 1730 its setting and many key characters began to change. Consignment or commission merchants who dominated trade with substantial Tidewater planters

yielded to the Scots shopkeepers and factors more at home in Virginia's Piedmont beginning in the 1730s. Since these newer stores are the principal wellspring for the debts—and stories—related in the Reports on British Mercantile Claims, we shall explore the shopkeeper-factor business model in more painstaking detail, turning finally to the changes in colonial policy that paralleled and inspired the new business model after the first third of the eighteenth century. These developments were a collective understanding fundamental to the conversations that are the heart of this dissertation, those conducted by Special Agents of the United States commissioned by the Jay Treaty's sixth article. But we begin our look at the afterlife of debts by attempting to understand them while they yet lived.

* * *

It began with four barrels. A century and a half later Virginia's annual tobacco exports would reach dizzying heights—50,000 hogsheads, some 47 million pounds of tobacco.25 But John Rolfe's 1614 harvest was more fit for a skiff than a schooner. Soon, as every Virginia fourth-grader learns, even Jamestown's streets were planted with *Nicotiana tabacum*.26 The weed multiplied like something out of a New Testament parable.25,26

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25 James Balfour wrote merchant John Norton that Virginia's 1768 "exportations" were 50,258 hogsheads. 5 November 1769, in Frances Norton Mason, ed., *John Norton & Sons: Merchants of London and Virginia* (Richmond, Virginia: Dietz Press, 1937), 109-110; T.M. Devine, ed., *A Scottish Firm in Virginia, 1767-1777* (Edinburgh: Clark Constable, 1984), ix. A hogshead was a large cask or barrel that, like the trade it conveyed, grew in size over time. Jacob Price, who undoubtedly spent more of the twentieth century considering the hogshead than any other, found that they averaged 400 pounds in weight in 1676 and 1,000 pounds a century later. Price and Clemens, "A Revolution of Scale in Overseas Trade," 10, 23.

first delivery. Jamestown, whose first years had a decidedly Old Testament feel, at last had a cash crop, and hope.

Rolfe's realization that Amerindian husbandry could supply a growing European habit in many ways fixed the colony's destiny. Virginia was soon a tobacco colony, a tobacco economy, and a tobacco culture. A continually metastasizing European demand for the weed ensured that it remained so through the Revolution. (Indeed, nearly four centuries after Rolfe's innovation, tobacco remained the most profitable crop in three of the world's five most populous countries, helping to provide for the families of some 100 million full- and part-time laborers.) Streets were soon returned to wagons and carts, but generation after generation of Virginians looked to their next tobacco crop as a badly needed balm. Tobacco was as clearly the protagonist in the stories of Virginia's pre-Revolutionary debts as it had been in the survival of Jamestown nearly two centuries earlier.

Though Virginia growers would change practices and even crops after the first third of the eighteenth century, Robert Beverley's 1705 view of the "the extream [sic] fruitfulness of that Country," like many Virginians', centered on tobacco. The

29 Beverley, the first historian of Virginia, was also a "Native and Inhabitant of the Place," as his title page proclaimed. Though Beverley borrowed widely from other writers, the "critical consensus" that his history is a "minor but genuine American classic" is undisturbed. For my purposes Beverley is a harbinger of the myriad connections that bound Virginia debtors (Chapter Seven) and the special agents who investigated their accounts (Chapters Four through Six). Consider by way of example his connections to others mentioned in this chapter's description of debt in Virginia. Beverley's father, a political leader like his son, supported Governor William Berkeley during Bacon's Rebellion and drew up the 1680 "An act for building a towne"; Beverley's history borrowed from (and mangled a bit) that of Henry
endless work required to bring a tobacco crop from seedling to market gave the weed an outsized effect on Virginians' way in the world. To "make a crop" required fifteen months of labor and luck. Each Christmas planters began by watching the weather—though in truth, they were always watching the weather—in hopes of laying seed during the first week of the new year. As much as a month would be spent replanting seedlings into individual hills during the late spring, a particularly tricky endeavor. Summer months brought constant tending: weeding, removing leaves close to the ground (called "priming"), flowers ("topping") and suckers, and, all the while, watching vigilantly for pests like cutworms and horn worms.

At least planters had a chance to manage pests. The weather, which always determined the schedule and sometimes destroyed whole harvests, was altogether beyond their control. Predicting it was especially key when deciding the right moment to begin cutting and curing. Once judged "case," which historian T.H. Breen defines as "dry without being brittle, pliable without being moist," the tobacco was prized into hogsheads for storage and eventual shipment. Even this last step, which began in the fall and could overlap with the planting of the next season's crop, required highly skilled labor, most often that of enslaved women and men.30 As

Hartwell, James Blair, and Edward Chilton; Beverley's wife, nee Ursula Byrd, was the sister of William Byrd II; Beverley wrote during a year and a half he spent in London in 1703 and 1704, pursuing an appeal of a lawsuit to the Privy Council. In a later day Beverley would have been equally at home as a debtor in the Reports on British Mercantile Claims or a Special Agent of the United States who pursued their stories. The description of his work as a classic, Jay B. Hubbell's in 1954, is recounted in Robert D. Arner, "The Quest for Freedom: Style and Meaning in Robert Beverley's History and Present State of Virginia" Southern Literary Journal8, no. 2 (Spring 1976), 79. Beverley emphasized very different Old Testament resonances than I suggest above. "Certainly it must be a happy Climate," he writes, "since it is very near of the same Latitude with the Land of Promise." Louis B. Wright, ed., The History and Present State of Virginia (Chapel Hill: University of North Carolina Press, 1947), 296.

30 The French traveler and author J.P. Brissot de Warville, visiting Virginia in 1788, observed that "[n]othing but a great crop, and the total abnegation of every comfort, to which
historian Rhys Isaac put it, farming tobacco "had no beginning and no end," not unlike the debts crops seldom seemed to fulfill.31

Once safely prized in a hogshead, tobacco was ready to be rolled to the nearest watercourse. The colony's four broad rivers—from north to south, Potomac, Rappahannock, James, York—"afforded a commodious Road for Shipping at every Man's Door," as Robert Beverley wrote.32 Like much else in his history of Virginia's first century, Beverley's characterization was more apt for wealthy Virginians than for their middling neighbors. The homes of leading "gentlemen" indeed faced the "Road"; their neighbors of modest means accessed commercial traffic at their betters' private river landings. Virginia's four largest

*the negroes are condemned, can compensate the expences [sic] attending this production before it arrives at the market." Though he writes of later cultivation, Frederick F. Siegel's conclusion that "[i]n the production of tobacco intelligence is the prime factor" applies with at least equal force in early Virginia. New Travels in the United States of America, 2nd ed. (London: J.S. Jordan, 1794), 375; The Roots of Southern Distinctiveness: Tobacco and Society in Danville, Virginia, 1780–1865 (Chapel Hill: University of North Carolina Press, 1987), 93–96, quote at 96.


32 Again the Virginia-as-Eden trope returns: "As Judea was full of Rivers . . . So is Virginia." These comparisons were driven in part, of course, by a desire to attract settlers to the colony. Louis B. Wright, ed., History and Present State of Virginia (Chapel Hill: University of North Carolina Press, 1947), 57, 296. Wright's introduction to the above-cited volume, xix–xx.
rivers put some ten thousand square miles of arable land within reach of global markets, but almost all of that area went unsettled well into the eighteenth century. After settlers pushed past the falls in numbers, Scots merchants and their franchised stores—not the rivers—brought commercial opportunity to most Virginians' doors. Until then most trading was limited to those parts of the colony accessible to ocean-going vessels, anywhere from forty miles on the York to 160 on the mighty James.33

Towns, too, were slow to appear. Henry Hartwell, James Blair, and Edward Chilton wrote in a 1697 report to the Board of Trade "that as to the natural advantages of a country, it is one of the best; but as to the improved ones, one of the worst of all the English plantations in America."34 The observation yet rang true two and three generations later. Not for lack of Virginians' enterprising spirit, however. One such effort to establish towns, passed by the General Assembly in 1680, was in Robert Beverley's telling "kindly brought to nothing by the opposition of the tobacco merchants of England." Modern historians have endorsed his view.35 A similar effort

33 The Rappahannock was navigable for 100 miles and the Potomac for 140. Arthur Pierce Middleton, Tobacco Coast: A Maritime History of the Chesapeake Bay in the Colonial Era (Newport News, Virginia: Mariner's Museum, 1953), 32.
undertaken by the House of Burgesses a decade later led to the dissolution of the General Assembly. Here again, the shopkeeper-factor system that developed after 1730 undermined the importance of towns. Scots merchants were nearly equally comfortable establishing their stores adjacent to roads or ferry landings, proximate to courthouses, or in what seemed—to travelers—implausibly remote locations.

In addition to the colony’s peculiar “fruitfulness” and geography, Virginians’ business partnerships with British creditors were defined by the empire’s colonial policy and the law it informed. The home government set policy; the colonial House of Burgesses passed laws, which were then endorsed—or not—by the Board of Trade. The result was a poorly stitched seam that often showed tension as British oversight of her colonies waxed and waned during the seventeenth century. The mother country’s close scrutiny arrived to stay in the 1740s—more about which momentarily. Two seventeenth-century developments helped lay groundwork for an increasingly tightly constrained relationship between debtor and creditor.

The first was Bacon’s Rebellion. Though its details are beyond our scope—too bad, really, given that they include a governor inviting attack with chest bared; a white handkerchief waved in surrender; a capital town burned; and a leader dead not from battle but dysentery—the revolt by Nathaniel Bacon and several hundred armed banditti from April 1676 to February 1677 raised a number of concerns about the trajectory of the colony’s policy and politics. These were published in a “Declaration of the People of Virginia” that bemoaned Governor Berkeley’s

36 Billings et al., Colonial Virginia, 146–147.
37 Farmer, In the Absence of Towns, 116–118.
imposition of “unjust taxes upon the commonalty” and failure “in any measure [to] advance this hopeful colony either by fortifications, towns, or trade.” Complaints were also shouted at the Governor, Burgesses, and Councillors, whom Bacon and his band trapped in the Jamestown state house on 23 June: “Noe Levies, Noe Levies.”

Historians’ sense of the movement’s causes has changed over time: The temptation to see it as a harbinger of other grievances leveled at another royal leader one hundred years later, long irresistible, has yielded to an emphasis on the commonalty’s concerns with county governments. But the role of debts in stirring the rebellion is beyond dispute. It is no coincidence that poor weather all but canceled the 1676 crop, leaving middling and landless Virginians with “Debt beyond hopes or thought of payment,” in Berkeley Loyalist Philip Ludwell’s phrase. Nor that one of the twenty “Bacon’s Laws” passed in June 1676 in response to the insurrection extended debtors’ time to pay. Debts would often be discussed in decades to come, but never with such deadly relevance.

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39 “Declaration of Nathaniel Bacon in the Name of the People of Virginia, July 30, 1676,” Massachusetts Historical Society Collections, 4th ser. 9 (1871), 184.
40 Though William Sherwood recorded the yelling over taxes, Bacon’s chief demand was for a commission to fight Indians on the frontier. This was also the episode in which Governor William Berkeley bared his chest to issue Bacon a personal challenge. “William Sherwood’s Account of the Assembly’s Proceedings,” in Warren M. Billings, ed., The Old Dominion in the Seventeenth Century: A Documentary History of Virginia, 1606–1689 (Chapel Hill: University of North Carolina Press for the Institute of Early American History and Culture, 1975), 276.
41 Billings et al., Colonial Virginia, 90.
42 It was not the last disruption related to tobacco, however. When prices remained too low for too long in the early 1680s, and no crop management could be had from the General Assembly, some resorted to cutting plants. Two were hanged: only a broad-minded response from the colony’s leadership prevented more serious reprisals. Billings et al., Colonial Virginia, 106–108.
Bacon's Rebellion also captured the home government's attention in a way that contributed to the second development twenty years later. The creation of the Board of Trade, an institution charged with overseeing British colonial policy, foreshadowed the erosion of the home government's relationship with its colonies. Before the last decade of the seventeenth century, the Privy Council—the Crown's executive advisory board—monitored colonial policy through a standing committee known as the "Lords of Trade." When British merchants lost confidence in this group's ability to protect their investments abroad, they lobbied for closer oversight. Thus was born "His Majesty's Commissioners for promoting Trade of this Kingdom, and for inspecting and improving his Plantations in America and elsewhere," a new group staffed by men experienced in international trade and not currently serving on the Privy Council. The doings of Virginians and their fellow colonists would have this group's full attention. Virginia debts were the first subject the new board engaged. On 13 July 1696 they heard an appeal of an adverse decision in the colony brought by British merchants William Boutwell and Thomas Wenbourne.

In the eyes of the Board of Trade, Privy Council, Parliament, and other British policy makers, Virginia's agronomy and geography were destiny. Their

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43 Brent Tarter's masterful article "Bacon's Rebellion, the Grievances of the People, and the Political Culture of Seventeenth Century Virginia" solidifies this changed consensus. VMHB 119, no. 1 (2011), 2-41. Tarter catches the spirit that held the rebellion's first interpreters in calling it "the largest and most violent uprising of white people that took place in any of England's North American colonies before the one that began exactly a century later" (3).

44 The appeal concerned Virginia's law shielding members of its Governor's Council from suits for debt. The Governor's Council was at once an advisory body to the governor; the upper chamber of the House of Burgesses; and, with the Governor, the highest court in the colony, the General Court. Warren M. Billings, A Little Parliament: The Virginia General Assembly in the Seventeenth Century (Richmond: Library of Virginia, 2004); Billings et al., Colonial Virginia, 151-152; Robert A. Bain, "The Composition and Publication of The Present State of Virginia, and the College" Early American Literature 6, no. 1 (Spring 1971), 38-39.

45 James Abercromby, agent for three colonies during the eighteenth century—including Virginia from 1754 to 1774—summarized this position as well as any Briton in a 1752 report
restrictions, to the mounting frustration of Virginians during the eighteenth century, encouraged the single-minded production of tobacco and all but prohibited the production—and certainly the export—of manufactures. Presaging the inspection regime that would emerge three decades later, three Virginians wrote in 1697 that “tobacco swallows up all other things, every thing [sic] else is neglected, and all markets are often so glutted with bad tobacco, that it becomes a mere drug, and will not clear the freight and custom.” More than opportunity cost, however, was lost to the myopic focus on tobacco. The quality of the weed and the soil that produced it suffered. Both would encourage migration to the Piedmont after the first third of the eighteenth century.

The most odious constraint the Board enforced, by Virginians’ lights, was the British monopoly on the import and marketing of her tobacco. Codified in the Navigation Acts of 1660, the policy chafed Virginians for more than a century until independence. In shortest form, colonies were to ship their principal cash crops exclusively to Britain or British colonies; likewise, their imports would, with few exceptions, come from England exclusively. British bottoms, manned chiefly by

47 Though deeply resentful of the Navigation Acts, Virginians, as Woody Holton has written, complained of them publicly relatively little until the summer of 1774. They understood that a continuing partnership with British merchants was the greater good. Bruce Ragsdale also speaks to the complaints’ relatively muted quality, and finds them most common when tobacco prices were lowest. His suggestion squares with the timing of Hugh Jones’s publication discussed below. During the 1720s tobacco prices were depressed ahead of a relatively constant thirty-year uptick. Holton, Forced Founders, 48–59. A Planter’s Republic: The Search for Economic Independence in Revolutionary Virginia (Madison, Wisconsin: Madison House, 1996), 44.
British sailors, were the only ships empowered to convey the trade. When the Anglican clergyman Hugh Jones undertook to explain Virginia to his fellow Britons in *The Present State of Virginia*, published in 1724, he concluded with “schemes” to improve her station by revising these limitations. His open letters to the Board of Trade urged a broader role for “the Manufactures and vendible Goods of Virginia,” an unleashed export trade, and less onerous duties on her tobacco crop. As the eighteenth century progressed, Virginians increasingly imagined broader trading relationships. The Currency Act, Revenue Act, Stamp Act, and renewed Navigation Acts threw into stark relief the idea of Britain’s monopoly as a “heavy tax” in the view of Virginians contemplating independence. The tax, of course, was paid in what Virginians viewed as artificially depressed prices.

Tobacco, geography, and colonial policy helped define the experience of the first five or six generations of Virginians by creating problems only credit could solve. Much as good storytelling requires withholding information, life in eighteenth-century Virginia depended on managing absence. A forty to sixty days’ sail separated Virginians from manufactured goods and banks. Seasons separated

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50 Quoted in Holton, *Forced Founders*, 210; see also 46–47: Billings et al., *Colonial Virginia*, 79, 120.
harvests and the income they produced. (Those harvests, of course, were themselves at the whim of unknowns from weather to pestilence to market fluctuations.) Hard currency was little more than an idea for much of the eighteenth century. Each of these interstices was filled by credit; each helps explain why very nearly all Virginians knew debt. It was the pitch to their ship, the mortar to their home, the whiskey to their electioneering. Life in early Virginia would have been unimaginable absent debt. London-based firms who consigned Tidewater planters' tobacco created the first of two models through which Virginians secured credit.

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Great Britain's mercantilist policies and Virginia's agronomy and geography dovetailed in the practice of consignment merchants, London firms that brought almost all Virginia tobacco to market through the first quarter of the eighteenth century. They, in turn, worked an outsized effect on the psychology of Virginia debtors. Though Scots merchants would further refine the art of relating to Virginia debtors after 1730, London consignment firms knew the challenge of what planter Richard Corbin called "a Commercial Friendship." They might have even said that tobacco farming was a simple affair compared to the prickly bunch steadfastly guarding their "honor and interest." Locking arms with them by extending credit was an intensely human endeavor that required merchants to track their clients' feelings nearly as carefully as their balances.

Tobacco, of course, was the linchpin of the system that developed. Finicky to grow, cumbersome to transport, exorbitantly expensive to import, tobacco invited the

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52 Actually, as we shall see, currency was explicitly an idea in colonial Virginia.
53 Tobacco Culture, 108.
significant brokerage role played by firms like John Glassford and Sons, the Norton concern, and Henderson, McCaul and Company. These concerns and their competitors—and the competition was unrelenting—accepted shipments of tobacco, which they would in turn sell, or consign, on the most advantageous terms possible. Both to maximize their crop’s market value and to ensure their clients’ buying power and loyalty over time, firms advanced planters credit for their crops to come. Typically these arrangements lasted for a year, at which time the balance was settled, or more commonly, rolled to the next year or securitized by a bond. These arrangements allowed Virginians to draw bills of exchange on their accounts. Each one, when presented, called the question of the drawer’s creditworthiness—a modern “stress test” in miniature. Few things riled Virginians more than to have a bill “protested,” to suffer it stamped, in the modern parlance, “insufficient funds.” This outcome called into question not only a debtor’s solvency, but, depending on one’s perspective, his very honor.54

Consigning planters bore the risk of the journey but stood to reap the higher profits of sale in Britain or on the Continent. Merchants handled details including paying customs duties and arranging insurance for the voyage. These services, and of course the all-important extension of credit, earned them a commission on the gross sale price.55 Merchants’ holding Virginia capital also meant that planters were

54 Breen, Tobacco Culture, 135. French traveler Ferdinand M. Bayard captured the spirit, even the language, of these continuing obligations in describing a visit to Virginia later in the eighteenth century. “Americans do not like to be financially embarrassed,” he wrote. “When you lend them money, they clearly understand that you are also lending them all the time that they consider necessary to pay it back.” Ben C. McCary, ed., Travels of a Frenchman in Maryland and Virginia with a description of Philadelphia and Baltimore in 1791 (Ann Arbor, Michigan: Edwards Brothers, 1950), 152.
illiquid. Access to the proceeds of their crops depended on a continuing business relationship, an element neither party overlooked. Consignment firms were merchants and banks both, services much in demand for Virginia debtors.

In the commission system's return trade lay the seeds for the store-based system to come. Twice a year—usually early spring and early fall—London commission merchants shipped their customers a broad array of goods on credit. The practice was as fraught as variables of time and distance and taste could make it, uncertainty that encouraged the colony's mid-eighteenth-century shift to a store-based factor system. Three prominent Virginians in 1697 diagnosed several challenges inhering in the commission trade. Merchants, they lamented, "drive a pitiful retail trade," being little more than "country chapmen," or itinerant peddlers; private tobacco inspection imperiled the whole business; transporting the tobacco was a constant bother, including the "scrambling manner" in which ships bound for Great Britain were loaded. One complaint would not soon be resolved: "they are obliged to sell upon trust all the year long." This last would be no less true as shopkeeper-factors began to dominate the trade beginning in the middle of the eighteenth century.

The gradual shift from the commission trade to one dominated by local stores franchised by Scots merchants progressed through a multitude of hybrid

56 W. A. Low, "Merchant and Planter Relations in Post-Revolutionary Virginia, 1783–1789," VMHB 61, no. 3 (July 1953), 309.
57 "When banks appeared, they made more efficient a system whose key elements were already in place and working." Price, "What Did Merchants Do?", 278.
58 Elkins and McKitrick, The Age of Federalism, 770–771. Historians have also used the term "plantation" and "commercial" to describe these respective systems. Richard B. Sheridan, "The British Credit Crisis of 1772 and the American Colonies," Journal of Economic History 20, no. 2 (June 1960), 168–169.
approaches. For example, some "factors" managed their own capital, some were exclusive agents for broad-based, international firms, and some combined these roles. Many factors' contracts allowed them, as John Hook's with James and Robert Donald and Company did, to import and market a certain amount of goods not thought to compete with the firm's stock. The "cargo trade" was another arrangement through which British concerns shipped a broad array of merchandise to other merchants doing business in the colonies. The goods were financed, as with planters under the commission system, for at least a year. The career of William Allason, another successful merchant and punctilious record-keeper, demonstrates even better than Hook's the variety of opportunities open to young merchants on the make. Allason worked for several firms on several sets of terms—sometimes as a "supercargo"—and also worked in St. Kitts and Antigua for a time. He and his brother established a store in Falmouth in 1760; another followed in Winchester.

John Hook's decision to head west, following the pathbreaking exploration of William Byrd II of Westover just a few years earlier, was an early sign of the rise of the small planter, the Virginia Piedmont, the Glasgow tobacco merchants, and, ineluctably, the debts in which all three had a hand.

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The Reports on British Mercantile Claims tell the story of the rise of tobacco culture in Virginia's Piedmont. From the 1740s to the Revolution new settlers and broader market forces converged on the area of Virginia west of the Tidewater and

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61 Albert H. Tillson Jr. describes Allason's evolving approach in Accommodating Revolutions, 175–179.
east of the Blue Ridge Mountains. Younger sons of eastern planters joined Scots-Irish from Pennsylvania and points north to settle the area.\textsuperscript{62} Slaves, too, were brought to the Piedmont in massive numbers. After the mid-eighteenth century most slaves disembarked and were sold closer to the fall line than the Chesapeake Bay; as historians Philip D. Morgan and Michael L. Nicholls have written, "the center of black life now lay beyond the fall line." By the beginning of the Revolution nearly half of all Virginians lived in the Piedmont. The once-dominant Tidewater was now a minority.\textsuperscript{63}

Whether by choice or by force, those new to the Piedmont were chasing tobacco. "That bewitching vegetable," as William Byrd II of Westover aptly called it, took center stage in his account of surveying the Piedmont in the late 1720s and early 1730s.\textsuperscript{64} Indeed, the 200,000 Virginians who settled west of the fall line throughout the middle of the eighteenth century established a new foothold for tobacco culture just as the weed's grip on the Tidewater began to loosen. Piedmont soils, though far from optimal, were better suited to tobacco than the exhausted land of the Tidewater, which planters increasingly sowed in wheat as the century progressed.\textsuperscript{65} The colony's generous land policy ensured that even those of modest means would help meet Europe's seemingly insatiable demand for Virginia tobacco.

\textsuperscript{62} These groups were of the first importance, but French Huguenots and German settlers also made their home in the Southside, the last section of the Piedmont to draw settlers. Charles J. Farmer found yearly population increases of seventeen percent there during the 1740s. \textit{In the Absence of Towns}, 39.


\textsuperscript{64} Drew A. Swanson, \textit{A Golden Weed: Tobacco and Environment in the Piedmont South} (New Haven: Yale University Press, 2014), 17. The generations of Piedmont settlement in which I'm interested are a prequel to Swanson's story, which turns on the emergence of "bright" tobacco in the mid- to late-nineteenth century. Debtors who appear in the Reports on British Mercantile Claims grew dark-leaf tobacco.

\textsuperscript{65} Farmer, \textit{In the Absence of Towns}, 31–32.
during the eighteenth century.66 This was "a dispersed and less wealthy planter class whose petty wants and small crops hardly justified the time of the greater London commission houses," as historian T. M. Devine has written.67 Into this void stepped a new shopkeeper-factor system in the persons of Scots like John Hook.68

Hook and his countrymen made the Piedmont their "particular province."69 Charles J. Farmer, one of few historians to consult the Reports on British Mercantile Claims, describes the Scottish firms' growing presence in the Piedmont's Southside. During the first three decades of settlement they traded alongside old-style English consignment firms, entrepreneurial planters, and itinerant peddlers. By 1760 their dominance of the market was beyond doubt. William Cunninghame & Company, far and away the most powerful Glasgow firm trading in Virginia, sited nine of its fourteen stores at or west of the fall line. Those at Culpeper, Dumfries, Fauquier, Amherst, and Cabin Point, in particular, helped speed the growth of what passed for towns in the Piedmont. Like several other firms', "the Cunninghame business was set in the region of new tobacco country."70

66 Billings et al., Colonial Virginia, 203.
67 Hook's operation differed in one important detail from that of the Glasgow-based firms that so dominated the Piedmont trade. Hook was neither shopkeeper nor factor but partner with William and James Donald, whose firm had brought him up in the trade. That training, in addition to the Donalds' continuing logistical support and financial backing, enabled Hook's entrepreneurship, and so recommends him as an exemplary storekeeper. Martin, Buying into the World of Goods, 13–17.
69 Billings et al., Colonial Virginia, 201, 272.
Scots benefitted from a more direct and less dangerous shipping route. These advantages catalyzed interest among Scots merchants in short order. Within five years of the 1707 Act of Union, which opened the colonies' tobacco trade to Scots, Glasgow merchants more than tripled their ships under sail, to forty-three. The share of American trade accepted in Scottish ports grew fivefold in the three decades after 1738, to more than half. Almost sixty firms were doing business in Virginia when the Revolution began. Fifty-two are represented in the Reports on British Mercantile Claims. Cunninghame & Company, the largest, operated fourteen stores in Virginia; the Glassford concern had nine. Historian Jacob Price knows this history best and summarized it most concisely: Glasgow, in his telling, "may be said to have financed the Piedmont frontier."

Historian Ann Smart Martin's illuminating and exhaustively researched history of John Hook's shop-keeping traces a career exemplifying the opening of the Piedmont. The fourth of a middling Scottish manufacturer's seven children, Hook

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71 The more direct route had less to do with distance than with prevailing winds and currents. These took ships departing southern England down the coast of continental Europe before they headed west across the Atlantic. As Richard McMurran put it, "A ship from Glasgow might have already arrived in Virginia while a London sea captain had only reached Portsmouth where he would have to wait for favorable Channel winds." “The Virginia Claims of William Cunninghame,” 8: Billings et al., Colonial Virginia, 201.
76 Soltow, “Scottish Traders in Virginia,” 84–89.
78 This paragraph and the one that follows lean heavily on the first chapter in Martin's Buying Into the World of Goods. Martin rightly emphasizes that Hook was just behind the
was born just before the middle of the eighteenth century. In 1758 he journeyed to Virginia to learn the tobacco trade from the sprawling Donald concern, masters of the commission model Hook would eventually help replace. Eight years after his arrival Hook set up shop in the southwest Virginia Piedmont—first in Bedford, then in Franklin County. Like several of the most successful Scots merchants, Hook married well in Virginia. In 1770 he wed a “wealthy planter’s daughter” named Elizabeth Smith. Hook’s union little quieted concerns about his loyalism when the Revolution took hold.79 (Neither did it, however, cost him his job; many Scots firms “cannot agree to be served by a married man, if a single one can be got,” as James Robinson wrote to Fauquier shopkeeper Bennett Price in 1768.)80 Some of Virginia’s reticence about Scots merchants was obvious as late as the middle of the nineteenth century, when Samuel Mordecai recalled that “these concerns branched out, like


80 The quote is from Robinson’s letter informing Price that his days as Cunninghame’s Fauquier representative were numbered given the firm’s fear that a married shopkeeper “must often be necessarily called from their business by his family affairs.” Price’s firing suggests the intermediary role played by a firm’s chief factor in the colony. When Price shared news of his nuptials with Robinson at a June court meeting, the latter had predicted that they would not affect his contract with Cunninghame. Perhaps, Robinson suggested, the firm would feel compelled to hire an assistant for the store. During the next three months he received instructions to the contrary from the firm’s partnership in Glasgow. Price had gained a spouse but lost a job, the news Robinson conveyed in his letter of 11 September 1768. Devine, ed., A Scottish Firm in Virginia, 6–7.
polypi, to the villages and courthouses, and some of them, also like polypi, consumed
the substances of all that came within their grasp.81

For shopkeepers and factors, buying tobacco was job one. “We shall be in
great want of tobacco this fall,” James Robinson, Cunninghame’s chief factor,
reminded its Falmouth storekeeper during the fall of 1768. “You will therefore use
your endeavors to hasten the planters to the warehouse and to buy all you can.”
Their “endeavors” included goods, bills of exchange, or cash—though cash was
usually limited to attracting business to new stores or for competitive purposes such
as securing the business of a particularly keen tobacco producer.82 The price
merchants allowed for tobacco was top-of-mind to all involved. Both planters and
merchants acted strategically to maximize profits. Robinson acknowledged the
ubiquity of these efforts—and engaged in them—when he warned Falmouth
Shopkeeper John Turner to keep news of a Cunninghame ship’s arrival from his
customers. The less time a ship spent on Virginia docks, the higher the margin a
firm would earn on the tobacco within. Farmers who learned of a ship’s half-full hold
would naturally demand a higher price for their crop.83

A debtor’s solvency, his or her relationship with the merchant’s factor, or both
could turn on the price of tobacco, as the experience of the Fitzhugh family
demonstrates. Thomas Fitzhugh’s father charged more than £100 at William
Cunninghame & Company’s Falmouth store during the late eighteenth century. The
firm earned the family’s business, Fitzhugh’s son Thomas explained around 1800,

81 Samuel Mordecai, Richmond in By-gone Days: Being Reminiscences of an Old Citizen
(Richmond, Virginia: G. M. West, 1856), 25.
83 Robinson to John Turner, 25 October 1768, T. M. Devine, ed. A Scottish Firm in Virginia,
10.
when its representative “discovered his father’s displeasure” with Bogle, Summerville & Company. The Cunninghame shopkeeper in turn pledged “to allow as high a price for his crops of tobacco” as any planter in the area received. Soon the crop, and the complaints, belonged to Cunninghame: “The price allowed for the tobacco had been a source of contest for some time.” The younger Fitzhugh took up the mantle when his father died in early 1775. When Robert Hening, a special agent of the United States investigating the balance owed Cunninghame, called a generation later, Thomas was still complaining of sharp trading. A fair price, he argued to Hening, like the one received by Col. Bailey Washington, “whose crop was not better than his father’s,” would have wholly erased his family’s £100 debt.

Strategic behavior pervades this exchange, but two details in particular stand out. Fitzhugh the elder had accrued a significant balance with Bogle “owing to some large purchases,” in Robert Hening’s phrase. A new beginning with Cunninghame must have appealed to him—much as his tobacco crops, “generally large and of good quality,” had caught the eye of that firm’s factor. The last step in Cunninghame’s courtship of Fitzhugh was settling his balance with Bogle & Co. Few who appear in the Reports on British Mercantile Claims—Virginia planters or Scots merchants—would be surprised that a quarrel over the price of the tobacco in a corner of Stafford County simmered for some forty years.

This kind of intense competition among merchants encouraged other kinds of strategic—even surreptitious—action among Virginia debtors. The common practice of carrying modest balances with a handful of merchants rather than a sizable account with one house is suggestive of their approach. In so doing Virginians kept

84 V11:N4:179
their suppliers on notice to compete earnestly and helped forestall future lawsuits for debt.\textsuperscript{85} Many Virginians, like the Wife of Bath and the mouse in her tale, had more than one hole to run to.\textsuperscript{86}

The experience of shopping at a factor's store during the second half of the eighteenth century would probably resonate with modern consumers. These emporiums drew customers from as far as fifteen or twenty miles and often competed with other firms at close hand.\textsuperscript{87} (Any modern handyman who shops adjacent Lowe's and Home Depot locations can understand this principle.) Shopkeepers were mindful to keep both necessaries and luxuries on hand, in the most current and fashionable iterations possible; consider a modern "big box" retailer compressed into a 42' x 20' structure, in John Hook's case.\textsuperscript{88} Collecting one's provisions at a factor's store was a more personal, direct, and regular way for Virginians to shop. Firms worked to ensure closely-tended customers—as we have seen—by recruiting single proprietors. If absolutely necessary, a personable but not-too-chatty spouse could be accommodated.

\textsuperscript{85} Both jurisdictional thresholds and common sense argued against pursuing small debts, particularly the unsecured book debts that predominated in Virginia stores.
\textsuperscript{86} The reference is from the Wife of Bath's Prologue in Chaucer's \textit{Canterbury Tales}, a collection that appeared in some contemporary Virginians' libraries: "I hold a mouse's heart not worth a leek / That has but one hole into which to run, / And if it fail of that, then all is done." Geoffrey Chaucer, \textit{Canterbury Tales} (reprint London: J.M. Dent, 1975), lines 578–580. For Chaucer in the better-curated private libraries of the day, see Richard Beale Davis, \textit{Intellectual Life in Jefferson's Virginia, 1790–1830} (Chapel Hill: University of North Carolina Press, 1964), 95, 102–105, 109–112.
\textsuperscript{87} A successful store comprised a market share of at least a dozen miles in each direction; securing at least 300 hogsheads of tobacco a year was another minimum expectation. Soltow, "Scottish Traders in Virginia," 86.
Purchases were recorded in the factor's account book. These running, unsecured debts were far and away the most common type submitted by British merchants to the arbitral commission established by the Jay Treaty's sixth article. The routine, even banal, quality of Virginians' shopping is suggested by the modest balances so common in the British Mercantile Claims. These were all sorts of goods bought by all sorts of women and men. And they were nearly uniformly bought on credit. Indeed, merchants would have as soon succeeded without goods as without credit. The same impetus drove factors to function as banks later in the century, though at much closer hand than the London-based commission merchants. The Anderson-Low Store in Williamsburg did nearly a quarter of its business in direct loans to clients; equally welcome, given the scarcity of cash in late-eighteenth-century Virginia, was their willingness to transfer credit between clients to satisfy their clients' private obligations.

Merchants' decisions to extend credit were made personally but never in isolation. A Virginian's request for "great indulgence," and the calculations a merchant would undergo in response, best highlight the complex set of relationships surrounding the colony's commerce. Partnership with the client, whose tobacco or retail business was the merchant's lifeblood, was in the foreground, of course. But as the Fitzhugh family's debts affirm, the interconnected quality of Virginia society

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89 For more detail on merchant's accounting practices, which often involved some combination of daybooks, wastebooks, ledgers, and account books, see Albert F. Voke, "Accounting Methods of Colonial Merchants in Virginia," *Journal of Accountancy* 41, no. 7 (July 1926), 1-11. For analyses of two specific Virginia stores, see Martin, *Buying Into the World of Goods*, and Whitney, "Clues to a Community."


91 William Waller Hening used the phrase when discussing a mortgage Henry C. Martin took with the merchant George Kippen & Company. Since the Houses were given to extend credit broadly, he wrote, "it was unusual to take a mortgage or any kind of security unless the debtor was in doubtful or desperate circumstances." V27:N1:52.
underscored the importance of keeping clients happy. Much as merchants convened to share news and fix prices\textsuperscript{92}—in fact, quarterly or at least semi-annual meetings were not uncommon—Virginians \textit{talked}.\textsuperscript{93} Modern business owners at the whim of online reviews can empathize with the speed and certainty of Virginia debtors' collective opinion. Credit extended on unfavorable terms was much preferable to losing one's clientele.

Virginia debtors' relationships with British merchants were deeply symbiotic but just as strained.\textsuperscript{94} Each had something the other needed very much—tobacco, for the merchants; and everything else, for Virginians. Each abided inconvenience, real or perceived slights, and occasionally disappointing returns to maintain the relationship.\textsuperscript{95} In especially trying times both parties considered whether their counterparts acted in bad faith. Tobacco kingpin Landon Carter was no typical debtor, but his view of merchants' dubious motives would have resonated with his neighbors as much as it has with historians. "All the rest are much in trade," he wrote in 1774, "and I fear that is a Profession that kicks Conscience out of doors like

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\item \textsuperscript{92} Here again, Samuel Mordecai: "Previous to the Revolution, a convention of the British merchants was semi-annually held at Williamsburg, when the prices they would allow for tobacco was fixed for the then current year, after the crops were pretty well ascertained. This was trading on a pretty safe basis, as the partners abroad could control the prices there in great degree." \textit{Richmond in By-gone Days: Being Reminiscences of an Old Citizen} (Richmond, Virginia: G. M. West, 1856), 27.
\item \textsuperscript{93} Virginians took concerns about merchants' collaboration to their logical end during the decade before independence: not a few posited a conspiracy to sweep up debtors' estates in satisfaction for their growing balances. Breen, \textit{Tobacco Culture}, 139–141.
\item \textsuperscript{94} Breen, \textit{Tobacco Culture}, ch. 3.
\item \textsuperscript{95} Rhys Isaac argues persuasively that Virginians' discomfiture with British merchants is inseparable from their own moral qualms about the extravagant, enslaving lives tobacco helped define. \textit{The Transformation of Virginia, 1740–1790} (New York: W.W. Norton & Co., 1988), 247, 251.
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a fawning Puppy."\textsuperscript{96} Within a few years' time British merchants would be excused from the Commonwealth with equal fanfare.

The shopkeeper system also allowed Glasgow merchants unparalleled access to the second most valuable commodity they traded: information. The substantial risks of transatlantic trade—shipwreck, pirates, even pests—were managed by short-term partnerships and several types of insurance. (Though very different in scale, the network of mutual obligations that bound Glasgow merchants had much in common with the web of debts that bound Virginians one to another.) The merchants' most pervasive risk—the credit-worthiness of their legions of customers—was monitored carefully by shopkeepers. Chief Cunninghame factor James Robinson conveyed the difficulty of these decisions in advising Robert Paton, the firm's Culpeper storekeeper.

Cultivate an acquaintance with the characters and estates of the people in the neighborhood and with whom you deal. Should you find any of the present debtors dubious (by this expression I mean in the present instance worthless) or more in debt than there is a probability of their paying, endeavor to give security by giving long credit and steer clear of such in the future.

Robinson, who prided himself on giving his employees detailed instructions, understood that dubiety would not suit. Paton must sift the "worthless" from the myriad "dubious" accounts.\textsuperscript{97}

\textsuperscript{96} Entry for 20 May 1774, in Greene, ed., \textit{Diary of Colonel Landon Carter}, II:812–813.
\textsuperscript{97} Robinson continued: "No man, unless he has a clear and visible estate, must be credited with more than the value of their annual crops." Thomas Jefferson would rely on this policy in his diplomatic attempts, while secretary of state, to deflate British claims; see p. 98–99 \textit{infra}. Robinson to Paton, 8 February 1773, Devine, ed., \textit{A Scottish Firm in Virginia}, 66. Emphasis in the original.
Shopkeepers forwarded reports on settlement, policy, and climate to their factors, who fulfilled a key liminal role for their firms. Usually based in entrepôts like Norfolk, and not uncommonly related to a firm’s partnership, factors interpreted a firm’s policy for front-line storekeepers, attempting to guide the daily decisions on when, to whom, and how much book debt a given store should embrace. New Falmouth factor Francis Hay may have rolled his eyes at the valediction with which Robinson closed a letter packed with more than 1,500 words of instructions: “If at any time you want information or are at a loss in any particular, I shall be ready to give you my directors or advice.” When the advice backfired, factors like Robinson sought to collect debts or filed suit.

Merchants’ profits were lucrative but far from guaranteed. Hugh Young was but one merchant to himself wind up the subject of a mercantile claim. As Special Agent Thomas Nelson summarized Young’s prospects around the turn of the nineteenth century, the merchant was “at one time in very good circumstances and at another in very bad.” The in-kind service that often stood for payment was

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98 When William Cunninghame returned to Glasgow in 1762, he charged his brother Alexander with managing the firm’s business as chief factor in Virginia. Alexander himself sailed east six years later, leaving James Robinson in charge. Though not a relation, Robinson was himself a partner in the firm. His letters to Virginia shopkeepers, cited often in this stanza, are a priceless resource for those studying the rise of Glasgow-based stores in late eighteenth-century Virginia. McMurran, “The Virginia Claims of William Cunninghame,” 29–30.


100 Factors often announced their imminent departure from Virginia, as Cunninghame factor William Reid put it, so “those who are still indebted to this Store, and have not ascertained their Balances, it is hoped will settle, and grant Bond, or Specialty before I go.” Reid’s request was particularly aspirational given that his travel was in response to the General Assembly’s expulsion of merchants who refused to swear allegiance to the Revolution. *Virginia Gazette*, 7 March 1777; see also 4 August 1767 and 9 June 1768.

101 V10N1:31
another reminder of merchants’ difficulties. Debtors performed an array of work for merchants, affirming both the factors’ relationships in their community and the difficulty of collecting in other ways. Providing legal counsel and transport by wagon were the two services that debtors most often used to satisfy their accounts: Andrew Buchanan acknowledged his £39.17.8 ¾ debt contracted at Bogle, Somerville & Company’s Falmouth store but argued he’d “since considerably overpaid it by services rendered as attorney at law.” 102 Most Virginians were debtors and creditors both, with labyrinthine obligations throughout neighborhoods, families, and other associations besides. 103

Desperate circumstances on the part of debtor and creditor created other novel partnerships. The firm of Oswald Dennistown & Co. held a debt of £44 for John Smith. When Robert Hening spoke with him some years later, Smith said “John Gibson who was agent for that concern in the time of the war agreed to give him up the debt if he would move the books when it was expected that they would be burned by the British. It was admitted,” Hening continued, that Smith honored the bargain. But his debt survived the British advance just like those of his neighbors. 104

Imagine John Smith evaluating his options as the British advanced. Do nothing, and a key, perhaps only, record of his debt, and that of his fellows, would perish—at the hand of Britons, no less. Such was the fate of a good many debts

102 V15:N2:119. The Reports on British Mercantile Claims are replete with details of Virginians making good their debts with such service. No less a legal authority than George Wythe, for example, hoped that his representation of John Norton & Sons would “sett [sic] off against a small balance claimed of me.” Wythe to J.N. & Co., 22 February 1786, in Mason, ed., John Norton & Sons, 473.
104 V14:N4:171.
claimed through the British Mercantile Claims. (One receipt lost to fire—though started by American forces—had been signed by Atchison, Hay & Company's impossibly named factor, Hugh Risk.)

Rescue the records as agreed, however, and his debts, as well as those of his countrymen, would remain in place. But his own, by force of deed, would be satisfied. Honorably so. It appears that the latter was the course Smith ultimately chose. His thoughts are as inscrutable as his name, of course. But we have but his testimony and Special Agent Robert Hening's view that Smith got a bad deal. He expressed wonder both that Smith had been extended this credit and that his assistance had not, in the merchants' view, expunged the debt. Smith's debt lived on in Oswald Dennistown's claim, which occasioned Hening's investigation. This could suggest that the firm reneged on its deal; more likely it typifies the expansive response almost all merchants made to the Article Six Commission's call for unpaid accounts. While the firm made a bargain with Smith, they may have reasoned, they had none at all with the United States.

Virginians had long been as convinced of their own good intentions as they were of their agents' sharp accounting, inattention, and suspect decision-making. Commission agents missed the market by selling tobacco too soon or holding it too long; they selected planters' merchandise carelessly and packed it even less attentively; the terms on which Virginians received credit, and the dunning that

105 V17:N4:259. The papers of Culpeper firm Roger Dixon and Philip Clayton and Company, who traded with James Robb & Company, were burned by troops under British General John Burgoyne, for example. V27:N4:255.

106 These are but the clearest options. If the British advance failed to endanger the records, Smith could have burned them himself, and hope the arson went undiscovered. He might also, in an outcome the facts could sustain, exaggerate the danger to the records and so move them to fulfill the bargain he struck with Gibson. This analysis turns in part on what danger the records actually faced; since the store is not referenced, this is a bit harder to pinpoint.
followed, were insulting to honor and interest alike. Edward Ker's dealings with London merchant John Bland are suggestive. As his executor explained to Special Agent William Satchell a decade after Ker's death, "[t]he sales of tobacco at a price much below what Ker had a right to expect from the advices received from Bland urging him to ship it and holding out a prospect of considerable advantage to arise therefrom occasioned Ker to suspect the integrity of Bland in the transactions." In addition to poor brokerage, Ker complained of the all-too-common "sundry exceptional charges." Virginians were not alone in referencing honor and integrity, of course. Merchants frequently referred to it when corresponding with their pre-Revolutionary debtors.

What Virginians were apt to call honor was integral to eighteenth-century credit relationships. The legal historian Bruce H. Mann reminds us that "reputation" was an accepted definition for credit for two centuries before the Revolution. It was no mere slip of the tongue that a refused bill of exchange was said to have been "dishonored." In most cases "symbiosis" would stand for a description of credit and reputation: in Virginia, where funds were often secured by nothing more than a promise to pay, honor and interest were inextricably bound. Historian Joanne B. Freeman's effort to unpack reputation centers on the notions of "rank, 

108 V17:N1:42.
109 John Hatley Norton was mistaken, Virginian John Page wrote, in the notion that his honor was implicated by a request for payment on his father's debts. "I Lament that the Hurry of Business here has made me neglect your Letter so long—especially as you call on my Honor for attention to it..." (emphasis in the original.) Twice more Page uses the term, assuring Norton that he will pay whatever fraction of his father's balance remains after his estate has been settled. John Page to John Hatley Norton, 27 February 1790, in Mason, ed., John Norton & Sons, 490.
110 Republic of Debtors, 7, 12, 8–9. Though not focused on Virginia's credit practices exclusively, Mann's introduction to eighteenth-century credit practices and terms of art is indispensable. See especially 6–33.
credit, fame, character, name, and honor.”111 Each of these elements of reputation operated in what Kenneth S. Greenberg calls “the world of appearances,” a world late-eighteenth-century Virginians were invested in to striking degree.112 We need only recall Philip Breedlove, shivering in his linen shirt, and William Waller Hening’s view that the image captured Breedlove’s story, to appreciate the importance of appearances.

But we can tell more of Breedlove, and his fellow Virginians, thanks to several thousand conversations on late-eighteenth-century debts transcribed in the Reports on British Mercantile Claims. Unsurprisingly, they are shot through with the language of honor. Virginians of “strict honor” were the kind of Virginians special agents were apt to call “Mr.”—and the kind for whom outstanding balances were assumed to be a mistake.113 No one needed more detail when Conrade Webb reported that “General Reputation speaks well” of Thomas Branch. The notion of “General Reputation” as a character speaking of its own accord may catch the spirit of honor’s public quality.114

Countless other phrases familiar in the reports demonstrate the thin line between a debtor’s accounts and the account of a debtor. William Dulin was among those described as “much embarrassed in his circumstances.”115 Often this sufficed,
but Blake B. Woodson provided an appositive for John Mason, who “was in embarrassed circumstances, unable to pay his debts.” Perhaps the most evocative double entendre was that used to describe Drury Burge, whose life may have been as interesting as his name. “He was good in 1783 but since has died insolvent,” James Eastham wrote in one of his few reports. “He was a noted gamester and experienced a great variety of fortune.”

The reports generated by claims for Thomas Jefferson's debts brought a particularly interesting take on honor. William Waller Hening reported that James Lyle, the agent of Henderson, McCall & Co., not only praised Jefferson's approach but had a contrary review of some of his fellow merchants. “Mr. Lyle has often expressed himself in the highest terms of approbation of the conduct of Mr. Jefferson in relation to their debts and as frequently declares that if all the creditors had acted as honorably, neither the principal nor the interest would ever have been a subject of decision between the two governments.” As we shall see, and as this generous abstract might imply, Hening was a neighbor and follower of Jefferson's when he wrote.

Conversations on debt became more strained as the two governments parted ways during the 1760s and 1770s. It could not have been otherwise. Seamless eighteenth-century credit relationships required a common understanding of the

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117 V32:N1:40.  
obligation in its political and social context. When whatever fellow feeling that bound merchants and debtors earlier in the century yielded to mutual enmity in the 1760s and 1770s, debts were different. The idea of honor had depreciated: Virginians spoke of it twice as often but their declarations meant half as much. Debtors substituted descriptions of their trustworthiness for remittances. And whatever the exact relationship between debts and the Revolution, the war gave indebted Virginians a new way to measure their honor against those who'd long traduced it. They were all too happy to engage on different ground.\textsuperscript{119} That ground had often shifted during the two generations before the War in response to Virginia laws and monetary policy and the empire's colonial oversight. It is to the laws and policies paralleling and undergirding the rise of the Piedmont and its Glasgow-based shopkeepers that we now turn.

* * *

The legal and regulatory regime that shaped Virginia's way of debt catalyzed the opening of the Piedmont to Scots merchants during the three generations from 1730 until Independence. The salience of debt in turning the colony toward the shopkeeper-factor system is clear in the home government's colonial policy, especially those monopolizing the colony's tobacco and limiting its currency. Too, Virginia's own laws helped change relationships between creditors and debtors in the years leading to the Revolutionary War.

The Board of Trade's redoubled focus on doings in Virginia suggests the stress that pervaded commercial and political relationships. A more muscular review

\textsuperscript{119} Mann, \textit{Republic of Debtors}, 17.
of Virginia's proposed legislation was one important sign of the Board's new oversight. The Board's endorsement was required for the laws to take effect, but during the first few decades of the eighteenth century its review barely deserved the name. When Virginia's General Assembly submitted a proposed revision of the colony's laws in the late 1740s, however, their experience was different. The board disallowed about a third of the revised laws and instituted a mandatory suspending clause in any future revisions. Virginians were “abruptly confronted,” as Rhys Isaac has written, “with the ultimate location of power in their colonial world.”120 The Board of Trade would parse colonial laws more finely going forward, and look especially dimly on alterations to the transatlantic commercial relationship.

If the British tobacco monopoly proscribed Virginians' partners, the policies limiting circulating currency called the tune. Cash was as scarce in Virginia as debts were ubiquitous. Tobacco, of course, they had. Appropriately, Virginia's first banknotes were receipts for tobacco emitted by the colony's inspectors.121 Like the sundry pistoles, pieces of eight, and other foreign currencies that circulated in Virginia in later years, tobacco notes were valued in pounds, shillings and pence. That Virginia's currency was literally an idea underscores both its shortage of currency and the principle that drives any fiat money.122 And as scholars like

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122 Rhys Isaac underscores “[t]he operation of money as an idea in a complex of ideas,” writing that the “pounds, shillings, and pence had no tangible form but were simply a money
Michael O’Malley have explained, currency almost inevitably became a vehicle for other ideas and forces. Broadly speaking—and quite understandably—colonists welcomed currency emissions while Britons remained wary. This was so, O’Malley writes, because “[p]aper money put at risk not just wealth but the order of the universe . . . it threatened to make meaning itself, the meaning of the differences between people and things, vanish or collapse.”

Tobacco, the colony’s lifeblood, had become its legal tender, too. Though tobacco notes proved a capable stand-in, Virginia’s currency shortage invited “many little knaveryies,” in the French traveler J.P. Brissot de Warville’s phrase. “A person cuts a dollar into three pieces,” he reported, “keeps the middle piece, and passes the other two for half dollars . . . and so the cheat goes round.” What historian Stephen Mihm calls the United States’ “counterfeit economy” truly caught on when private-bank-issued notes proliferated during and after the second decade of account, used for reckoning the values of exchanges of goods, services, coins, and paper notes. The contrast was particularly striking in the case of foreign currency, which of course bore a value all their own. The Transformation of Virginia, 22–23.

123 This potential is key to the broader, thought-provoking argument of O’Malley’s Face Value. Americans’ evolving understanding of money as “a shorthand way of assigning value to difference” paralleled and informed their developing view of race. More specifically, during the period of greatest interest to my study, O’Malley finds that “as enthusiasm for market freedom increases, so too did desire for its opposite. Americans have drawn that line with race, and African Americans have borne the brunt of that contradictory desire.” Though he does not cite the work of political scientist Rogers Smith, O’Malley’s argument resonates somewhat with Smith’s efforts to reconcile the founding generation’s “comparative moral, material, and political egalitarianism” with the “array of other fixed, ascriptive systems of unequal status” that “surrounded” them. O’Malley also offers a concise but telling take on debates over paper money—including the very real effects of its inflationary tendencies. Face Value: The Entwined Histories of Money and Race in America (Chicago: University of Chicago Press, 2012), 27–32, quotes at 30 and 42–43. Rogers M. Smith, “Beyond Tocqueville, Myrdal, and Hartz: The Multiple Traditions in America” American Political Science Review 87 (1993), 549. Smith’s argument is developed more fully in his Civic Ideals: Conflicting Visions of Citizenship in U.S. History (New Haven: Yale University Press, 1997).

of the nineteenth century. But as de Warville suggests—and Mihm’s research
affirms—fake bills were also passed much earlier.125

Two of the House of Burgesses’ laws particularly irked British merchants.
They interceded to oppose both a 1748 “Act declaring the law concerning executions;
and for the relief of insolvent debtors”—more about which momentarily—and a 1757
“Act for granting an aid to his majesty for the better protection of this colony.”126 The
latter act issued £180,000, which was declared legal tender for the satisfaction of
debts. This policy ran headlong into the merchants’ concept of their obligations,
which they were given to call, uniformly, “sterling debts.”127 The Board of Trade
received a memorial from merchants during the summer of 1758 underscoring this
point: two weeks later they issued an instruction urging a revisal of Virginia’s law to
her royal governor, Francis Fauquier.128 When the Currency Act appeared some

125 Mihm’s A Nation of Counterfeitters is among the sharpest of the robust scholarship that
has developed around money in recent years. Perhaps his book’s chief theme is just how
much ubiquitous counterfeit currency had in common with legitimate banking and finance in
antebellum America. Mihm offers an exemplary quote from the nineteenth-century journalist
Hezekiah Niles, who “claimed not to ‘see any real difference, in point of fact, between a set of
bank directors, who make and issue notes for 5, 10, or 100 dollars, which are not worth the
money stated on the face of them, which they deliberately promise to pay with a previous
resolution not to pay, and a game of fair, open, honest counterfeiters. One speculates by law,
and the other against the law: both are speculators and have [a] unity of interest.’” A
Nation of Counterfeitters: Capitalists, Con Men, and the Making of the United States
Mihm’s story centers on counterfeiting outfits in northern New England, Canada, and the
Middle West; better on Virginia’s own long and distinguished history of passing fake bills is
Kenneth Scott, Counterfeiting in Colonial America (1957; reprint Philadelphia: University of
Pennsylvania Press, 1957), esp. ch. 5. See also his “Counterfeiting in Colonial Virginia,”
VMHB 61, no. 1 (January 1953), 3–33.
127 The phrase suggested, of course, the merchants’ preference for being paid in hard money.
O’Malley, Face Value, 25.
128 Fauquier’s dilatory enforcement of the Board’s instructions earned their censure,
communicated through colonial agent James Abercromby. Abercromby to Fauquier, 4
February 1763, John C. Van Horne and George Reese, eds., The Letter Book of James
Abercromby, Colonial Agent 1751–1773 (Richmond: Virginia State Library, 1991), 211–213:
years later, merchants' effective lobbying left Virginians relieved that its provisions did not go even further.

When Parliament passed the Currency Act of 1764 forbidding the printing of further currency, at least £230,000 in Virginia money still circulated. Merchants feared this depreciating paper, understandably concerned that debts contracted in pounds sterling would be repaid in increasingly valueless scrip. The Currency Act sought to address those trepidations. The inability to print money left Virginia and her fellow colonies chronically strapped for cash just as a depression set in. Modern capitalism's view of wealth robs these measures of their force. Eighteenth-century mercantilists believed that "[t]he world contained only so much gold or silver, only so much fertile land, only so much 'real wealth,'" as historian Michael O'Malley has written. Virginians and their fellow colonists were on the business end of mercantile policy: Their new home provided little raw material for specie while their old government siphoned it back to England through measures like the Stamp Act.

British merchants' strong preference for being paid in cash only redoubled shortages: even coin that filtered into Virginia from the West Indies, for example,

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131 Face Value, 16–17.
most often made its way across the Atlantic. Inflation, too, exacerbated shortages by making what little specie circulated worth less. As we have seen, the absence of cash encouraged creativity among debtors and creditors both. Like the larger firms whose claims comprise the Reports on British Mercantile Claims, backcountry merchant John Hook accepted clients’ produce and even hours of labor—“working in his garden, raising chickens, picking cotton”—in return for their purchases. Even wagers were bartered. A “common cry” at cock fights and horse races, Culpeper County’s George Hume wrote near the middle of the century, became “2 cows and calves to one, or 3 to one, or sometimes 4 hogshead tobacco to one.”

There were other circumstances in which bartering would not do—for example, the cash-only auctions that were often the last step in attempts to collect outstanding debts and taxes. Here the scarcity of cash artificially depressed prices and threatened to make sheriffs the county’s debtor. No more cash was at hand to buy a debtor’s goods than to pay a merchant’s bill. Both debtors and creditors suffered when attached goods brought twenty-five cents on the dollar at auction, as was the case in early 1780s Virginia. In 1783 three in four county sheriffs were unable to meet their tax collections: two years later, as “Slam Bang” wrote in the Virginia Gazette, the “scarcity of cash is the subject of conversation in every

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132 Martin, Buying into the World of Goods, 7.
133 Hume to Brother, 22 August 1754, in “Letters of Hume Family,” WMQ First Series 8, no. 2 (October 1899), 89.
134 Sheriffs executed surety bonds that made them, and their co-signers, liable for their collections. This circumstance encouraged sheriffs to petition the legislature for relief when their prospects were dire.
135 Mann, Republic of Debtors, 31.
company. The question was not whether an emission of currency was necessary but whether ‘the remedy is as bad as the disease.’”136

This endemic shortage of specie helped define one important element of the merchant-client relationship: long-term, revolving, ever-deepening debt. Barlett Hailey summarized in a report on his debt prepared in 1801 much of the relationship between Virginians and the merchants who were, from afar, their never-ending source of credit. Hailey, who farmed in Louisa County, had accrued a small debt—just more than £6—and was presumed by William Hening to be good for that sum more or less constantly since the peace. But when Hening spoke to his neighbor about the balance, he responded in a way familiar to Henderson, McCall, & Co. or any other merchant trading in the Commonwealth. “He says he will endeavor to pay it from the ensuing crop.”137

High duties on tobacco were also tough medicine for eighteenth-century Virginians. Not only did Great Britain compel Virginians and other colonists to market their tobacco in England, they added duties that became truly onerous in the century after 1660. By the middle of the eighteenth century the duty was more than eight pence per pound—an amount twice or even three times what the tobacco might bring when sold.138 (A steady business in smuggling—“underweighing,” “relanding,”

137 V15:N3:203
or secreting tobacco home—developed to avoid these duties; historian Robert C. Nash suggests a peak rate of ten percent of the trade entered Great Britain illegally during the early eighteenth century.\(^{139}\) When in 1732 the Virginia House of Burgesses and British ministry appeared ready to replace the duty with an excise tax—to be borne by purchasers in Great Britain—British merchants successfully lobbied against the proposal. Instead the duties continued to be rolled into Virginians' accounts, remaining a nontrivial fraction of the obligations to consignment merchants.\(^{140}\) The Glasgow tobacco merchants who dominated the Piedmont after 1730, on the other hand, paid these duties directly. The change was attractive to smaller planters and helped speed the growth of Glasgow-based firms in Virginia.\(^{141}\)

So too did a redoubled inspection regime that managed the quality of tobacco exports. As tobacco prices began to rise in the 1730s, even areas known for substandard leaf, such as New Kent County, were planted to the hilt. The inspection act passed in 1730 was intended to buoy prices by ensuring uniform quality among


\(^{140}\) However, during the late eighteenth century one penny per pound was due in cash when tobacco arrived in Great Britain; the rest could be bonded. Liquidity with which to meet such duties is the first qualification T. M. Devine outlines for any who would have been *Tobacco Lords*, 3. Ragsdale, *A Planter's Republic*, 44–45.

\(^{141}\) Glasgow-based factors factored the onerous duties into the price they paid for a hogshead of tobacco. However they, unlike consignment merchants, owned Virginia tobacco before it left the colony, and so did not add the duties into planters' ongoing accounts. Smaller Piedmont growers thus avoided the compounding interest that their Tidewater neighbors had lamented. Since one penny per pound of the duty was due in cash when the tobacco arrived, which "put a strain on the liquidity of even the richest merchants" of either the consignment or factor-shopkeeper approach. *Devine, Tobacco Lords*, 3.
Virginia's exports.\textsuperscript{142} Planters with holdings of all sizes brought their crops to predetermined inspection warehouses, receiving notes when their crop was deemed satisfactory. (These notes were the colony's early currency referenced above.) The colony and Scots merchants were providing services that large planters had offered less formally for decades, such as extending their "marks" to neighbors with smaller production capacity. And the merchants whose new stores stood in the shadow of the inspection warehouses soon began to extend the consumer credit that Tidewater planters had long offered. The salient result of both innovations for these leading Virginians was an erosion of their balance sheets and standing in the community.\textsuperscript{143}

Though the Inspection Act is a signal example, other Virginia laws touching pre-Revolutionary debt had substantial effects on the trajectory of legislative, legal, and diplomatic affairs during the last quarter of the eighteenth century.\textsuperscript{144} Some of the laws' repercussions were immediate and transparent; others developed more subtly over time. Virginia legislators often drew laws broadly, speaking around or about debts rather than to them directly. But contemporary debtors, like the Reverend Abner Waugh, understood them in simpler terms. As he shared with Special Agent Thomas Miller around the turn of the nineteenth century: In Virginia, debts "were done away by an Act of the Legislature."\textsuperscript{145}

\textsuperscript{142} As early as 1619 Virginia law compelled the destruction, rather than the export, of poor quality tobacco; the 1730 inspection regime remained in place until the Revolution. Stacy L. Lorenz, "To Do Justice to His Majesty, the Merchant, and the Planter": Governor William Gooch and the Virginia Tobacco Inspection Act of 1730," VMHB 108, no. 4 (2000), 345–346, 351.

\textsuperscript{143} Nelson, \textit{A Nation of Deadbeats}, 19–20.

\textsuperscript{144} For a more detailed summary of debate over debtor protection laws during the 1760s and 1770s, see Holton, \textit{Forced Founders}, 60–65.

\textsuperscript{145} V26·N1·49

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At bottom, as Waugh conveyed, these laws extended a tradition of Virginia debt legislation friendlier to debtors than to creditors by deferring payments on British debts for a generation or more. After 1705 debts were payable in goods in addition to currency. Interest was limited to six percent in 1730, then five percent in 1748: the penalty for usurious lenders was twice the amount of the loan. Debtors unable to meet obligations were jailed at the county’s expense for the first twenty days; thereafter, creditors received the bill. Those owing less than £10 or 2,000 pounds of tobacco could surrender any remaining capital and be discharged. (In 1772, creditors were made liable from a debtor’s first day in jail, and the per diem fee was tripled.) Replevy bonds, which required the endorsement of another thought “good,” allowed debtors to forestall—often for as long as a year—arrest, imprisonment, or “execution,” the seizure and sale of their property. Even those for whom execution was inevitable benefited from broadened categories of property that were sheltered. Seen from a distance, the pattern is clear. As the century progressed, the Virginia the General Assembly made it more difficult for creditors to seize a debtor’s person or property.

146 Hening’s Statutes at Large 3:385–389.
147 Hening’s Statutes at Large 4:294–296; 5:101–104.
148 Hening’s Statutes at Large 4:151–167. Although creditors could tack these expenses onto suits against debtors, Robert and Katherine Brown are doubtless correct that the law had the effect of discouraging arrests for middling debts. Virginia 1705–1786: Democracy or Aristocracy?, 109; Coleman, Debtors and Creditors in America, 195.
149 Hening’s Statutes at Large 8:527–528.
150 Coleman, Debtors and Creditors in America, 192; see also The Revised Code of the Laws of Virginia, 2 vols. (Richmond, 1819), 1:530n–531n.
151 Coleman, Debtors and Creditors in America, 196.
152 More dynamic still was the exchange rate in play between Virginia debtors and British creditors. But for a seven year period in the middle of the eighteenth century, when a steady exchange of twenty-five percent was established, the General Court “altered the rate periodically to reflect changing economic relationships.” Coleman, Debtors and Creditors in America, 198n15.
As its treatment of the General Assembly's broad revisions suggested, not every statute regarding debts earned the Privy Council's requisite endorsement. A 1748 measure would have raised the jurisdictional threshold for debt causes in the General Court to £20 from £10, keeping a greater measure of debt cases in the local county courts. The Council vetoed.\(^{153}\) Occasionally acts secured the home government's blessing only to yield to concerns later. "An Act Declaring the Law concerning Executions, and for the Relief of Insolvent Debtors" empowered sterling debts to be satisfied in Virginia currency after twenty-five percent was added to a debt's face value. Rightly fearing the further depreciation of Virginia currency, British merchants interceded with King George II. His instructions resulted in a 1755 statute that revisited the issue.\(^{154}\) A 1762 bankruptcy law—stipulating that debtors who forfeited their property save household and professional items would be cleared of additional balances—was likewise thought too kind to debtors. Virginia leaders also thought better of the statute, fearing it was "injurious to the credit of this colony, and may be of evil consequence to the trade thereof."\(^{155}\) James Madison would lead the charge to codify such thinking in the Constitution some years on.

British merchants and factors felt the political ground shifting under them during the early 1770s. The credit crisis that complicated debtor-creditor interactions in 1772—and led to the near-total demise of the consignment system—

\(^{153}\) Coleman, Debtors and Creditors in America, 192.


all but halted collections. Merchants, pressed anew by their creditors, were even keener to collect, and Virginians less able to pay. The 1774 closure of Virginia courts underscored these developments. (The Coercive Acts inspired the closure, in Virginians' telling.) When fighting began in the spring of 1775 Virginia leaders dropped their pretensions to moderation on debt legislation. The fifth Revolutionary Convention that met in Williamsburg during May and June approved merchants' departures with an important caveat: no "books of accounts or papers or papers belonging to any person in Great Britain" were to be destroyed or removed from the colony.\footnote{156 The Proceedings of the Convention of Delegates, Held at the Capitol, in the City of Williamsburg, in the Colony of Virginia, on Monday the 6th of May, 1776 (Williamsburg, 1776), 165. Merchants were similarly forbidden to take any profits. An echo of this restriction followed the British defeat at Yorktown, when Congress empowered states to approve "passports" with which British merchants could export profits. Virginia demurred. John P. Kaminski and Gaspare J. Saladino, eds., Documentary History of the Ratification of the Constitution, (Madison: State Historical Society of Wisconsin, 1988–1993) 9:943n19. Hereafter cited as DHRC.} This language obviously embraced account books and other records of Virginians' debts, and so is understood by many as a tacit debtor relief measure—or the groundwork for debtor relief measures to come. The House of Delegates, "the spring Convention under a new name," in historian John Selby's phrase, compelled in the fall what it had allowed in the spring: British merchants had forty days after the new year to swear allegiance to the new government or depart Virginia.\footnote{157 Many stayed. Charles J. Farmer found that 23 of 44 Scots merchants working in Southside Virginia took the oath rather than leave the new Commonwealth. One, Samuel Calland, married a Virginian four days before the date to leave. In the Absence of Towns, 123–124; Selby, The Revolution in Virginia, 138, 149.} It eschewed subtlety to describe "all the natives of Great Britain who were partners with, factors, agents, storekeepers, assistant storekeepers, or clerks here, for any merchant or merchants in Great Britain." Virginia's courts were closed to this set but her ports were wide open.
During its session that began on 20 October 1777 the General Assembly passed a law that affected relatively few debtors but had a disproportionate influence on the legal debates that followed. The text of what would become known as the "Sequestration Act" or Loan Office Act declared:

That it shall and may be lawful for any citizen of this commonwealth owing money to a subject of Great Britain to pay the same, or any part thereof, from time to time, as he shall think fit, into the said loan office; taking thereout a certificate for the same in the name of the creditor, with an endorsement under the hand of the commissioner of the said office expressing the name of the payer, and shall deliver such certificate to the governor and council, whose receipt shall discharge him from so much of the debt.\footnote{An act for Sequestering British Property, enabling those indebted to British subjects to pay off such debts, and directing the proceedings in suits where such subjects are parties (October 1777 session), Hening's Statutes at Large 9:377. Though passed on 22 January 1778, the Sequestration Act is nearly uniformly dated to 1777; the legislative session in which it was passed began on 20 October. I follow the convention, which the editors of the Documentary History of the United States Supreme Court outline on 204, n4.}

Debtors remitted depreciated Virginia currency to the Commonwealth, which issued a receipt cancelling the debt. The law did not determine whether or how the Commonwealth would be liable for the debt in proceedings to come.\footnote{Another section of the bill sequestered estates owned by Britons for the duration of the war. Title was retained by the owner, but any rent, for example, would accrue to the Commonwealth until the fighting was over. Like the loan office provision, this was intended to help breathe life into the commonwealth's torpid finances. Emory G. Evans, "Private Indebted and the Revolution in Virginia, 1776 to 1796," WMQ, Third Series 28, no. 3 (July 1971), 353.} The Sequestration Act precluded the collection of debts in Virginia courts by a British plaintiff, or, indeed, by private Virginia creditors. The plan, elegant in theory if impractical in execution, was also designed to provide the state treasury with an infusion of paper money. Only 300 Virginians participated.\footnote{Quoted in Evans, "Private Indebtedness and the Revolution in Virginia," 353.} Thomas Miller, a special agent assigned to investigate debts in central Virginia under the Jay Treaty's sixth article, explained it concisely in reporting on Jeremiah Peirce's obligation.
“During the Revolution an act passed the Legislature of this state,” he wrote, “authorizing all persons indebted to British merchants to make payments in paper money into the Treasury, which payment was to extinguish the debt.”

This act presented Virginia debtors with a real quandary. There was no short-term prospect of British merchants collecting; not, certainly, while the countries were at war. Recall, too, as debtors certainly did, that state legislators’ antipathy toward creditors long predated the war. It would likely survive the conflict should the United States prevail. (A contrary result mooted these considerations, of course.) Another detail spoke to the speculator inside so many late-eighteenth-century Virginians: the command that Virginia currency satisfy debts at par despite its depreciation on the market. Sure enough, payments into the state loan office tracked the depreciation of Virginia currency. Currency worth two percent of its face value in specie had eye-popping purchasing power in debts. But the limited subscription proves how difficult Virginians found the decision to pay pennies on the dollar today or simply keep hoping tomorrow would never come.

Something approaching a companion to the Loan Office Act appeared five years later. The General Assembly again reached out to debtors by allowing settlements in the form of tobacco, hemp, and flour. The court would value the items presented. Later in 1782, and again in the year following, debtors were permitted to

161 V26:N1:51.
settle accounts with title to land or slaves. Another 1782 law explicitly declared that British subjects lacked standing, or the right to initiate suits, in Virginia courts.

Debtors and creditors alike took this as an affirmative bar to entertaining debt suits well into the 1790s. Once reopened in 1777, state courts funneled debt suits that predated the closure to the "British docket," an approach reminiscent of ejecting merchants from the Commonwealth that same year. With past cases stalled, and current cases foreclosed by the legislature, Virginia courts offered no recourse to British merchants.

Virginia's serial currency emissions during the 1780s created yet more havoc for creditors to negotiate. What many contemporary writers called "the doctrine of political transubstantiation of paper into gold and silver" depreciated currency, helping debtors at their creditors' expense. Before the Commonwealth promulgated laws devaluing currency, few debtors could have mustered the balance due. After these laws helped empower debtors, the merchants and their factors reasonably wanted no part of Virginia's scrip. James Jutt's experience suggests that Virginia currency was suspect even before its value was undermined officially. Jutt's £130 debt to the Spotsylvania outpost of Glassford, Gordon, Monteith & Company was never in jeopardy, according to William Hening. But when "he tendered the amount of this demand to Alexander Blair, factor for the claimants . . . in paper

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163 Hening's Statutes at Large 11:76.
money before it experienced any depreciation . . . he refused to accept it.” Jutt's money—Virginia's money—was no good.

Virginia's financial policy also led to creative financing by the Commonwealth's leaders. When £2,000,000 in paper currency was released in May 1780, a tax on windows followed that would collect and then extinguish the currency; Virginia also backed the emission with a mortgage on the recently vacated capitol building in Williamsburg. The appearance of paper money marked time in Virginia as clearly as comets or cicadas or hundred-year floods. In the case of John Hightower, “dead and insolvent ever since the paper money ceased,” its appearance marked two tragedies. For some merchants it signaled the end of their business in Virginia. The principal behind Atchison, Hay and Company, which did a steady business on Virginia's Eastern Shore, “sold off his stock of goods immediately upon the emission of paper money in this state,” the Reports on British Mercantile Claims relate. Atchison “shut up his books and refused to settle with anyone in that currency during its circulation.”

Not all merchants were so resolute; those who hoped to stay in Virginia felt pressured to deal in Virginia's scrip. Accepting the depreciated currency could wreck a merchant's books; refusing it, however, could demolish his standing in the community. “If any person particularly Scotchmen refused the paper money when much depreciated in payments of debts contracted before the war,” wrote Scots

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166 V15:N3:199.
169 V17:N4:261. The firm went effectively unrepresented in the Commonwealth until the summer of 1798, when its representatives were no doubt encouraged to return by the new federal courts, the Article Six Commission, or both.
merchant William Allason in 1785, “they were held in the greatest detestation.”170 Those who hoped to stay, like Allason, deemed questionable currency just another move in the long game required to thrive in Virginia's marketplace.

The Virginians who introduced this chapter, women and men who populate the Reports on British Mercantile Claims, lived with debt. Several of them died very nearly at its hand. When we appreciate the ubiquity of debt in late-eighteenth-century Virginians' everyday lives, we come closer to understanding why Thomas Bolkham hired out his children, William Horrell drank himself dead, and tippling houses were so well traveled in the years just before Revolution. Indeed, when we survey the conditions obtaining during Virginia's nearly 175 years as a British colony—its agronomy, role in the mercantilist system, and its development into the Piedmont, where Scots merchants reached farther than watercourses, to begin—the hegemony of debt in early Virginia seems almost obvious. As we have seen, the colony's leaders were nearly as focused on managing debts' effects as their citizens. Debts' reach only broadened after the Revolution, as the new United States and Great Britain attempted—again and again—to settle the unfulfilled accounts. So great was the challenge, in fact, that an unprecedented approach in international law was required. But that gets ahead of our story. To understand why the Jay Treaty provided for an international arbitration of the United States' private, prewar debts, we should review the hold they maintained on Congress, state legislatures, judges, and diplomats from the Revolution to 1800. To those efforts we now turn.

Chapter Two

"The Dire Debate": Virginia's Prewar Debts in Postwar Politics

Where'er you go, you find a crowd
In fierce contention bold and loud.
All say they love their country well,
Yet their opponents wish in hell.
A true example I relate,
And thus began the dire debate.

William Munford,
"The Political Contest: A Dialogue"¹

Mecklenburg County's William Munford, politician and poet, took up his pen to describe the ideological scrum sweeping the Commonwealth in 1798. His pedigree and his timing were impeccable. Munford's father, Robert, had served in the House of Burgesses during the 1760s and the House of Delegates a decade later. His political career provided material for two comedic plays, his country's first. (It was Robert's character Mr. Tackabout who "promised" his county's voters an "independent dominion.") William had watched the combination of debt and drink unwind his father's career and, some thought, his health. His father's troubles also displaced young William, who was sent to live with relatives while Robert tried to right his affairs.²

William found something of an example in what others might have taken for a cautionary tale. Twenty-three years old in 1798, he had won his father's old seat in the General Assembly a year earlier. By that time he had been writing poems and prose for several years, and within months he would serve as a free-lance Special Agent of the United States investigating his neighbors' prewar debts. He brought a

¹ In Poems and Compositions in Prose on Several Occasions (Richmond: Samuel Pleasants, Jun., 1798), 163.
² For more on Robert Munford, see infra, 218–222.
keen perspective to “The Political Contest,” as he called a 1798 poem that contrasted the views of Federalists, Democratic-Republicans, and a third gentleman who valiantly attempted moderation.

Munford pitched the poem as typical of conversations his readers would easily recognize. “Three politicians t’other day,” it begins, “Were met; but where, I need not say . . . Since men who act and think as these / Are seen at present where you please.” Running more than 400 lines, the poem engages many of its moment’s contentious questions through “A,” who calls himself a “mod’rate m[a]n,” “B,” a Republican, and “C,” an unabashed Federalist. Munford’s Messrs. “A, and B, and C” will rejoin us for the last decade of our journey through debt-driven political debate. Questions about how to resolve prewar debts, as we shall see, were at the heart of their “dire debate.”

In fact, the controversy over prewar debts played an important part in almost every significant public policy discussion during the generation that followed independence: in the negotiations to conclude the war, of course; in the effort of the nascent Articles government to live up to the Treaty of 1783; in James Madison’s thinking before the Constitutional Convention, and in the Virginia Ratification Convention afterward; in the new federal executive’s early diplomacy with the late mother country; and in several leading cases taken up by the new federal courts. Whether debts were front and center, as in the leading cases of *Jones v. Walker* and *Ware v. Hylton*, or more subtly involved, as in the Virginia ratification convention, they resonated in each. And each was a story followed closely by contemporary Virginians. To trace these conversations with some care is to get closer still to the

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perspectives of the debtors and of the Special Agents of the United States who took their stories down from 1798 to 1801.

The Peace of Paris negotiated in 1783 was an obvious forum for settling the argument over accounts that pre-dated the war. British negotiators were keen for the treaty to guarantee payment of old debts to their countrymen. Virginia's unparalleled legislative and judicial obstacles to collection offered an early test of the new nation's divided sovereignty and split the United States' three peace negotiators. Individual states had helped forgive their citizens' debts before and after the war; the Articles of Confederation gave the general government next to no authority over the states. How would the Articles government enforce the bargain its representatives struck in Paris? Benjamin Franklin and John Jay thought the remedies a proper province of states, but John Adams envisioned a broader reach for the Articles government. His idea that Congress should "recommend" to states non-interference with debts gave way to a treaty that took, in John Bassett Moore's phrase, "bold national ground."4 The fourth article of the final treaty declared that "creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money of all bona fide debts heretofore contracted."5

Adams, Franklin, and Jay understood that their bargain ending the war would open a new front at home. Their message conveying the treaty spoke somewhat defensively of the resolution of prewar debts. Making good on these

obligations was both legally proper—“no acts of government,” they wrote, “could
dissolve the obligations of good faith resulting from lawful contracts between
individuals”—and strategically forward-thinking. The negotiators’ phrasing seemed
to invoke Virginia’s and Virginians’ self-understanding along with the country’s
future prospects. “[T]he purity of our reputation in this respect in all commercial
countries is of infinitely more importance to us,” they argued, “than all the sums in
question.” Virginians might have responded that much hung on the antecedent of
“us.”

The years that followed proved that few state legislators shared this broad­
minded approach. Virginia’s General Assembly had no appetite for revising their
position on pre-Revolutionary debts. In fact, they continued to pass laws that made
pre-Revolutionary debts more elusive. All along they emphasized Britain’s
unfulfilled responsibilities under the treaty. Great Britain had come no closer to
surrendering key Northwest forts, much less resolved southerners’ worries over
compensation for slaves lost during the Revolutionary War. Recriminations stood in
for action during this period of circular diplomacy.

As one of the Treaty of Peace’s negotiators, John Jay was an obvious
candidate to serve as the Confederation government’s secretary of foreign affairs,
which he did from December 1784 through March 1790. Early in his tenure Jay
picked up correspondence begun by John Adams, then serving as consul to Great
Britain, and Adams’s counterpart the Marquis of Carmarthen. In 1785 Adams had
formally petitioned—“require” was the term he used—Great Britain to abandon

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6 Quoted in Moore, *History and Digest*, 272.
Northwest forts as described in the 1783 Treaty. Carmarthen’s response, which
demurred on the forts and countered with the merchants’ unfulfilled accounts,
landed on Jay’s desk during the spring of 1786. In a comprehensive summary
prepared for Congress, Jay offered a full-throated endorsement of the British
position: Merchants were justified in demanding the payment of just debts, right
down to the wartime interest.8 Jay reviewed each state’s laws for violations of the
peace treaty’s fourth article. Virginia’s, like New York’s and South Carolina’s, were
especially contemptible.9 “[Y]our secretary,” he wrote, “is of opinion that the thirteen
state legislatures have no more authority to exercise the powers, or pass acts of
sovereignty on those points, than any thirteen individual citizens.”10

The three recommendations in Jay’s 1786 report were institutionally ahead of
their time, politically unthinkable, or both.11 Congress should urge the uniform
repeal of all laws at odds with the 1783 treaty (Jay provided a template statute),
resolve that states should eschew any future lawmaking passing upon a treaty, and
charge Adams to confess error to the British government in the hope of embarking
on negotiations to settle the Treaty’s outstanding issues. To appreciate the novelty of
Jay’s suggestions, recall that the states his report lectured were in point of fact the
only real law-making bodies during the Confederation period. It was to these states,

8 “However harsh and severe the exaction of this interest,” Jay wrote, “considering the war
and its effects, may be and appear, yet the treaty must be taken and fulfilled with its bitter
as well as its sweets.” *Secret Journals of The Acts and Proceedings of Congress* (Boston:
Thomas B. Wait, 1821), 4:212
9 Not long after becoming foreign secretary, Jay requested that each state forward a copy of
its laws touching British debts. The states took no action on his request. Stahr, *John Jay,*
202.
11 Jay and his most recent biographer count four recommendations. I have collapsed his
advocacy for states to repeal debtor relief provisions and to do so using Jay’s proposed
through their representatives, that Jay reported as Secretary for Foreign Affairs.

His conception was different, however, and broader: the course he recommended, as his biographer Walter Stahr has written, presaged both federal supremacy and dual sovereignty.12 Later in the same year Jay offered a précis of his report for John Adams: “The result of my inquiries into the conduct of the States relative to the treaty,” he wrote, “is, that there has not been a single day since it took effect, on which it has not been violated in America, by one or other of the States.”13

Violation in the form of inaction characterized both sides. Indeed, the same issues continued to percolate years later when Jay was dispatched to Great Britain in the summer of 1794. His visit was made more congenial by his 1786 report to Congress on pre-Revolutionary debts. Though submitted confidentially, Jay had shared the sense of his recommendations with John Temple, then serving as British consul. The diplomatic exchange ensured that merchants viewed Jay favorably when he arrived to negotiate eight years later. No creditor or debtor could doubt Jay’s position that prewar obligations ought to be paid.14 Few could have predicted that they would ultimately be paid in his name, and in a method he predicted. The United States government could step in to make creditors whole, he wrote in 1786, to prevent “our national reputation for probity, candour [sic] and good faith [from being] tarnished.”15 But first Virginians would have something to say about Madison and Jay’s handiwork.

12 Stahr, John Jay, 203.
13 Jay to Adams, 1 November 1786, in Correspondence and Public Papers of John Jay, 3:214.
15 Stahr, John Jay, 211–212, quote at 212.
The General Assembly was obliged to rethink its prior legislative efforts to "injure their British creditors"\textsuperscript{16} in the aftermath of the Treaty of Peace. The "United States in Congress Assembled," as the Articles government was styled, recommended states repeal any laws at odds with the treaty's fourth article. In May 1784 James Madison moved such repealing legislation on the floor of the House of Delegates. Patrick Henry, foreshadowing their coming fight in Virginia's Ratification Convention, defeated the measure by arguing that Northwest forts and slaves should be addressed before debts. These caveats survived when Virginia did finally repeal—sort of—its prior legislative evasions of pre-Revolutionary debts in October 1787. The act's suspension of prior stalling tactics was itself suspended by a stalling tactic: The bill was to take effect if and when the Commonwealth's governor had been notified that Britain had surrendered the Northwest military outposts and made restitution for slaves taken during the war. The Constitution underscored the Treaty of Peace as the law of the land, but Virginia's endorsement of its provisions was weak tea indeed. As we shall see, their response to the Constitution itself was almost equally anemic.

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To recall the indebted Virginians who introduced Chapter One is to be reminded of the perverse and pervasive effects of debt before the Revolutionary War. Virginia's collective concern about overwhelming obligations informed the debtor relief laws her General Assembly passed during the last third of the eighteenth

\textsuperscript{16} William Knox, \textit{The Interest of the Merchants and Manufacturers of Great Britain, in the Present Contest with the Colonies, Stated and Considered} (Boston: Drapers, 1775), 37.
century. The effects of these laws only begin with Virginians' financial and psychological well-being and the atrophy of British merchants' accounts.17

Their most important result was in helping to shape the thoughts of James Madison, who voted against many of the measures during his service in the House of Delegates from 1783 to 1786.18 Madison synthesized these objections in April 1787 in “Vices of the Political System of the U. States,” certainly one of the most consequential memoranda to the file ever penned.19 Madison knew well that Virginia's General Assembly had no real competition when it came to inflating currency to benefit domestic debtors.20 The “multiplicity,” “mutability,” and “injustice” of these laws were chief among the “Vices” that troubled him. Local politicians decrying taxes and debts were not merely farce.21

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18 This followed a three-year stint in the Confederation Congress, setting Madison up to understand as few others could the fecklessness of the national body and the “mutability” of the Virginia assembly. The Articles of Confederation required what contemporaries called “rotation in office.” Its fifth section declared that “no person shall be capable of being a delegate for more than three years in any term of six years.” Articles of Confederation, Section V (1781). Available at http://avalon.law.yale.edu/18th_century/artconf.asp.
19 “Vices” has received the attention of many historians of the founding and early national eras. Gordon Wood, for example, argues persuasively that the disappointment so plain in Madison’s draft is of a piece with a broader feeling that the 1780s had fallen short of the Revolutionary aspirations to “reform the character of American society and to establish truly free governments,” in his phrasing. Wood also demonstrates that Virginia was not alone in the bad acts that so troubled Madison. The Creation of the American Republic, 1776–1787 (Chapel Hill: University of North Carolina Press, 1969), 393–396, 409–425, quote on 395.
20 Madison served in the General Assembly from 1776 to 1777 and 1784 to 1786. This service, together with his work in the Continental Congress in the early 1780s, convinced him how fully states’ locally-driven policies confounded any of the states’ collective endeavors. Still, Madison’s vision was a national one. He wrote memorably of the states’ discriminatory economic policies that “New Jersey placed between Phila. & N. York, was likened to a cask tapped at both ends; and N. Carolina, between Virga. & S. Carolina to a patient bleeding at both arms.” Albert Beveridge, Life of John Marshall (Boston: Houghton Mifflin, 1919) I:311.
21 The quote continues: “In short, I have inspired them with the true patriotic fire, the spirit of opposition. . . .” Tackabout, whom Robert Munford describes as “a pretended whig, and a real tory,” underscores these accomplishments among many others in a vain effort to prove
Though not adjacent—part of the appeal of Madison’s “Vices” report is its stream-of-consciousness quality—two of his thoughts clarify which laws troubled him. He lamented “the regulations of trade” that “snare not only . . . our citizens but . . . foreigners also.” Both groups, indeed “all civilized societies are divided into different interests or factions,” Madison wrote. He offered seven examples of how citizens might be distinguished. The first was “as they happen to be creditors or debtors.”

The states’ unjust laws, in Madison’s telling, sprang from the equally fouled sources of “the Representative bodies” and the “people themselves.” The Constitution’s central idea—like that of Madison’s white paper—was to empower a federal government to stand between the two groups. The tenth section of the Constitution’s first Article was the instrument fashioned to prevent navel-gazing public policy such as sustained debtor relief. This section departs from the Constitution’s general approach in that it describes limitations on state governments. “No state shall,” it reads in relevant part, “emit bills of credit” or “make anything but gold and silver coin a tender in payment of debts.” Making the nation’s independence real meant putting a stop to state laws that flummoxed creditors, Madison reasoned. What potential trading partner would trust a nation whose own best thinkers consider their laws a commercial catastrophe? The roots for

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22 The text concludes without exploring its twelfth subject, the “impotence” of the state laws. J.C.A. Stagg, ed., *The Papers of James Madison, Congressional Series*, vol. 9, 345–348.

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both the preamble’s aspiration to “establish justice” and Article I, Section 10’s limitations on state governments are found in Madison’s white paper.\textsuperscript{23}

If Madison’s “Vices” was a nascent outline for the Constitution, the Virginia ratification convention was its most searching referendum.\textsuperscript{24} Just days after the Philadelphia convention concluded in September 1787, a correspondent wrote James Madison that its work was “at this moment the subject of general conversation in every part of the town, and will soon be in every quarter of the state.” After the first of the year, Governor Edmund Randolph reported that none spoke of the Constitution, “not from a want of zeal in either party, but from downright weariness.”\textsuperscript{25} The Commonwealth’s appetite for debate had revived by summer. It remained unclear, however, as specially scheduled coaches delivered convention


\textsuperscript{25} Six of nine Virginia newspapers printed the Constitution in late 1787: two pamphlet editions appeared in Richmond and broadsides were produced in Winchester and Alexandria. John Dawson to James Madison, 25 September 1787, and Edmund Randolph to James Madison, 3 January 1788, in George Mason to John Mason, 21 July 1788, in \textit{DHRC} 8:19, 16, 284.
delegates to Richmond on Sunday, 1 June, whether the Constitution or its detractors would prevail.26

The stakes were apparent to all. Eight of the nine states required by Article VII had given their assent to the new compact. New York’s vote—like Virginia’s, universally deemed to be pivotal—had yet to be cast. Edmund Randolph aptly surmised that the circumstances “reduced our deliberations to the question of union or no union.”27 Virginians were alarmed; Britons, encouraged. When around 175 of the former gathered in Richmond in June 1788 to consider ratifying the Constitution, they understood it as something of a collection notice for Virginians’ immense pre-Revolutionary debts. The debate turned in part on whether delegates thought the collection proper. The ratification convention began and ended with talk of Virginians’ pre-Revolutionary debts. They were discussed at least implicitly on most days in between.

Joining James Madison to urge ratification were Edmund Pendleton, the chief judge of Virginia’s Court of Appeals and unanimous selection to chair the proceedings; George Wythe, the Chancellor of Virginia, the young nation’s preeminent legal scholar and educator, and chair of the Convention’s Committee of

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27 New Hampshire became the ninth state to ratify the Constitution on 21 June, while the Virginia delegates were in session. There was widespread agreement that Virginia’s assent was pivotal to the new union; opponents of the Constitution argued as much even after New Hampshire’s ratification. Randolph’s comment came in his long speech to the convention on June 27, shortly before the convention voted to ratify. Cyrus Griffin, obligated to remain in New York as president of the Continental Congress, was not sanguine about the effects of the timing on Virginia: “this will make her in fact the preponderating state of the union; and being so placed,” he wrote future Article Six Commissioner Thomas Fitzsimmons, “I fear the consequences...” 3 March 1788, in *DHRC* 8:453.
the Whole; John Marshall, already an esteemed Virginia attorney at the age of thirty-two; and James Innes, the attorney general of Virginia. Alongside Henry, or rather, in the wake created by his words, were James Monroe, just a month past his thirtieth birthday; George Mason, author of the 1776 Virginia Declaration of Rights, who was much concerned that the Constitution lacked a similar affirmative statement of rights—and that the federal government's power of direct taxation would prove onerous; and William Grayson, the handsome former staff officer to General Washington, who in later years would join Richard Henry Lee in opposing Federalist initiatives as one of Virginia's first United States senators.

The Convention began by adopting the procedural rules of the House of Delegates—a subtle reminder of the state-first perspective Federalists faced throughout the debates—and agreeing to consider the Constitution section by section. The approach was quickly discarded, as members from both sides turned the convention's attention to whatever sections of the document comported with their argument of the moment. This allowed speakers to insinuate talk of debts into the conversation at almost every turn.28 These obligations were bound up with the proposed federal courts whose jurisdiction would embrace them, which Madison correctly predicted would get the opposition's full attention.29

28 Madison sketched the allegiances of ratification delegates for Thomas Jefferson: "[A]lmost all the Counties in the N. Neck have elected federal deputies. The Counties of the South side of James River have pretty generally elected adversaries to the Constitution. The intermediate district is much chequered in this respect. The Counties between the blue ridge & the Alleghany have chosen friends to the Constitution without a single exception." James Madison to Thomas Jefferson, 22 April 1788, in DHRC9:746.

Edmund Randolph best represented the Commonwealth's divided mind.\textsuperscript{30} Virginia's governor, thirty-four years old when the constitutional convention began in Philadelphia, was given the honor of presenting the "Virginia Plan" to his fellow delegates on 29 May 1787.\textsuperscript{31} Uncomfortable with what became of that proposal, he "withheld his subscription" from the Constitution—one of only three delegates present in mid-September to do so.\textsuperscript{32} Within a month he explained his objections to the compact in a letter addressed to the Speaker of Virginia's House of Delegates but clearly intended for his fellow Virginians. (It was reprinted as a pamphlet by the year's end.)\textsuperscript{33} Who better, then, to lead off the convention with a speech advocating the Constitution's ratification?

Randolph's long speech on Wednesday, 4 June—the convention's first day of substantive discussion—signaled both his support for ratification, with amendments, and his sensitivity to the issue of debt. Virginians' disregard for their prewar obligations explained why "foreign nations . . . discarded us as little wanton bees who had played for liberty, but who had not sufficient solidity or wisdom to secure it on a permanent basis." This failure was obvious in Congress's inability to compel the satisfaction of the Treaty of Peace's article on just debts, which Randolph read to his colleagues. "I wished to see the treaty complied with," Randolph asked

\textsuperscript{30} Kevin R. C. Gutzman argues that the common perception of Randolph as "weathervane" is too simple. Where other contemporaries and other historians see intellectual calisthenics, Gutzman credits Randolph with a ""democratic"" approach, one ""respectful of the people."" In these views Gutzman finds the roots of the tightly-cabined view of federal power under the Constitution that would become the "Virginia Doctrine." "Edmund Randolph and Virginia Constitutionalism," \textit{Review of Politics} 66, no. 3 (Summer 2004), 469-497, quotes at 471.


\textsuperscript{32} \textit{DHRC}\textsuperscript{9:932}.

\textsuperscript{33} Editors of the \textit{DHRC} print Randolph's pamphlet as "Edmund Randolph's Reasons for Not Signing the Constitution," 27 December 1787, 8:262–274.
sarcastically, "but have not been able to know why it has been neglected." Virginia's responses to the Confederation Congress's requisitions helped explain the inaction. "You are too contemptible," the governor said, recounting his Commonwealth's position, "we will despise and disregard you." The United States could scarcely hope for a warmer response from international creditors. The governor next rose on Friday the sixth, and in a three-hour speech described justice as having been "suffocated," "strangled," and "trampled under foot [sic]." He had no doubt read his "Vices."

After prevailing over a "bilous indispition [sic]" that frightened Federalists up and down the East Coast, Madison was back in traces by the time the courts—and debts—were discussed in earnest during the third week of June. This began with the reading of the first and second sections of the Constitution's Article III on Thursday, 19 June. Edmund Pendleton, the convention chair and chief judge of Virginia's highest court, was then helped from his chair to begin a robust defense of the Constitution's judicial framework. Even Pendleton tacitly admitted, in conclusion, that the federal courts could prove "ruinous"; he was confident that Congress, in giving them shape, would feel compelled to "prevent that dreadful oppression." If Pendleton guessed at the probable, George Mason, who followed

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34 Edmund Randolph, speech in the Virginia ratifying convention, 4 June 1788, DHRC 9:934–5.
35 Edmund Randolph, speech in the Virginia ratifying convention, 6 June 1788, DHRC 9:971, 972.
36 DHRC 10:1637–1638.
37 Limited to crutches after a 1777 fall from a horse, Pendleton, like Madison, battled an unrelated illness during the Ratification Convention. Pendleton's biographer can be forgiven a bit of hyperbole, perhaps, when he suggests that "tears were in the eyes of many of the [convention's] older members" given the president's decision to "carry a chief part of the burden of debate in the face of his obvious infirmities." Mays, Edmund Pendleton, II:235.
38 Edmund Pendleton, speech in the Virginia ratifying convention, 19 June 1788, DHRC 10:1398–1401.
him, was alarmed at the possible. The courts are "constructed as to destroy the
dearest rights of the community," he began. Mason then read, again, Article III's
first section and outlined the common Anti-Federalist argument that state courts
would be subsumed by the federal jurisdiction. He fretted over what result if "a
dispute between a foreign citizen or subject, and a Virginian cannot be tried in our
own Courts, but must be decided in the Federal Court." Mason's suggestion,
explored in the example of Northern Neck land claims, was that the state judiciary
would be "annihilate[d]" and the General Assembly, laid "prostrate." Anti-
Federalist attempts to limit federal jurisdiction were often sung in this key, and
historian F. Thornton Miller has written that jury trials were an important part of
the strategy. If juries were assured jurisdiction over facts, if they were made
available for civil as well as criminal trials, and if they could be guaranteed to come
from the vicinage of the defendant, Anti-Federalists felt, British debtors and other
foreign interests would have less recourse in the new tribunals.40

Randolph's final, three-hour speech to the convention, among the last words
uttered before the roll was called, included a carefully drawn warning about British
debts.41 Neither his peregrinations nor Anti-Federalist objections to the proposed

39 George Mason, speech in the Virginia ratifying convention, 19 June 1788, DHRC 10:1406–
1407.
Capo Press), 145; F. Thornton Miller, Judges and Juries Versus the Law: Virginia's
Provincial Legal Perspective 1783–1828 (Charlottesville: University of Virginia Press, 1994),
18.
41 James Innes, Virginia's attorney general and renowned as one of its most eloquent orators,
made what may have been a pivotal speech late in the Convention. Henry himself noted that
it was distinguished by "eloquence splendid, magnificent, and sufficient to shake the human
mind!" Such was Innes's power that Henry felt the need to reassure his fellow travelers, in
response, that "He cannot shake my political faith." Innes would resign the attorney
general's post to accept a commission to serve on the Jay Treaty's Article Six Commission.
Edmund Randolph, speech in the Virginia ratifying convention, 19 June 1788, DHRC,
10:1536.
United States judiciary stalled the momentum for ratification in Virginia. "The judiciary department has been on the anvil for several days," Madison wrote to Alexander Hamilton on 22 June, and "attacks on it have apparently made less impression than was feared." Delegates began to anticipate the convention's denouement, which centered on the form and timing of amendments Virginia would propose. Anti-Federalists would have preferred to reject the Constitution, but a majority coalesced around ratifying "with amendments." After Madison promised that Federalists would remain in session to consider recommended amendments, the Constitution was ratified by a vote of 89-79. George Wythe chaired the committee that drafted Virginia's amendments, which eventually numbered forty. Half were affirmative rights in the style of Virginia's Declaration of Rights; half were structural limitations on the federal government's power. One among these would so limit the federal courts' jurisdiction as to keep them out of debt cases altogether.

The Constitution's likely effect on Virginia's chronic indebtedness to British merchants elicited great consternation outside the chamber as well. Virginians' concerns with the Constitution long survived the vote to ratify. St. George Tucker, the Commonwealth's leading legal mind after Wythe, summarized these not as an attorney but as a debtor and a father.

"You will have heard that the Constitution has been adopted in this state. That event, my dear children, affects your interest more nearly than that of many others. The recovery of British debts can no longer be postponed, and there now seems to be a moral certainty that your patrimony will all go to satisfy the unjust debt from your papa to the Hanburys. The consequence, my dear boys, must be obvious to you.

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42 James Madison to Alexander Hamilton, 22 June 1788, in *DHRC* 10:1665.
Your sole dependence must be on your own personal abilities and exertions."44

Whether Tucker's fears were justified would depend on how the new federal courts treated the Commonwealth's laws on pre- Revolutionary debts.

The opening of the federal courts in the spring of 1790 was anticipated by creditors and debtors alike—and with predictable enthusiasm and chagrin, accordingly. Such fears were widely thought to have inspired, during the summer of 1787, fires at the New Kent County clerk's office and the King William County courthouse (the latter occurred the night before the county court came into session).45 Both fires consumed a great many records of debt actions, relieving defendants of their obligations and finding a new way to frustrate plaintiffs. State courts had long been effectively shut to suits for British debts. Judge John Tyler, just two years past his service in the Ratification Convention, said during a 1790 meeting of the Fredericksburg District Court "that he would preside at the trial of no

44 Low, "Merchant and Planter Relations," 317. Tucker wrote to his stepsons Richard and John Randolph, who indeed suffered financially during the decade that followed ratification. They sold the family's holdings to help meet demands pressed by the Hanbury firm; a 1797 judgment in federal court was particularly dire. John, commonly known as John Randolph of Roanoke, wrote that spring that "I have been deprived by a sentence of the Federal Court of more than half my Fortune." For more on the younger Tucker and Randolph families' efforts to parry claims, see Philip Hamilton, The Making and Unmaking of a Revolutionary Family: The Tuckers of Virginia, 1752-1830 (Charlottesville: University of Virginia Press, 2003), 98-131, quote at 105.

45 John Price Posey, former member of the House of Delegates, burned the New Kent County jail—from which he and an accomplice had escaped three days earlier—in addition to the clerk's office on 15 July 1787. Evidence that Posey was inspired by concerns over debt litigation is circumstantial: he had been convicted sixteen months earlier, in Northampton County Court, of defrauding debtors and "destroying 'in a passion' an arbitration bond." Harry M. Ward suggests, however, that the effects of his act on debtors may help explain the contemporary ambivalence toward his death sentence. Public Executions in Richmond, Virginia: A History, 1782-1907 (Jefferson, North Carolina: McFarland & Company, 2012), 17; Malcolm Hart Harris, Old New Kent County (West Point, Virginia: M.H. Harris, 1977), vol. I, 97-99. Myra L. Rich, "Speculations on the Significance of Debt: Virginia, 1781-1789," VMHB 76 (1968), 306.
Such was the breach into which Virginia's United States District and Circuit Courts stepped in May 1790; and just as the Anti-Federalists had hoped, state politics and state court proceedings provided an unmistakably important context for their work.47

The first decade in Virginia's federal circuit court deflated both creditors' and debtors' expectations, as creditors received a hearing but often little else.48 Dockets swelled with actions—Farrell & Jones, to choose the firm represented in the federal court's first key test case, lodged two dozen suits within months of the federal circuit court's operation.49 This in spite of a $500 (£150 Virginia currency) jurisdictional threshold. (As the Reports on British Mercantile Claims affirm, most obligations failed to satisfy this minimum. However, multiple debts, accumulating interest, and exchange rates often allowed creditors to invoke federal jurisdiction.

Debt litigation in the 1790s was effectively politics by other means. As historian Charles F. Hobson has written, "The parties to British debt suits acted not only as private litigants," but "became public symbols, representatives of the sovereignty and dignity of the nations to which they belonged."50 Virginia state judges and juries, of course, had for years fulfilled a similar role. "Created for the purpose of preventing injustice," as Emory Evans has written, they had "become, in

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47 Fish, Federal Justice in the Mid-Atlantic South, 25.
48 The other group to benefit from the court's work in debt cases was the Virginia bar. John Marshall argued scores of these cases, almost always representing Virginia debtors. "Editorial Note," Papers of John Marshall, Vol. 5:259.
50 "The Recovery of British Debts in the Federal Circuit Court of Virginia, 1790 to 1797." VMHB 92, no. 2 (April 1984), 176. Though I refer frequently to his concise, detailed editorial note in the Papers of John Marshall, Hobson's article is an even more thorough treatment of the issues covered in this stanza. My understanding of these leading cases owes much to his keen analysis.
many cases, the very instruments for its perpetration.”51 The new federal tribunals were the only game in town.

The focus gradually shifted from what Federal District Judge Cyrus Griffin called the “unhappy difference between Great Britain and her Colonies” to the merits of the legal causes before the court. In the three years after the establishment of the federal Circuit Court, creditors experienced only the most modest success in pursuing their claims. Their fortunes improved significantly during the following three years, with key rulings by the Circuit and Supreme Court punctuating the change in 1793 and 1796, respectively. These cases involved Virginia’s latest efforts to address its citizens’ indebtedness: four imaginative arguments, collectively called the “special defenses.” The politics inhering in the debt cases were transparent in these arguments, more protest than legal analysis.52 (Merchant William Cunninghame summarized them from Glasgow as “the plea of their being British debts.”)53 So central were they to debtors’ defenses of British suits that John Marshall had forms printed for his pleadings. When one of the arguments did not pertain to a given case, he simply struck through it.54

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54 As the editors of Marshall’s papers suggest, Marshall very likely contributed heavily to the development of these pleas. He represented debtors in more than 100 suits for debt during the 1790s. “Editorial Note,” Papers of John Marshall, Vol. 5, 265. The forms are reprinted at 280–287.
One special defense maintained that creditors' claims expired along with the colonies on 4 July 1776. Another argument debtors' counsel advanced involved the British abrogations of the Treaty of Peace. These violations, together with continued "hostile acts," the thinking ran, meant that Great Britain and the United States were yet at war. A third plea argued the Commonwealth's 1782 law removing standing from British plaintiffs barred collection by British subjects. A fourth defense was the last undermined in court and the most central to Virginians: It asserted that the 1777 Sequestration Act had effectively shielded debts from collection. Thomas Walker—the first lead plaintiff—presented a receipt for funds he'd paid into Virginia's loan office under the auspices of the 1777 law. Since these pleas raised matters of law, judges would rule on their validity before sending the case forward for a jury's decision on questions of fact.

They were evaluated in two leading cases, Jones v. Walker, heard in November 1791, and Ware v. Hylton, argued in May 1793. The first was called by some "the celebrated case of the British debts," principally since the eight stellar attorneys participating included Patrick Henry; the latter led to the Supreme Court result that finally decided the question. William Jones was the surviving partner of Farrell & Jones, a Bristol-based commission merchant. Thomas Walker, a well-

55 Britons' different understanding of this timing, and Thomas Macdonald's pointed way of underscoring it, would contribute to the failure of the Jay Treaty's Article Six Commission; see p. 154-156 infra.
56 The first plea in any case for debts was a general claim that the obligation had been met. This ensured that, after legal questions such as those raised in the "special defenses" were settled, the case would go to a jury for resolution and the award of damages. In Virginia this usually meant adjusting the award, especially as to interest that accrued during the war. "Editorial Note," Papers of James Marshall, vol. 5, 264-269; Fish, Federal Justice in the Mid-Atlantic South, 54.
57 "it involved more particularly the honour of the state of Virginia, and the fortunes of her citizens..." William Wirt, Sketches of the Life and Character of Patrick Henry (Philadelphia: James Webster, 1818), 312:
known resident and former legislator from Albemarle County, had executed a bond
to the firm in May 1772 and later remitted a £215 payment into the state's loan
office. His case was heard by Supreme Court justices John Blair and Thomas
Johnson, sitting "on circuit," and District Judge Cyrus Griffin.58

Argued during the last week of November 1791, *Jones v. Walker* was "a case
in which, from its great and extensive interest, the whole power of the bar of
Virginia was embarked."59 Much as in the Virginia Ratification Convention, Henry
left the most lasting impression. He spoke for three days, beginning at 11 o'clock in
the morning on Friday, 25 November. Early in his argument Henry distinguished
the honor of individual Virginians from a nation's collective responsibility—an issue
that would similarly interest the Special Agents of the United States years later.
Christians were obliged to turn the other cheek, Henry acknowledged, "[b]ut when to
the character of Christian you add the character of patriot, you are in a different
situation." Patriots not only don't forget—they get even. "When you consider injuries
done to your country, your political duty tells you of vengeance."60

The United States, in other words, was both the pawn of a vast empire and a
nation clothed in its own sovereignty. The war that won that sovereignty was never
far from Henry's thinking. It "obliged us to emit paper money, and compel our
citizens to receive it for gold." He acknowledged that "[i]n the ears of some this

Mid-Atlantic South*, 54.
Webster, 1818), 312: Jerman Baker, Andrew Ronald, Burwell Starke, and John Wickham for
the creditors; Alexander Campbell, Patrick Henry, James Innes, and John Marshall for the
debtors. Henry argued on both occasions; the second, according to William Wirt and the
stenographer David Roberton, was the less impressive of the two. It nevertheless reportedly
led Justice Iredell to exclaim "Gracious God?—he is an orator, indeed!"Wirt, Sketches, 313.
sounds harshly. But they are young men, who do not know and feel the irresistible necessity that urged us.”61 Those of Henry’s generation knew the costs of war. One cost for British merchants was the loss of “this right of constraint over the debtors.”62 This was a pittance relative to the sacrifices asked of Americans, Henry argued. “Sir, if you had seen the sad scenes which I have known; if you had seen the simple but tranquil felicity of helpless and unoffending women and children, in little log huts on the frontiers, disturbed and destroyed by the sad effects of British warfare and Indian butchery, your soul would have been struck with horror!”63

Whether the United States was—Henry would have said “were”—real in 1776 or 1783 was a nontrivial fact in controversy. “The consent of Great Britain was not necessary (as the gentlemen on the other side urge) to create us a nation. Yes, sir, we were a nation, long before the monarch of that little island in the Atlantic Ocean gave his puny assent to it.”64 James Innes, Virginia’s attorney general and later an Article Six commissioner, was given the honor of concluding the debtors’ presentation. But unlike the summer of 1788, the painstaking debate before the circuit court did little to settle the question. Justice Blair left the bench before the case concluded, and that left two judges who could not agree on the fourth, Loan Office defense. The court declined to rule.65

63 Wirt, *Sketches of the Life and Character*, 348–349. Emphasis in the original. Such rhetoric would resonate again in the debate over the Jay Treaty, as in William Wilson’s comment that the British “the other day were laying this Country in smoke and ashes.” Wilson to Joseph Jones, 14 September 1795, quoted in Thomas J. Farnham, “The Virginia Amendments of 1795: An Episode in the Opposition to Jay’s Treaty,” *VMHB* 75, no. 1 (January 1967), 84.
64 Wirt, *Sketches of the Life and Character*, 327.
Cyrus Griffin, United States District Judge and Virginian, thought the 1777 Sequestration Act absolved debtors. Justices Thomas Johnson and William Cushing, who sat on circuit with Griffin in succession, thought that the act did not excuse debts. Justice Cushing was heard to say that an opinion by him and Griffin "would not forward the business."\textsuperscript{66} New characters, however, appeared in the next act. Plaintiff William Jones's death in early 1793 led to the emergence of a new defendant, Richmond merchant Daniel Hylton, and a new named representative in the form of Farrell & Jones, John Tyndale Ware. The new case's facts were identical in relevant part to the \textit{Walker} matter. But a new pair of justices joining Judge Griffin in Richmond—Chief Justice John Jay and Justice James Iredell—led to a different outcome.\textsuperscript{67}

The Circuit Court heard nine days of argument in \textit{Ware v. Hylton} in late May 1793. More than half of the oratory was provided by the defense's counsel, and a good bit of both sides' presentations focused on British violations of the Treaty of Peace as a bar to collection. John Marshall spoke on 29 and 30 May 1793, first maintaining that Great Britain's repeated breaches of the treaty negated its provision on prewar debts. He further argued that loan office payments were not a

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\textsuperscript{66} In summarizing the diverging opinions for Lord Grenville, George Hammond emphasized the judges' provenance. "[A] difference of opinion subsisted between Mr. Griffin the federal district Judge, \textit{residing within the state of Virginia}, and Mr. Cushing one of the Judges of the supreme Court, whose decisions in the other states have been uniformly favorable to the claims of the British creditors." 1 January 1793, in \textit{Documentary History of the Supreme Court}, vol. 7, 206–207, quote at 207 and 207n20. Emphasis in the original.

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\textsuperscript{67} Pleas were filed in \textit{Ware} on forms Marshall designed, and with his name crossed out and James Innes's substituted. \textit{Documentary History of the Supreme Court}, vol. 7, 209n27.
“legal impediment” contemplated by the treaty and that a “Treaty will not repeal a legislative Act.”

On 7 June 1793 the Court undermined the special pleas that turned on independence, the Act of 1782 barring British plaintiffs from Virginia courts, and the notion that the war was yet in progress. Iredell joined Chief Justice Jay on these points, but he agreed with Judge Griffin to uphold the plea based on the Sequestration Act. Iredell determined that the Sequestration Act was a legitimate statute that neither the Treaty of Peace nor the Constitution disturbed. Hylton, accordingly, was not liable for the fraction of his debt paid into the state loan office. A jury received the question of payments of the balance. Chief Justice Jay, reflecting his belief in the propriety of paying interest that accrued during the war, advised the jury to return a verdict for full interest and principal. Virginia jurors, however, in keeping with the ambivalence conveyed in the Reports on British Mercantile Claims, could not reach a verdict on wartime interest. Jay put the case over and a subsequent jury ordered payment—absent war interest—on 31 May 1794. Virginians were only warming to defiance of John Jay, who landed in

68 A treaty struck by the Confederation, that is; he and his fellow Fairfax investors would see the last point differently through the lens of the Constitution. The long early-nineteenth-century litigation over the contested title to Lord Fairfax’s former tract tested the Treaty of Paris against a different confiscation statute passed by the Commonwealth. The distinction, for Marshall, hinged on timing: the Constitution prohibited laws contrary to a treaty after its ratification, but did not touch laws that predated it. Marshall analogized from the relevant section of the Treaty of Peace, Article V. It asks Congress to recommend that states return British loyalists’ confiscated estates: “[s]ince the confiscated estates were not restored by the treaty itself, by implication (said JM) the treaty did not revive debts paid into the loan office.” “Argument in the Circuit Court, 29–30 May 1793,” Papers of James Marshall, vol. 5, 305; quote at 312, n46, 312–313, n50.

69 Documentary History of the Supreme Court, vol. 7, 210–211.

70 Only the relatively few debtors who had paid into the state loan office, of course, could argue the plea upheld in the Walker case. “Editorial Note,” Papers of James Marshall, vol. 5, 264–269.
Falmouth, England to negotiate with Lord Grenville nine days after the jury spoke. The Loan Office plea—and Ware v. Hylton—lived on.

If Ware v. Hylton was, as Justice Iredell and not a few Virginians thought, "the greatest Cause which ever came before a Judicial Court in the World," one wouldn't have guessed from its timing. Three Supreme Court terms brought no action on Ware's appeal of the loan office plea. The petitioner's request for a continuance and Jay's absence led to the delay; the Chief Justice's May 1795 election as New York's governor ensured that he would not hear the case again. No replacement had been confirmed when arguments began on 6 February 1796.

That is to say, by the time the case came on for argument, the Jay Treaty had been negotiated, debated, and ratified. All this made Marshall's appearance on behalf of the debtors still more salient, as he and Justice James Iredell were reminded during their travels to Philadelphia for the Supreme Court session. One night's stay at a tavern became a moot court with several layfolk; the Irish author Isaac Weld observed and reported. "It is scarcely possible for a dozen Americans to sit together without quarrelling about politics," Weld wrote, "and the British treaty, which had just been ratified, now gave rise to a long and acrimonious debate."

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71 Elkins and McKitrick, The Age of Federalism, 404-405.
73 Jay was under sail from London when elected; he assumed the governorship on 1 July 1795. Stahr, John Jay, 339.
74 Washington commissioned John Rutledge Chief Justice as a recess appointment on 1 July 1795, the same date Jay's resignation became effective. Little more than two weeks later—perhaps before Rutledge himself was aware of the invitation—Rutledge roundly criticized Jay and his treaty at a meeting in Charleston, South Carolina. (Rutledge's personal distaste for Jay may have owed in part to having missed the initial appointment as Chief Justice.) Partisan newspapers and still-new political parties debated Rutledge's fate for the balance of the year; unsurprisingly, Federalists disclaimed him, Republicans supported his continuing in office. The Senate rejected a permanent appointment on 15 December 1795. John Anthony Maltese, The Selling of Supreme Court Nominees (Baltimore: Johns Hopkins University Press, 1995), 26-31.
Marshall tested his arguments in this wayside on the banks of the Susquehanna River. "The farmers were of one opinion . . . the lawyers and the judge were of another, and in turns they rose to answer their opponents with all the power of rhetoric which they possessed." No doubt fueled by a libation or several, the debate roared late into the evening. In Weld's telling, the exchange was more notable for heat than light. William Munford's imagined "Political Contest" may not have been all that fanciful after all.75

This was not the only harrowing element of Marshall and Iredell's journey. Marshall recovered quickly from a serious carriage accident they experienced in route to Philadelphia, still managing most of the heavy lifting in the argument for Hylton. His lone appearance at the Supreme Court bar was widely praised, even in defeat. If the law had prevented the Commonwealth—but not a creditor—from pursuing a debt, Marshall asked, "[w]hat man in his senses would have paid a farthing into the treasury?"76 On 7 March the five associate justices gave their opinions in serial fashion—"seriatim," in the legal argot. Only Iredell, sticking to his views on circuit—"seriatim," in the legal argot. Only Iredell, sticking to his views on circuit, would have upheld the special plea exempting loan office payments from collection.77 Though the remaining four justices divided on the question of the

75 The "noisy contest lasted till late at night," only to be rejoined in tavern's bedchamber. "Here the conversation was again revived, and pursued with as much noise as below, till at last sleep closed their eyes, and happily their mouths at the same time . . ." Isaac Weld, Travels through the states of North America, and the provinces of Upper and Lower Canada, during the years 1795, 1796, and 1797. 3d ed. (London: John Stockdale, 1800), vol. 1, 102–3. Munford, Poems and Compositions in Prose, 163–175.

76 "Editorial Note," Papers of John Marshall, 5:321. That relatively few Virginians pursued this opportunity could also signal, as the editors of the Marshall Papers point up, some doubt about the law's efficacy. "Editorial Note," 5:267.

77 Justice Iredell, "in conformity to a practice which the Judges of this court have generally pursued, forbore taking any part in his decision," since he had heard it below. However, some 12,000 words worth of his views were included in the case's report. They "had not been changed by any thing which had occurred, in arguing the case on the present writ of error." Ware, administrator of Jones, Plaintiff in Error v. Hylton et al. 3 U.S. 256–280.
Sequestration Act’s propriety as a general matter—Chase thought it permissible, Wilson did not, and Cushing did not engage the question—they were of one mind that Article Four of the Treaty of Peace eviscerated it.

Creditors' claims began to get traction in the federal courts after these congenial decisions. Not long afterward, however, the Jay Treaty's Article Six Commission was created; understandably, given the decades of frustration at the hands of Virginia debtors and their counsel, firms focused on the process aborning in Philadelphia. The sustained and clamorous quality of the leading cases that roiled Virginia courts during the 1790s was a harbinger of what they would find there.

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The executive branch was likewise wrestling with pre-Revolutionary debts during the early 1790s, and here too Virginians were in the vanguard. While Marshall's law practice turned on explaining pre-Revolutionary debts, his second cousin Thomas Jefferson occupied the same ground as secretary of state in a one-sided debate with Great Britain's minister to the United States. Despite their relation, Marshall and Jefferson were vastly different temperamentally, politically, and tactically. Indeed, their common perspective on pre-Revolutionary debts may have been the most important political agreement of their dual careers.

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78 Ware, administrator of Jones, Plaintiff in Error v. Hylton et al. 3 U.S. 199.
As we have seen, during the 1780s British creditors came to expect a warm response from the likes of Jay and Adams, the latter of whom served as minister to Great Britain from 1785 to 1788. Virginia debtors' concern that their interests were represented but poorly in talks with Great Britain were briefly assuaged in 1792, when Jefferson exchanged memoranda with newly appointed British consul George Hammond. Out of his depth, and with tepid support from his government, Hammond did his best to parry the arguments Jefferson conveyed in a treatise that ran some sixty transcribed pages and more than 20,000 words. Jefferson ably vindicated many positions Virginians held dear—including the appropriateness of withholding payment for debt while Great Britain maintained the Northwest forts and British complicity in delay by limiting Virginia's West Indies Trade. (The robust income this trade promised, the argument went, would permit colonial debtors to square their prewar accounts.) Put simply, Virginians—for the preponderance of the debtors Jefferson classified were his countrymen—might be undone by circumstance, or confounded by the malfeasance of former friends, but they would not welsh.

Jefferson concludes his discussion of prewar debts by suggesting the charge of the Special Agents of the United States a decade later: Who were these debtors? He outlines five classes, but practically there are three: those who have settled their debts, those whom circumstances suggest never will, and those with the ability to pay but who have not yet done so. This last class, "the one now in question," is also "little numerous," Jefferson assured Hammond. So too is the sum of Americans' prewar debts: it would make no sense for the total to much surpass the value of one

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year's crops, the credit extended each year "in the common course of dealings." The United States' message to Great Britain was unmistakable: The total debt in controversy and the portion capable of being repaid were modest. This message would be conveyed just as keenly by the Reports on British Mercantile Claims.

The verdicts of contemporaries and historians on Hammond and Jefferson's dealings are nearly uniform. Prepared to trade punches, Hammond found himself in a knife fight. Few cut closer than Jefferson. But real resolution of the issues over which he sparred with Hammond awaited another round of negotiations by John Jay.

Virginia Democratic-Republicans found Jefferson's evisceration of Hammond enjoyable and useful both. When residents of Petersburg published their rejection of Jay's Treaty, its departure from the principles Jefferson imposed on Hammond was key. One important premise for the treaty was to obviate the long, fruitless debate over who first, or most, had abrogated the 1783 Treaty of Peace. Virginians had held this front with great effort throughout the 1790s, and no rout was more satisfying than Jefferson's correspondence with Hammond. Ceding the point that Great Britain had first undermined the Treaty of Peace "ought to be reprobated by a

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82 Jefferson writes of debtors insolvent before the war; debtors bankrupted during it; debtors solvent at the war's end who have failed since; debtors solvent throughout the war who have since reconciled their obligations; and the final class, described in detail above. The two classes Jefferson highlights as particularly large—the second and fourth, in his reckoning—are not incidentally those whose conduct is beyond reproach. Charles T. Cullen, et. al, eds., Papers of Thomas Jefferson (Princeton: Princeton University Press, 1990), 23:588.

83 Alexander Hamilton intimated privately to Hammond that the administration was not uniformly supportive of Jefferson's views. The intervention, which one historian calls the "final insult" in Jefferson's fraught tenure as secretary of state, effectively ended the negotiation. Charles R. Ritcheson advances an interpretation of the exchange more sympathetic to the twenty-eight-year-old Hammond than most. Ritcheson, Aftermath of Revolution, 231–242.
nation which regards either its honor or its interest." Jefferson's fellow Virginians
did not stand by while the Federalists squandered the advantage.\textsuperscript{84}

France's declaration of war on Great Britain in 1793 called the questions
addressed in the Treaty of Peace a decade earlier—neutral shipping rights, to
begin—and underscored what a desultory attempt those 1783 resolutions had since
proved. Sympathies for Revolutionary France and Britain reflected the new nation's
political divisions and revived its own revolutionary spirit.\textsuperscript{85} The notion of renewed
war with Great Britain advanced from idle talk to real fear until Chief Justice John
Jay was dispatched to London. His task during the summer of 1794 was to negotiate
an agreement that would solidify the two nation's commercial relationship. Signed
in November 1974, the treaty dominated the Senate's calendar during most of June
1795. Seven years after Virginians took up the ratification of the Constitution,
another June would be spent considering pre-Revolutionary debts.

The story of the Jay Treaty's negotiation, ratification, and political effects has
been told often, and often quite well.\textsuperscript{86} The contemporary shorthands for it tell us

\textsuperscript{84} "Resolutions unanimously agreed to . . ." in \textit{The American Remembrancer: or, an Impartial
Collection of Essays, Resolves, Speeches, &c. Relative, or Having Affinity, to the Treaty with
Great Britain} (Philadelphia: Henry Tuckniss, 1795), 103. Twice more the resolutions spoke to
the twinned concerns of honor and interest. 104, 105. The Petersburg Resolutions' mention of
the "late secretary of state" is relevant to the debate among historians concerning how
directly Democratic-Republicans connected defeating the Jay Treaty with raising Jefferson to
the presidency. Virginians, even better than their countrymen, understood that Jefferson
was the nominee-in-waiting and that almost every argument that undermined the treaty
burnished his candidacy. Referring to his demolition of Hammond, of course, elegantly

\textsuperscript{85} Farnham, "The Virginia Amendments of 1795," 76.

\textsuperscript{86} The classic and still useful treatment is Samuel Flagg Bemis's \textit{Jay's Treaty: A Study in
Commerce and Diplomacy} (New York: Macmillan, 1924). See also Jerald A. Combs, \textit{The Jay
Treaty: Political Battleground of the Founding Fathers} (Berkeley: University of California
Press, 1970); Ritcheson, \textit{Aftermath of Revolution}; and Bradford Perkins, \textit{The First
Rapprochement: England and the United States, 1795–1805} (Berkeley: University of
California Press, 1967). Elkins and McKitrick present a sharp, concise narrative of the
treaty's roots and ratification in their \textit{The Age of Federalism}, ch. 9.
much about its political context. One, “the Treaty of Amity,” was doubly ironic. The
treaty’s provisions led to commission-driven bickering—none fiercer than the Article
Six arguments over unresolved pre-Revolutionary debts—and broke open new fault
lines in United States politics.87 Another suggestive handle for the agreement was
“the British treaty,” which many, Virginians included, might have said with a snarl.
They saw a treaty not with the British but by, of, and for the British. As William
Munford’s Democratic-Republican “B” put it, “The British brib’d that scoundrel Jay,
/ To pass his country’s rights away.”88 Historians have been more generous,
acknowledging the weak hand Jay held and the concessions he did secure.89 A full
account of names the treaty earned in time would include “the bugbear treaty,” “the
half-false treaty,” and dozens even less kind.90

If any of Virginia’s Democratic-Republicans approached the Jay Treaty with
an open mind, the first sentence in its first section slammed it shut. Indebted
Virginians were in no way prepared, as the treaty’s preamble wishfully described,

87 Todd Estes ably examines this partisan divide in his The Jay Treaty Debate, Public
Opinion, and the Evolution of American Political Culture (Amherst: University of
Massachusetts Press, 2006).
88 The quatrain also reaches the Senate’s debates on ratification, concluding “And twenty
senators I’m told / were all subdu’d by British gold.” “The Political Contest,” 166.
89 “In order to form a just estimate of the merits of the British treaty,” Jay’s son wrote forty
years after it was struck, “it is necessary to call to mind the unpropitious circumstances
under which it was negotiated, to examine the results it produced, and finally to compare its
provisions with the treaties subsequently formed by the United States.” Modern historians’
conclusions prove this was not filial piety alone. Compare Todd Estes’s conclusion that the
Jay Treaty was “probably as good a treaty as the young and largely powerless country could
have expected.” Todd Estes, “The Art of Presidential Leadership: George Washington and the
Jay Treaty,” VMHB 109, no. 2 (2001), 130. The Life of John Jay: With Selections From His
Correspondence and Miscellaneous Papers vol. 1 (New York: J & J Harper, 1833), 377. For
similar evaluations of the Jay Treaty as effective diplomacy, see Bemis, Jay’s Treaty, 267–
271 (allowing Jay’s failures—including the exchanges on debts—but emphasizing the United
States’ keen desire for an agreement); Ritcheson, Aftermath of Revolution (acknowledging
that Grenville “scored heavily” but maintaining those concessions “outweighed not a whit
those won by” Jay) (Dallas: Southern Methodist University Press, 1969), 352–359; Beeman,
The Old Dominion & The New Nation, 139–140.
90 Washington, “Comments on Monroe’s A View of the Executive of the United States,”
“to terminate their Differences in such a manner, as without reference to the Merits of Their respective Complaints and Pretensions.” To do so would undermine the arguments that had successfully kept creditors at bay for more than a generation. Virginians found much not to like in the twenty-eight articles that followed, but it is no exaggeration to say that the gig was up within the treaty’s first few words. They, like its sixth article on debts, probably caught the attention of John Tyler, who wrote to St. George Tucker, “of this I am not in temper to speak . . . with words of respect for the great Agent who has been so kind as to legislate in conclave with Granville our best Rights away; and moreover to establish a court of judicature within the States to grant Judgments on British debts vs. the American People—O People, where is thy Spirit?”

Federalists’ talk of imminent war aside, the Jay Treaty was first a commercial arrangement. “She can defend us and our trade,” Munford’s Federalist “C” emphasized, “And make the Sansculottes afraid.” Even its arbitral commissions’ procedures were affected by the endemic commercial troubles the treaty addressed. When David Howell traveled to the St. Croix River Commission’s first meeting in Halifax, Nova Scotia from Boston, he was compelled to reserve a private ship for the purpose. American ships, at the time, were prohibited from commercial activity with British North America; sailing under British colors offered

91 Miller, ed. Treaties and Other International Acts, 2:245.
93 Democratic-Republicans maintained that the Federalists’ warmongering was just that. Munford’s “B,” caught their spirit when he replied, “(W)e are the humble fools / Of tyrants, rogues, and British tools. They’ve brought us now into the war; And ’tis as true as you stand there!” “The Political Contest,” 164.
different, equally dire risks, since France and Great Britain were at war just then. Preventing like problems in the future depended on a resolution of the outstanding pre-Revolutionary debts, a matter the sixth article described in detail. These prescriptions begin our close look at the Article Six Commission's work in the next chapter.

Virginians, "to whose entire outlook, way of life, and past conduct Jay's work stood as a baleful reproach," would have much to say about the treaty before its ratification. Virginia's senators had no illusions about the importance of pre-Revolutionary debts in their consideration. Steven Thomson Mason summarized the "Treaty Party" in Virginia for his colleague Henry Tazewell as those Virginians interested in the Fairfax lands as well as British merchants and their agents. Mason's sphere included the most reliable, if not all, of the treaty's supporters. George Washington perceived the obverse image: "Who were the contrivers of this disgust and for what purpose was it excited? Let the French Party in the U.S. and the British debtors therein answer the question."

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94 John Bassett Moore, "The United States and International Arbitration," The Advocate of Peace 58, no. 4 (April 1896), 89–90. The arbitral commission born in the seventh article was more congenial to Virginians. It was charged with settling Americans' claims of "considerable losses and damage by reason of irregular or illegal Captures or Condemnations of their vessels and other property." Britons would submit claims for losses at the hand of American privateers, too. Treaties and Other International Acts, 252.

95 Elkins and McKitrick, The Age of Federalism, 442. Virginia's antipathy for Jay's Treaty was durable, too: when the Virginia Report of 1799–1800 was republished fifty years later, the accompanying preface predicted that "we shall probably never again be subjected to a like humiliation." The Virginia Report of 1799-1800, Touching the Alien and Sedition Laws: Together with the Virginia Resolutions of December 21, 1798... (Richmond: J. W. Randolph, 1850), xi.


With Democratic-Republicans like Mason and Tazewell firmly opposed, the Senate’s debate on ratifying the Jay Treaty promised ample drama. It did not disappoint. The treaty’s supporters passed an “Injunction of secrecy,” but its opponents still forwarded abstracts of the debate to Virginia Republicans.\textsuperscript{98} Pierce Butler forwarded at least four updates on the Senate’s work to Madison, “[c]onvinced that this . . . secret is much safer with You [sic] than in the hands of the many to whom it is Confided.”\textsuperscript{99} Virginia’s Henry Tazewell moved the treaty’s publication on 12 June and spoke in its favor the day following.\textsuperscript{100} Losing that motion, his colleague Mason leaked a copy of the treaty to Benjamin Franklin Bache, editor of the Philadelphia Aurora. The public debate had begun. A lyricist in the Jersey Chronicle gave Mason his due for welcoming those opposed to the “monarchical party” into the debate.

> When the Senate, assembled had shut up their door,  
> And left us no clue their designs to explore,  
> The people were anxious, & whispered their care,  
> But their voice was too weak for the dignified ear  
> Ye are down, down, down keep ye down . . .

> But the rabble had nothing to hear or to view,  
> Says the twenty, the secret’s too sacred for you,  
> Ye are down, down, down, keep ye down.

> But Stephens T. Mason, a man we revere,  
> With his name bid the infamous treaty appear,

\textsuperscript{98} Senate Executive Journal, 178.  
\textsuperscript{100} Tazewell’s motion became, under an amendment offered by Aaron Burr, a proposal to allow senators to discuss the treaty with chosen associates. It was defeated 9–20. Kramer, ed., “Senator Pierce Butler’s Notes,” 2–4.
"Twas the act of a freeman, who join'd with the TEN,
To save us from tyranny, rank us with men,
Altho' down, down, and like to be down.

He gave his assistance; enlightened our eyes,
And a cloud from all quarters begins to arise,
Vox Dei, Vox Populi, truly but one,
Shall tell dark designers—our will shall be done,
Till you're down, down, twenty times down.101

Bache knew how to make the most of the opportunity Mason presented. He published thousands of copies of the treaty, taking them on the speaking circuit to personally defame the treaty's provisions. (Bache went north, to Boston and New York; a colleague delivered pamphlets to points south of Philadelphia.)102 Bache's opportunistic journalism set the course for the Jay Treaty debate.103 Soon it involved Alexander Hamilton defending the treaty in twenty-eight essays signed "Camillus" in late 1795 and Thomas Jefferson and James Madison collaborating to gin up opposition behind the scenes. Jefferson exerted real influence in the way he was most comfortable: writing letters to like-minded Republicans from his beloved Monticello. One such, to Mann Page on 30 August, captured both the temper of Virginia and a metaphor that brought to life the poets' view of treaty opponents kept "down."

Our part of the country is in considerable fermentation on what they suspect to be a roguery of this kind. They say that while all hands were below deck mending sails, splicing ropes, and every one at his own

103 It likewise set the Aurora on a new heading. In May 1800, Bache's successor as editor, William Duane, reflected that the scoop "distinguished" the Aurora "as the national paper—here it was that the genius and the virtue of the country rallied round the principles of the revolution and republicanism . . ." Quoted in Richard N. Rosenfeld, American Aurora:A Democratic Republican Returns (New York: St. Martin's Press, 1997), 787.
business, and the captain in the cabbin [sic] attending to his log-book and chart, a rogue of a pilot has run them into an enemy's port.\textsuperscript{104}

If Democratic-Republicans felt that Virginia's honor was undermined in the Jay Treaty's concessions, Federalists were no more sanguine about the opposition it generated. Charles Lee, who became attorney general between the treaty's ratification and the House vote to fund it, described a typical view of the Democratic-Republicans in Congress. "[T]he national honor has been deeply tarnished, by those who advocated and voted in favor of a breach of the treaty," he wrote to John Marshall, then practicing law in Richmond, "& those men ought in my opinion to be forever excluded from the public councils of America for the part they have taken to disgrace their country." Support for Jay's treaty had become, for Federalists, a shibboleth.\textsuperscript{105}

Virginians expressed their views—most of which squared with those of her United States senators—in a number of county meetings that sprang up during the summer of 1795. John Thompson addressed one such gathering with a 1 August address in Petersburg. Put simply, he argued that the treaty failed a comparison with the new nation's revolutionary and constitutional principles. The sixth article in particular was unconstitutional: Congress could assume the states' debts, but not the Senate and president. "This article manifests the aristocratical [sic] spirit," he continued, "by accusing the state legislatures, which emancipated America, of atrocious injustice." He also called on that most reliable of Republican bêtes noires, the courts. "What article of the constitution authorizes the president and senate to


establish a judiciary colossus, which is to stand with one foot on America and with
the other on Britain, and drag the reluctant governments of those countries to the
altar of justice?° Not even Article III, so roundly criticized in Richmond seven
summers earlier, countenanced such a thing.

Virginia was as preeminent in disclaiming the treaty as she had been in
making it necessary—an irony its supporters did not overlook. The Commonwealth
and its courts were central to arguments in support of Jay’s Treaty. “Camillus”
defended the treaty by offering a detailed timeline of Virginia’s failures to pay its
debts since the Treaty of Peace. Not much more was required than to quote the
General Assembly’s language, as in its qualified repeal of laws confounding prewar
creditors from 22 June 1784. Until Virginians were made whole for slaves stolen
during the late war, and until the Northwest forts were ceded, the Assembly
concluded, “the national honor and interest of the citizens . . . obliged the assembly
to withhold their cooperation in the complete fulfilment of the said treaty.°°

Virginians’ fears of the Commission outlined in Article Six recalled their
concerns about the Constitution a few years earlier. The board seemed “pernicious,”
in the view of Petersburg residents, “because the circumstances which shall entitle a
creditor to redress before the commissioners are not enumerated.” Democratic-
Republicans, inheritors of the anti-ratification mantle, had a bad history with new
adjudicatory bodies with ill-defined parameters. The third article of the Constitution

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106 In The American Remembrancer: or, an Impartial Collection of Essays, Resolves,
Speeches, &c. Relative, or Having Affinity, to the Treaty with Great Britain. Philadelphia:
107 Meeting these terms did not guarantee Virginia’s compliance, Camillus emphasized.
“They only promise such a modification of them as would permit the payment in such time
and manner as should consist with the exhausted situation of the commonwealth . . .”
sketched the new federal courts in a little more than four hundred words. It was a model of precision compared with Article Six, under which "great latitude was left for discretionary powers." Geographic isolation was another worry that Democratic-Republicans recycled from 1788. All manner of trouble could follow since "it cannot be presumed that the real debtors will appear before commissioners at a distance." Here, however, Virginia Democratic-Republicans developed a solution. The Special Agents of the United States who investigated merchants' claims would represent their interests in subtle but unmistakable fashion.\(^{108}\)

Interestingly, given the discussion generated by debts during the prior half-dozen years, Article Six did not cause much stir in the Senate. Its members fretted that the treaty traduced the country's relationship with France; it delayed the surrender of Northwest forts until June 1796; it obviated Republicans' favored discriminatory trade policy, including a bar to increased duties on British ships for twelve years; it offered no remuneration for slaves lost during the Revolution. These were the themes most often sounded during the debate on ratification. Historians' conclusions that Article Six failed to foment opposition on the order of other provisions is borne out by the relatively thin notes that emerged from the Senate debates. Neither senator from Virginia, representing those with the most to lose

\(^{108}\) The residents of Petersburg also employed the Constitution's reforms against the proposed commission. It would be "unjust in principle" first because the debts it contemplated were contracted by private individuals, and second because the government that proposed to settle them, far from creating obstacles to collection, "has organized courts, whose only employment has been to inforce [sic] their payment." Virginians troubled by the idea of a robust federal government had lost the ratification battle and seen their proposed amendments mooting federal court jurisdiction go wanting. These losses, in the Jay Treaty's aftermath, became a kind of firebreak, an attempt to limit future damage. *DHRC* 10:1547–1550.
through its debts commission, is recorded to have spoken. Mason was not a frequent speaker on any question. Tazewell, by contrast, did rise in opposition to the ninth article, which endangered lands like the Fairfax tract that had been confiscated during the Revolution and later sold to private parties.

After a kerfuffle over the removal of the treaty’s twelfth article, which severely limited American trade with the British West Indies, the treaty was approved by exactly the Constitutionally-required two-thirds of the Senate. Virginia’s own Senator Tazewell proposed last-minute resolutions intended to derail ratification. One detailed seven objections that ought to lead the Senate to reject the treaty; the first included, obliquely, pre-Revolutionary debts to British merchants. The premise that these should be paid on the terms Jay negotiated was flawed: “so much of the treaty as was intended to terminate the complaints flowing from the inexecution of the treaty 1783, contains stipulations that were not rightfully or justly requirable of the United States.” In other words, “inexecution” on a scale practiced by Virginia during the generation since the peace was altogether proper. Great Britain’s breaches, though, were different, particularly the one passed over by John Jay. “[T]he treaty hath not secured that satisfaction . . . for the removal of

109 Oliver Ellsworth borrowed the language and spirit of the Constitution’s preamble in arguing for the Article, which he deemed “founded in justice.” Kramer, ed., “Senator Pierce Butler’s Notes,” 5.
111 Federalists preemptively moved to quash the deeply unpopular provision. On 16 June they excised the twelfth article “after a labourd [sic] Apology for the Conduct of the Envoy.” In its place Federalists proposed an “additional” article, suspending the twelfth. Their ratifying resolution also “recommend[ed] to the President to proceed, without delay, to further friendly negotiation” on the West Indies trade. Democratic-Republicans raised procedural concerns about summarily removing the article—here again, Tazewell was in the lead—but these came to nothing. Miller, Treaties and Other International Acts, 271–272.
negroes . . . to which the citizens of the United States were justly entitled."\textsuperscript{112} All other objections to the treaty were secondary and, like the argument over debts, by now a bit threadbare.

When George III proved willing to ratify the treaty without its excised twelfth article, no further negotiations were required to make the treaty real. The next step was President Washington’s to take. He did so decisively on 18 August 1795, hoping to void any further discussion. Washington simply declared that the treaty and its “additional” article “form together one Instrument and are a Treaty between the United States of America and his Britannic Majesty.”\textsuperscript{113} The gambit worked, stanching much of the protest in Virginia and beyond.\textsuperscript{114} His signature foreclosed the hope retained by many that Washington was personally ambivalent about the treaty’s terms. It also raised the stakes considerably since, as William Plumer wrote at the beginning of the decade, “It is impossible to censure measures without condemning men.” The public character Washington had cultivated so carefully was now of the first importance.\textsuperscript{115} His reputation and honor were in the

\textsuperscript{112} Journal of the Executive Proceedings of the U.S. Senate 1:185. Farnham, “The Virginia Amendments of 1795,” 76–77. This euphemistic language resonates with the Constitution’s three explicit concessions to slavery, one less directly phrased than the next. The three-fifths clause spoke of “all other Persons”; the twenty-year prohibition on banning the importation of slaves, of “such Persons as any of the States now existing shall thing proper to admit”; and the fugitive slave clause, of “Person[s] held to Service or Labor in one State, Under the Laws thereof . . .” These provisions appear in Article I, Section 2, Article I, Section 9, and Article IV, Section 2, respectively. Enslaved women and men represented, of course, a significant fraction of the capital Virginian stood to lose in action for prewar debts. Rakove, The Annotated U.S. Constitution, 110–111, 160–161, 202–203.

\textsuperscript{113} The Senate’s instrument of ratification is detailed in Miller, ed., Treaties and Other International Acts 2:271.

\textsuperscript{114} Todd Estes argues persuasively that Washington’s timely ratification, like several other decisive steps he took on the treaty, have been underappreciated by historians. “The Art of Presidential Leadership,” 127–158.

\textsuperscript{115} William Plumer to Jeremiah Smith, 10 December 1971, quoted in “Slander, Poison, Whispers, and Fame: Jefferson’s ‘Anas’ and Political Gossip in the Early Republic,” Journal of the Early Republic 15, no. 1 (Spring 1995), 32. Freeman found ample evidence of the
balance, a condition different in degree but not of kind from the situation of Virginia
debtors whose accounts and honor the treaty touched directly.

County meetings went quiet after the Senate's approval and Washington's
ratification. The General Assembly now seemed the best forum for Republican
objections, which took a Constitutional bent. Joseph Jones, a former delegate from
King George County and a prime mover in Ware v. Hylton, collaborated on the
General Assembly's response with that master of behind-the-scenes legislating,
James Madison. Jones thought it the General Assembly's duty "to express with
manly firmness their opinion of the exceptionable parts of it." The Assembly should
take up the treaty quickly "that a proper tone may be given to similar meetings."
Virginians should lead the debate as they had a generation ago. And, Jones added,
with more light and less heat than pamphleteers had shown to date. "Both young
and old now write addresses," William Munford affirmed "Which swarm from all the
printing presses."

The House of Delegates convened in November 1795 with an eye toward
Jefferson's future, Washington's legacy, and fomenting a spring debate on the Jay
Treaty in the Republican-controlled House of Representatives. The General
Assembly doubled down on Senators Tazewell and Mason's "no" votes by honoring
their opposition and recommending four amendments to the Constitution. The first

connection between policy and personality that Washington used to advantage. Hereafter
cited as JER.
116 Beeman, The Old Dominion & The New Nation, 143–144.
117 Ware, Administrator of Jones, Plaintiff in Error v. Hylton et al., 3 U.S. (3 Dall.) 199
(1796). Norman K. Risjord, Chesapeake Politics, 1781–1800 (New York: Columbia University
118 "The writers in opposition are too violent in their attacks on the P.," Jones wrote. "Such
licentious [sic] charges will injure rather than promote the Republican interest." Jones to
119 163.
step was to introduce Jay's Treaty, broadly considered, as a proper topic for the House of Delegates. This was done through a motion to “approve of the conduct” of Mason and Tazewell for their votes against ratifying the treaty.  

Federalist concerns about sullying the reputation of President Washington, and the impropriety of the House of Delegates taking an official position on a federally negotiated treaty, inspired an amendment from Charles Lee and a three-hour defense of the treaty and the president by John Marshall. But these efforts accomplished little more than a three-day delay and a resolution absolving President Washington of “evil intention” in ratifying the treaty. The House’s approbation of Mason and Tazewell passed by a two-to-one margin, clearing the way for a more robust debate on the treaty.

Having acquitted the first president of “evil”—perhaps only a resolution denominating debt as loathsome would have seemed more obvious—the House passed four contemplated amendments to the Constitution. But as historian Stephen G. Kurtz and others have emphasized, these were only nominally proposals to amend the Constitution; they were better understood as efforts to derail the treaty and affect the politics to come. The argument, at bottom, was that the Constitution had already been improperly amended in practice.

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120 Farnham, “The Virginia Amendments of 1795,” 83–84.
122 Historians have debated Republican motives in bringing objections to Jay’s Treaty to the General Assembly. Stephen G. Kurtz argued more than fifty years ago that elevating
The General Assembly's resolutions included one substantive matter and three attacks that approached the ad hominem. The House first directed the Commonwealth's congressmen to join Mason and Tazewell in "mak[ing] their utmost exertions" to pass the amendments. This would be necessary, of course, if one took the amendments at face value; two-thirds of both houses of Congress must pass an amendment to propound it to the states. Virginians, however, intended the House of Representatives not to praise Jay's Treaty but to bury it. The four amendments they suggested were more function than form, a way to arrange the funeral.

But it would have been indiscreet to simply forward the county petitions the Assembly received, so amendments were in fact proposed. The first would require, before a treaty "shall become the supreme law of the land," the House of Representatives to ratify any provisions that impinged on Congress's authority outlined in the Constitution's Article I, Section 8. This amendment raises a nettlesome issue that American constitutional law has resolved somewhat unconvincingly in the intervening years: Whether the treaty power extends beyond Congress's legislative reach. Such lofty considerations yielded to more personal jibes in other amendments, which proposed to remove the trials of impeachments from the Senate, cut its members' terms in half, and, in a slight to Jay no one could

Jefferson to the presidency was key; Dumas Malone countered that Jefferson was altogether uninvolved in the planning. Thomas J. Farnham highlights the interest in Congress revisiting the Treaty's Constitutionality. These motives are complimentary, of course, and Richard R. Beeman's acknowledgment that all played a role is persuasive. The Old Dominion & The New Nation, 144n7; Farnham, "The Virginia Amendments of 1795," 85. Journal of the House of Delegates, 1795, 91.

David M. Golove marshals an authoritative history of these doings, in addition to many other episodes in the nation's history, to answer in the affirmative. He grounds his analysis in details such as Madison's anemic defense of his fellow Virginians' argument that Article IX improperly abridged state legislative authority. "Treaty-Making Power and the Nation: The Historical Foundations of the Nationalist Conception of the Treaty Power," Michigan Law Review 98, no. 5 (March 2000), 1078, 1161–1188.
mistake, establish "[t]hat no person holding the office of a Judge under the United States, shall be capable of holding at the same time any other office or appointment whatever." The amendments passed by very nearly the same three-to-one margin as the threshold question earlier in the month, and four years to the day after Virginia became the decisive, tenth state to ratify the Bill of Rights.125

The Virginia General Assembly's concerns with the Jay Treaty had been foreshadowed by the Commonwealth's forty proposed amendments to the Constitution. The seventh among these would have required two-thirds of the Senate to approve commercial treaties, and three-quarters of both the Senate and the House to animate treaties dealing with the "territorial rights or claims of the United States." Given that many anti-administration leaders understood the Jay Treaty first as a commercial alliance with Great Britain, the ratification convention's eighth amendment is also relevant. It called for a two-thirds vote among both houses to pass any commercial law. The House of Delegates' second proposed amendment slightly expanded the scope of the ratification convention's nineteenth: in 1788 a "tribunal other than the senate" was contemplated for trying the impeachment of senators; seven years later, the House of Delegates suggested removing the Senate's jurisdiction in any impeachment. (No alternatives were proffered in either case.)126

126 Interestingly, the first articles of impeachment voted by the House called the question that Virginians raised in 1788. Senator William Blount's colleagues expelled him but attempted without success to try his impeachment. Buckner F. Melton Jr. The First Impeachment: The Constitution's Framers and the Case of Senator William Blount (Macon, Georgia: Mercer University Press, 1999).
The General Assembly forwarded its proposed amendments to the fourteen other states, where they wilted outside of Richmond's hothouse environment. Those state legislatures currently in session rejected the proposals, most on the same constitutional ground Marshall, Lee, and their fellow Virginia Federalists had advanced. Even some amply concerned about the treaty's merits found the arguments about the proper boundaries between the state and federal governments persuasive; Patrick Henry was one notable example. Others picked up his states' rights mantle. When Henry Tazewell wrote that "there may be yet something behind the curtain, that perhaps may authorize the President and Senate to convert our government into a monarchy and totally annihilate the state governments," he might well have cited a Henry speech to the Ratification Convention eight years earlier.

Not since that ratification debate a half-dozen years prior had Virginians been so divided on a question of public policy. Many of the issues, and many of the personalities, were the same. None better understood the issues, or was more pivotal in either conversation than James Madison, a leader in the Democratic-Republican-controlled House of Representatives when the Jay Treaty arrived in Congress. After its ratification by the Senate on 24 June 1795, the debate shifted to the House of Representatives' willingness to fund the treaty. Here Madison's interpretation and leadership would be key, as Charles Lee, Adams's attorney general and the brother of special-agent-to-be Edmund Jennings Lee, noted in February 1796. "Mr. Madison

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127 The New York State Assembly's rejection was no doubt especially welcome for Governor John Jay. Farnham, "The Virginia Amendments of 1795," 85-88: Wilkin amendment quoted at 85.
129 Henry Tazewell to John Ambler, 4 April 1796, quoted in Farnham, "The Virginia Amendments of 1795," 85.
I believe will not abstain from any acts tending to a complete frustration of the british [sic] treaty,” Lee wrote his brother, “and with him a majority will go to any point that he will lead.”

John Beckley, clerk to the House and steeped in Republican thought, was confident the pact would go “unexecuted” in the House. The Federalist strategy of “confounding the Treaty with the President” put the Virginian’s honor in play on both sides of the debate. Washington’s reputation and influence did offer the treaty’s opponents a challenge—one a group of Richmond citizens resolved creatively: They just knew that Washington agreed with them. William Munford captured this ambivalence in the voice of his moderate “A,” less inclined to vilify those “[w]ho do not think just like myself.” As he summarized it, “[t]hat treaty which I here must name / The signal of my country’s shame, Which proves that Godlike Washington, For once a foolish thing has done . . .”

The House of Representatives took up funding the Jay Treaty’s commissions on 14 April 1796. James Madison held the floor by the next day. He began by acknowledging that the treaty eschewed talk of past misdeeds, but lamented that its provisions “were not founded in the most exact and scrupulous reciprocity” that this

130 Like his fellow Federalists, Lee predicted dire results. “[T]he consequence will be,” he wrote, “that the posts will not be delivered up and probably a renewal of the indian war will take place, and a renewal of british [sic] depredations on the seas also.” 20 February 1796, Edmund Jennings Lee Papers, 1753–1904, Virginia Historical Society, Richmond.
principle would recommend. Pre-Revolutionary debts, for which “damages to the last fraction are to be paid,” contrasted all too starkly with losses of slaves, which the Jay Treaty overlooked altogether.135

Madison thought often of the Ratification debate when shaping his arguments against the treaty. Notes for a speech on the treaty he jotted down in the spring of 1796 refer to amendments suggested by the Maryland, Virginia, and North Carolina ratification conventions, and draw amply from the debates he captained in Richmond in June 1788. The “apparent collision” between the president’s and Senate’s “power to Treaty” and the “Oblign. on Congs.” left Madison circumspect about the Jay Treaty’s propriety. His approach suggests how his politics had developed during the Washington administration. The Constitution’s prime mover, and its chief advocate during the Virginia ratification debate, had soured on its federal mandate.136

The House of Representatives’ treatment of the Jay Treaty was also, for Virginians, somewhat anticlimactic. They were successful in getting the agreement an audience in the lower house and came within three votes of denying the appropriation necessary for its execution. But over the objection of the Virginia delegation—with the exception of Federalist George Hancock—the treaty was

136 Madison referred to seven different arguments by four different speakers—himself included—during the Virginia Ratification. Edmund Randolph, Francis Corbin, and George Nicholas all attempted to demonstrate that the treaty-making power was constrained. As the editors of Madison’s Papers explain, the speech was probably never delivered. “Editorial Note,” “Notes for a Speech on the Treaty Power,” Papers of James Madison, vol. 16, 269–277, quotes at 271.
funded, including its arbitral commissions. Funds with which to execute the treaty were appropriated on 30 April, by a vote of 51 to 48.137

The Article Six Commission funded by the House’s vote would depend on the same three-vote margin to accomplish its work. Theirs was a steep hill to climb, settling the obligations modern observers have said “hung like a nightmare over” Virginians.138 Others have called debts everything from the “common denominator”139 to the “invisible band”140 to the standby “web”141 to the tip of an “enormous iceberg of indebtedness.”142 The arbitral commission envisioned by the Jay Treaty’s sixth article was asked to paper over the failures that preceded it. The 1783 treaty, state courts, federal courts—all proved incapable of settling the British debts. Perhaps five delegates representing the two nations could do better.

They failed in spectacular fashion. They succeeded, however unexpectedly, in collecting stories. Debt affected Virginians in unpredictable and deeply personal ways, many of which, as we shall see, they related to the Special Agents of the United States who dropped in on them between 1798 and 1800. Just four years later the Democratic-Republican historian John Burk conflated debt-as-metaphor with debt-as-narrative. “It can never be a matter of indifference to a gallant and intelligent people, that there be a faithful record of their lives and manners,” he

138 Mays, Edmund Pendleton, I:146.
141 Mann, Republic of Debtors, 19.
142 Billings et al., Colonial Virginia, 204.
wrote. "It is a debt which their ancestors have paid to them." When Virginia debtors provided the most interesting records we have of their pre-Revolutionary debts, they could not help but think of those obligations' long and tortured afterlife.

As Burk's history suggests, debts permeated the public sphere during the last quarter of the eighteenth century. They kept presses humming and speakers in full cry. They complicated party politics and drove international relations. They were both the bass line and the melody of contemporary discourse. So how did William Munford resolve his fictional "Political Contest"? He didn't. Perhaps seeking book sales to both parties—or perhaps viewing the issues as literally intractable—Munford made it clear that vacillation was the greatest sin. "A," the "wretch who is of neither party, Nor in his own opinions hearty," suffered accordingly.

This said, they ("B" and "C") both at once fell to,
And drub'd poor A, quite black and blue.
In vain he call'd for help and mercy,
The storm of blows came on more fiercely,
As if his foes were quite a host,
While each strove hard to give him most...
Half beat to death, and as he fled,
Both B and C exulting said,
You rascal, when you next decide,
We think, you'll not take neither side.

Thus moderation in these times,
You see, is deem'd the worst of crimes.

No one who attended the work of the Jay Treaty's Article Six Commission would be abused for lack of conviction. We turn now to its equally dire debates.

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144 Interestingly, "A's" efforts to have it both ways on the Jay Treaty seals his fate. "C" pronounces the verdict: "He needs must therefore be a villain, And to chastise him I am willing." "The Political Contest," 174–175.
Chapter Three

“A Radical Remedy for an Old Sore”:
The Jay Treaty’s Article Six Commission

In retrospect, the Jay Treaty’s sixth article seems more like the work of fabulists than diplomats. It asked an arbitration commission to settle debts at least a generation old by reconciling two complex categories of evidence. First, commissioners were to make sense of states’ legislative, judicial, and political treatment of pre-Revolutionary debts during the last quarter century. Virginia’s treatment of debt alone offered, as we have seen, much to digest. Second, the commission was asked to sift through the thousands of debts remaining on British firms’ books. Merchants produced claims approaching $25,000,000, but almost everyone acknowledged that many had as much merit as the states’ depreciated paper money. Some 7,500 Virginia accounts were investigated in the Reports on British Mercantile Claims; the total from all of the states probably doubled that number.

More imposing than the volume and complexity of the claims before the commission, even, were the raw feelings in which pre-war debts were dyed. For example, both Thomas Fitzsimons and James Innes, the first two commissioners appointed by the United States, had served with valor in the War for Independence. Even those with less direct connections to the conflict felt its resonance. Could five commissioners capable of putting animosity aside be found in Great Britain and her

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former colonies? Could they act impartially within the political cauldron of late-eighteenth-century Philadelphia?

The answer to both, as I explain in this chapter, was an emphatic “no.” I begin by arguing that the Article Six Commission must be understood in the context of Philadelphia during the last three years of the eighteenth century. Its office was adjacent to the State House Yard—where politics was routinely practiced out-of-doors—and mere blocks from the city jail, whose debtor’s apartment housed everyone from the luckless pauper to the city’s first citizens. I then describe the men who composed the commission with a view toward understanding the personal enmity that developed during their two years together. Since so much of their effort turned on claims for Virginia debts and the Commonwealth’s long effort to confound their collection, I introduce Virginian James Innes at some length, and argue that his death was a key moment in the board’s work. It occurred while the commission debated the claim of William Cunninghame & Company. The Cunninghame claim was critical: It was the most prominent firm doing business in Virginia. The Cunninghame claim was also representative in that the board spent less time determining which debtor owed what and more time debating the Commonwealth’s policies broadly considered. Seen in this way, Virginians’ longstanding efforts to change the conversation around debts to one about politics proved strikingly, and lastingly, successful.

For my part, the Article Six Commission is the place that captured Virginians’ stories of pre-Revolutionary debts at the turn of the nineteenth century.

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2 The commission’s contemporaries were given to write “Article VI,” or the “sixth article.” I find “Article Six” easier on the eye.
But the commission also has a story all its own, one that reminds us that the debates, grievances, and visceral dislike that developed during the Revolution were every bit as durable as Virginia's pre-war debts. The chapter concludes by introducing the agents, and the stories they collected, that the commission and its historians have orphaned.

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Wrangling over debts was much at home in "the Metropolis of America," as Abigail Adams heard Philadelphia called while she and the Article Six Commission were both in town. With nearly 70,000 residents making their home along two miles of the Delaware River, Philadelphia was the nation's largest city and the seat of its new government—indeed, its "financial, commercial, manufacturing, political, publishing, intellectual, and cultural capital." For a few years, at least, it would also surpass Virginia as the locale most focused on the private debts that predated the Revolutionary War.

Philadelphia had long been the young nation's principal site for settling

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3 Adams was much less at home in Philadelphia, which she mocked in a letter to her sister Mary Cranch on 15 February 1798 as the "Metropolis . . . as these Proud Phylidelphians [sic] have publickly [sic] named it." Perhaps exemplary was leading citizen Benjamin Rush's verdict of a decade earlier that Philadelphia was "the primum mobile of the United States," the city which "from habit, from necessity and from local circumstances, all the states view . . . as the capital of the new world." Clive E. Driver, comp., *Passing Through: Letters and Documents Written in Philadelphia by Famous Visitors* (Philadelphia: Rosenbach Museum & Library, 1982), 49: Rush to Noah Webster, 13 February 1788, in Eugene Perry Link, *Democratic-Republican Societies, 1790-1800* (New York: Columbia University Press, 1942), 10.

balances and grievances. Its first turn as the nation's capital city concluded ignominiously in 1783, when several hundred Continental soldiers marched on the city to dun Congress for their pay. In the years that followed, taxes funneled into the city—including the notorious 1791 tax on whiskey—while political vitriol flowed out. Philadelphia's unrivaled partisan press thrived in a city where Federalists and Democratic-Republicans fielded militias, merchants outfitted warships, and Congressmen exchanged fisticuffs. Bare-knuckled conflict over politics and debt was as likely in Congress Hall as in the middle of the Fourth Street thoroughfare.

Two such battles suggest the city's mood as the eighteenth century drew to a close. The first, appropriately, occupied staffers of Philadelphia's best known political sheets, the *Philadelphia Aurora* and the *Gazette of the United States*. After trading insults about improper allegiance to France and Great Britain, respectively, the Republican Benjamin Franklin Bache and the Federalist John Ward Fenno met

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6 Philadelphia represented a provision of the excise on liquor westerners found particularly onerous: violators were to be tried there, no matter how distant their homes. Virginians had raised similar objections to the Article Six Commission itself, and the new federal courts before that. James Rogers Sharp, *American Politics in the Early Republic: The New Nation in Crisis* (New Haven, Connecticut: Yale University Press, 1993), 94.

7 McPherson's Blues, the Federalist outfit, approached six hundred men in 1798. They were countered by "Military Legion of Philadelphia"—the Republican Legion, in common parlance. Membership in the latter was secured by attesting to one's "attachment from conviction or principle to Democratic Republican government." J. Thomas Scharf and Thompson Westcott, *History of Philadelphia, 1609–1884* (Philadelphia: L. H. Everts, 1884), I:494.

in the street, where "Fenno struck at Bache, who plied his cane over Fenno's head." 9

(It was Bache, the grandson of Philadelphia's most famous citizen, who had first published the Jay Treaty on 1 July 1795.) Not to be outdone, Congressmen Matthew Lyon and Roger Griswold took up their canes in battle in the House of Representatives. 10 Both exchanges were inspired, like the business of the Jay Treaty's arbitral commission, by international politics. Partisan attack was Philadelphia's native tongue. The ten men most involved in the Article Six Commission proved fluent.

If politics was Philadelphia's language, most of its conversations turned on business. Visiting early in the 1790s, the Frenchman Ferdinand M. Bayard observed that "[a] Philadelphian dispenses with the rules of propriety, and with others more important, for the sake of his business." 11 Long before his visit, Philadelphia was viewed throughout Pennsylvania and beyond as too heavily influenced by "overgrown Citizens and the Bank." Merchants, speculators, and other moneyed influence peddlers convinced many a right-minded citizen to trade "the goodwill of his country for some stockholders [sic] fat beef." 12 This reputation found a potent

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9 Bache was the Aurora's editor; Fenno was the son of the Gazette's editor, with whom he shared a name. Bache and the elder Fenno would both die of yellow fever in 1798. J. Thomas Scharf and Thompson Westcott, History of Philadelphia, 1609–1884 (Philadelphia: L. H. Evarts, 1884), I:495.

10 Abigail Adams neatly contrasted Lyon with her party and its preferred international partner. "You will see much to your mortification," she wrote her sister, "that Congress have been fitting, not the French, but the Lyon, not the Noble British Lyon, but the beastly transported Lyon." He should have been expelled a fortnight ago, "but he is unfeeling [sic] enough to go again, and if he does, I have my apprehensions of something still more unpleasant." Adams was prescient: Lyons and Griswold traded blows in the House that very day. Driver, comp., Passing Through, 47–48.

11 "In Philadelphia, the merchant class is the leading class," Bayard lamented, "and the inhabitants devote themselves to mercantile affairs with all the ardor which can be prompted by vanity, long credit and the prospect of acquiring, easily and quickly, a very large fortune." Ben C. McCary, ed., Bayard, Travels of a Frenchman, ed. Ben C. McCary, 125.

12 The subject of the latter insult was Hugh Henry Brackenridge, who was born in Scotland, raised in York County, Pennsylvania, sent to the General Assembly in 1786, and then turned
symbol in the person of Robert Morris. Morris's vast wealth helped finance the Revolution, but his equally broad influence led some to fear that his city of Philadelphia would be the permanent capital for the nation. By the turn of the nineteenth century Morris also exemplified a steep fall. Mounting debts landed him in the Prune Street jail's debtor's apartment in February 1798. Later that year Morris's former mansion was appropriated to house prisoners—including debtors—during the city's late-summer yellow fever outbreak.13

Morris's finances and those of many other leading men were done in by the Panic of 1796–7, an appropriate prelude to the Article Six Commission's work. When Britons, fearing redoubled war with France, created a run on banks, the pressure on the founders had been reduced by the end of the previous year, based on his new fealty to Morris. Terry Bouton, Taming Democracy: "The People," the Founders, and the Troubled Ending of the American Revolution (New York: Oxford University Press, 2007), 137, 139. Benjamin Rush made the following note in his commonplace book while the Article Six Commission sat: “Burke's character of a merchant: Gold is his God, the exchange is his church, his counting house is his altar, an invoice his Bible, and his only trust is in his banker.” “Commonplace Book,” in George W. Corner, ed., The Autobiography of Benjamin Rush: His “Travels Through Life” together with his Commonplace Book for 1789–1813 (Princeton: Princeton University Press for the American Philosophical Society, 1948), 247.13 The Confederation Congress made Morris the superintendent of finance in 1781. He was thought by many—including Washington, who was estranged from Morris for a time as a result—to be a prime mover in the Newburgh conspiracy and the “mutiny” of Pennsylvania militia mentioned above. Historian Bruce H. Mann writes that Morris “embodied the contradictions and uncertainties about the place of failure in the new republic.” Mann argues that disentangling notions of honor from debts was a key predicate for the Bankruptcy Act of 1800, which ultimately freed Morris from prison. Republic of Debtors, 261.
Debtors quickly crossed the Atlantic. Many notable Americans were ill-prepared to meet their creditors' demands; avid speculators had the furthest to fall. "Distress," Benjamin Rush wrote of Philadelphia, "pervaded our city."¹⁴ One hundred and fifty Philadelphia businesses failed within a month and a half, and the city's jail was full of debtors. Leaving the city only exposed debtors to a wider array of creditors, as Supreme Court Justice James Wilson discovered in 1796. Wilson, who had signed the Declaration of Independence, served on the constitutional convention's Committee of Detail and was among the five initial justices appointed to the Court. In the spring of 1798 he was imprisoned for debt while riding circuit in North Carolina. (He sought refuge with his colleague James Iredell, with whom he disagreed in Ware v. Hylton, one of the last cases Wilson heard.) Wilson died on the lam. He spent his last days in a seedy Edenton tavern "raving deliriously about arrest, bad debts, and bankruptcy."¹⁵ Debt was no abstract legal principle in Philadelphia as the Jay Treaty's Article Six Commission convened.


¹⁵ Wilson's fortunes unraveled quickly when banks in the United States, following their British colleagues' lead, began calling loans in the spring of 1796. Each journey on circuit became more perilous than the last: while the Court was in session the Wilsons hid out in Bethlehem's Morris Tavern. After extricating himself from jail in Burlington, New Jersey, Wilson headed south—one of the young nation's highest officers fleeing one of its most common afflictions. He died on 21 August 1798. Charles Page Smith, James Wilson: Founding Father, 1742–1798 (Chapel Hill: Published for the Institute of Early American History and Culture by the University of North Carolina Press, 1956), 380–388, quote at 388.
Two half-finished structures on Philadelphia's Chestnut Street underscored the point. Turn-of-the-century visitors were inspired by Philadelphia's well-lit and paved streets, hundreds of new brick homes, and an abundance of the Lombardy poplars then in vogue. But these two structures dared passersby to look away. The first, at Chestnut and Eighth, was "Morris's Folly." Robert Morris's estate spanned—his contemporaries would have said ruined—a full city block. Universally derided as ostentatious, flat ugly, and worse, the crumbling pile sat half-finished and empty when the commissioners arrived in Philadelphia: it was pulled down and sold for materials during late 1799 and early 1800. Five blocks east, at Chestnut and Third, another striking, unfinished edifice loomed. The Bank of the United States itself was half-sheathed in scaffolding that enveloped it when the Article Six Commission arrived in Philadelphia, *The City of Philadelphia . . . as it appeared in the Year 1800.*

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Figure 3: Birch's depiction of the Bank of the United States, freed from the scaffolding that enveloped it when the Article Six Commission arrived in Philadelphia. *The City of Philadelphia . . . as it appeared in the Year 1800.*

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17 Architect Benjamin Henry Latrobe, not long removed from a very different experience in Prince Edward County, Virginia, described Morris's home this way after seeing it in the spring of 1798: "I knew not what to say about it in order to record the appearance of the monster in a few words. Indeed I can scarcely at this moment believe in the existence of what I have seen many times, of its complicated, unintelligible mass." For a riveting history of the complementary demise of Morris and his house, see Ryan K. Smith, *Robert Morris's Folly: The Architectural and Financial Failures of an American Founder* (New Haven, Connecticut: Yale University Press, 2014), quote at 169. As Smith reports, the site of Morris's home is today the home of Tony's Paradise "TOP CASH$$$ FOR GOLD" jewelry store. Ibid., 212.
scaffolding when the Article Six Commission convened. Its thirty-foot columns, still today a Philadelphia landmark, would be completed during their deliberations. Like these Chestnut Street icons, no one could predict in 1797 how the story of the young nation’s tenuous financial future would end. Five commissioners meeting at No. 3 South 6th Street would have something to say about it.

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Visitors to the Article Six Commission’s office must have shaken their heads when they looked out its window onto the State House Yard. How could they not think of the protest that had roiled it less than two years before? Here, at the nexus of Philadelphia’s political sphere, thousands of Philadelphians had gathered in late July 1795 to deride John Jay and his treaty. Even among hundreds of similar rites, Philadelphia’s denunciation of the Treaty of Amity had been epic. “The treaty was thrown to the populace, who placed it upon a pole,” Treasury Secretary Oliver Wolcott Jr. wrote President Washington, then fretting at Mount Vernon. Blair McClenachan, president of the Democratic Society of Pennsylvania, made “a motion that every good citizen in this assembly kick this damned treaty to hell!” The gathering stepped off, several hundred strong, to the French and British ministers’ homes in succession. There they burned the treaty and broke the windows of several noted Federalists. Even those who had missed the “burning farce” could have recalled the president’s residence in 1795, just down the street, “surrounded by an innumerable multitude from day to day, buzzing, demanding war against England, cursing Washington, and crying success to the French patriots and virtuous

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Republicans.” (The experience understandably affected John Adams, already envisioning himself in Washington’s place. He and Abigail would be the home’s new residents by the time the commission convened.) Did others who called on the commission at No. 3 still “feel[ ] keen sensations at this rascally business?”

Any Philadelphian who did not burn his or her copy of the Jay Treaty would have found therein specific instructions for the arbitral commission soon to be in their midst. Its sixth article began the investigation of pre-Revolutionary debts the way the Convention of 1802 would conclude it: with a dodge. “Whereas it is alleged by divers [sic] British Merchants” that debts remained, debts whose collection both state laws and judicial process had flummoxed, a new process was required. “The United States will make full and complete Compensation” where “the ordinary course of Justice” had failed. Two limitations cabined the merchants’ claims. No satisfaction was due where debtors could be proved insolvent, or where creditors had failed to pursue the balance owed. These two exceptions were of the first importance to the Special Agents of the United States who traversed Virginia in the years to come.


20 Miller, Treaties and Other International Acts, 249.

21 The language was broad enough to invite ample debate. “[I]t is distinctly understood, that this provision is to extend to such losses only, as have been occasioned by the lawful impediments aforesaid, and is not to extend to losses occasioned by such Insolvency of the Debtors or other Causes as would equally have operated to produce such loss, if the said impediments had not existed, nor to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful [sic] omission of the Claimant.” The emphasis is mine. Miller, Treaties and Other International Acts, 250.
The process envisioned in Article Six was, quite literally, a new thing under the sun. William Cobbett—who, writing as Peter Porcupine, examined the board at some length—deemed it "a radical remedy for an old sore, which had long rankled in the hearts, and interrupted the confidential intercourse of many of the most valuable subjects of both."22 The commission was to number five: two appointed by the Crown, two by the president ("and with the advice and consent of the Senate"), and a fifth to be agreed upon by the "Four Original Commissioners." If such an agreement proved illusory, the treaty directed each pair to propose a prospective fifth member. He would be chosen by lot.23 This acknowledgement of the sharp dealing to come was followed by another. The article outlined the oath each commissioner was to swear before taking any collective action.

I: A:B: One of the Commissioners appointed in pursuance of the 6th Article of the Treaty of Amity, Commerce and Navigation between His Britannic Majesty and The United States of America, do solemnly swear (or affirm) that I will honestly, diligently, impartially, and carefully examine, and to the best of my Judgement, [sic] according to Justice and Equity decide all such Complaints, as under the said Article shall be preferred to the said Commissioners, and that I will forebear to act as a Commissioner in any Case in which I may be personally interested.24

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22 Porcupine’s Works: Containing Various Writings and Selections, Exhibiting a Faithful Picture of the United States of America . . . (London: Cobbett and Morgan, 1801), 12-83. Peter Porcupine was the pen name taken by William Cobbett, an English polemicist who wrote from Philadelphia from 1793–1800. He returned to England to avoid paying a libel judgment won by Benjamin Rush, whose treatments for yellow fever Cobbett had made something of a personal mission to discredit. His description of the Article Six Commission is in a tradition of biological descriptions of the treaty generally. “Atticus” suggested, for example, that secrecy might have suited the treaty after all. “At length the illegitimate imp, the abortion of Liberty, has crawled from its skulking place, and contrary to the wishes of its parent and its godfathers, has peeped into day. Divested of the darkness which encompassed it, we may now behold and examine the foul blotches that overspread it, and trace a pestiferous malady oozing from every pore.” Quoted in Estes, The Jay Treaty Debate, 104–105. For the debate between Rush and Cobbett, see Eve Kornfeld, “Crisis in the Capital: The Cultural Significance of Philadelphia’s Great Yellow Fever Epidemic,” Pennsylvania History 51, no. 3 (July 1984), 196—201.

23 Miller, Treaties and Other International Acts, 250.

These words would soon ring hollow. No more comity reigned among representatives of debtors and merchants than they themselves had displayed in the years just past.

The treaty outlined sundry other details, too. Any three delegates representing the United States, Great Britain, and the "Fifth Commissioner" constituted a quorum. The board was to operate for eighteen months, with leave to work for another six at its discretion. Likewise, it could decamp from its initial meeting place of Philadelphia if it so chose. (This concession proved key when yellow fever continued its annual summer stranglehold on Philadelphia during the commission's work.) Awards would be "final and conclusive," and paid without deduction on terms named by the commissioners.25 Here again the language subtly acknowledged the difficulties past and the intransigence to come. The United States was directed to "undertake to cause the Sum so awarded to be paid in Specie to such Creditor or Claimant"—language not unlike that Jay had helped outline in Paris eleven years earlier.26

The Sixth Article's penultimate stanza, like its earlier talk of exceptions, offered vast interpretive possibilities. Here the substance of the board's work was outlined. Witnesses were to be sworn, or to present affidavits on oath. Too, the commission would review a wealth of documentary records. These could be authenticated by legal processes then obtaining in the United States, Great Britain, or "in such other manner as the said Commissioners shall see cause to require or allow." That language was a model of clarity compared to the standard commissioners were to apply in deciding claims. This they would do, suggested

25 Payments were not to begin until a year had passed since the two signatories exchanged ratifications of the treaty.
26 Miller, ed., Treaties and Other International Acts, 251.
Article Six, "according to the merits of the several Cases, due regard being had to all the Circumstances thereof, and as Equity and Justice shall appear to them to require."  

Appropriately enough, given the labyrinthine history of many of the colonies' pre-Revolutionary debts, the sixth was the longest of the Jay Treaty's twenty-eight articles. Its five paragraphs, four of which were designed to guide the arbitral commission's proceedings, seemed at first glance a careful précis of how the commission was intended to work. As soon as real claims crossed the commission's transom, however, it became clear that the article was not nearly detailed enough.

The treaty's broadly written charge spelled opportunity—and ultimately, peril—for the six commissioners who would attempt to carry it out. They would work simultaneously as legislators, judges, advocates, and what British commissioner Thomas Macdonald derisively called "statesmen." All understood that the board's jurisdiction was the dispositive detail in controversy. It was left to the commissioners to define the sixth article's principal terms: What qualified as a "debt"? An "impediment"? Did British claimants or American debtors bear the burden of proof necessary to refute (or to establish) a debtor's insolvency or a creditor's dilatory collection—the two explicit bars to collection? The two sides produced different answers for each of these questions. Efforts to resolve the stalemate only served to sharpen the differences. Though keen to act as judges, and

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27 "... all written Depositions, or Books or Papers, or Copies or Extracts thereof. ..." Miller, Treaties and Other International Acts, 2:251.
29 "The record of the British Debts Commission, then, is a lesson in the need for careful draftsman'ship when creating international tribunals to assess the liability of states, and in the need for some specificity as to the substantive and procedural law which the commission is to apply." Richard B. Lillich, "The Jay Treaty Commissions," St. John's Law Review 37 (1962–1963), 275–276.
unable to avoid advocacy, the commissioners spent most of their months together in a failed attempt to rewrite the sixth article of the Jay Treaty in intelligible fashion. This was the source of Macdonald’s jibe about statesmanship: Rather than carry out their function, the commissioners were redrawing the rules. Their earliest efforts along these lines were memoranda from each side that sought to define the board’s jurisdiction and procedure in ways congenial to their preferred outcomes.

In practice, the board’s approach to individual claims had much in common with that of a modern, appellate, common-law court, a legal tradition that bound the two countries. Before examining the claims that led off the commission’s work and engaged with Virginia’s policy on pre-war debts, we should sketch its process.

A merchant’s written filing, called a “memorial,” initiated each proceeding. The United States, through its General Agent John Read, was then invited to reply within one to three weeks. In practice, Read often collaborated with Attorney General Charles Lee before responding. For example, on 2 July 1799, Read asked for an extension of his time to respond to a claim based on Lee’s being called away from Philadelphia. The United States’ commissioners, too, turned to the executive branch for direction. On 31 August 1799, Commissioner Samuel Sitgreaves wrote to Treasury Secretary Oliver Wolcott seeking his “hints on the subject of Mr.

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30 “You were appointed Commissioners for the sole purpose of carrying out a most important well digested article of a national treaty into full and final execution,” Macdonald wrote on 30 September 1799. “[B]ut you have thought it fit to change your character—you are now Statesmen, judging it wise to stop its execution for the purpose of negotiating an alteration.” Macdonald to Fitzsimons and Sitgreaves, 30 September 1799, “General Records, 06/13/1800,” 107, Record Group 76, National Archives, College Park, Maryland. (Hereafter cited as “General Records, 06/13/1800.”) Jefferson agreed when he celebrated the fact that the United States commissioners’ response meant the debts “must again become a subject of negotiation [sic].” Jefferson to James Madison, 16 January 1799, Papers of Thomas Jefferson 30:623.
Macdonald’s notable motion; and the sooner the better, as I propose immediately to set about the observations on it.”

The board’s antiphonal briefing schedule is reminiscent of modern appellate practice. Though empowered to question witnesses under oath, the commission more commonly decided claims on their written records alone. Many claims were settled through resolutions allowed to steep for as long as several months or subject to several rounds of debate. Here again, written responses flew back and forth between the parties. This process was fueled by the broad principle of what a modern attorney would call discovery. Each side was to have access to any document relevant to the claim in question. Rules of evidence would trace state court practice “previous to the operation of lawful impediments.” The board also attempted to impose rules of timing and other procedural details, much as a modern court might, but these standards proved aspirational. Practicing before the board was as improvisational as procedural. Charles McEvers probably found one of the commissioners in his bedclothes when he applied for an extension to file a memorial at 10:00 p.m. on 29 November 1798. The extension was granted due to problems with the post and the case was finally heard on 4 December. The following month a rough voyage from Nova Scotia earned a reprieve for several claims. Because debt

31 “General Records, 06/13/1800”; Sitgreaves to Wolcott, 31 August 1799, “Correspondence, 1799,” Record Group 76, National Archives, College Park, Maryland. (Hereafter cited as “Correspondence, 1799.”)
33 Exemplary directions include compelling notice when an argument was waived (15 June 1798); demanding clear reasons for memorials offered outside the agreed upon process (16 July 1798); and requesting the United States to proceed in as timely a fashion as imperfect records allowed (14 May 1799). The last was endorsed by the three British Commissioners alone.
34 Moore, ed., International Adjudications 3:29.
records were frequently lost to rot or chewed up by mice, Virginia debtors understood that time was often the most important variable in determining the validity of British mercantile claims.36

The detail of the commission's process that most resonated with common-law judging—and the one that determined its outcome—was the notion that its reasoning in specific cases would provide precedents for future rulings. While the board declined to rule in the abstract, they nonetheless accrued key principles from real claims over time. When British merchants, confused by the treaty's unspecific terms, appealed to the agent representing their interests for help in drafting their claims, none was forthcoming at first.37 The commission's secretary was similarly reluctant to define instructions for the formatting or detail of claims. These "doctrines" would be "successively disclosed in the transactions of the Board," not inferred from "out of supposed cases."38

Over time the board grew prickly when agents ignored its past rulings in making their cases. Though the commission determined on 18 December 1798 that

36 Henry Dalby claimed to have received a receipt from Atchison, Hay & Company factor Hugh Risk in 1775 or 1776; he told Special Agent William Satchell "[t]he receipt with other of his papers has lately been destroyed by mice." V17:N3:204.
37 Smith ultimately promulgated instructions through pamphlets such as his 8 January 1799 treatise, reprinted in Moore, ed., International Adjudications, 36-44.
38 Fitzsimons and Sitgreaves to Secretary of State, 12 March 1799, "Correspondence, 1799"; Moore, ed., International Adjudications 3:26. Article III requires a "case or controversy" for the federal courts to speak. Just four years before Evans wrote, the Supreme Court—through Chief Justice John Jay—made clear that this language did not embrace advisory opinions. Hoping to balance obligations both to England and France and to Hamilton and Jefferson, President Washington had Jefferson submit twenty-nine detailed questions to the Court. The most fundamental was "in the first place, their opinion, whether the public may, with propriety, be availed of their advice on these questions?" The Court answered no. Jefferson to Chief Justice Jay and Associate Justices, 18 July 1793, in The Documentary History of the Supreme Court of the United States, 1789–1800, eds. Maeva Marcus et al., vol. 6, Cases: 1790–1795 (New York: Columbia University Press, 1998), 747–751. William R. Casto places the interaction in context in his "The Early Supreme Court Justices' Most Significant Opinion," Ohio Northern Law Review 29 (2002–2003), 173–207.
merchants were within their rights to claim war interest, John Read, general agent for the United States, continued to argue to the contrary. The board—United States commissioners Fitzsimons and Sitgreaves dissenting—emphasized in a later case that such arguments were no longer welcome. “Agents practicing before them,” the commissioners resolved in the third person, “are bound to pay respect to their Resolutions by refraining from all Argument or opposition on questions which they have distinctly settled.”

The idea that commissioners would pour content into the broad language of Article Six through discrete claims endowed each with signal importance. Rather than settle a dispute between one creditor and one debtor, each claim had the potential to speak to scores, even hundreds, that would follow. This method also, of course, highlighted the importance of the board’s earliest claims. Finally, like the Supreme Court, which completed its first decade of work while the commission sat, its decisions would be final—or so it seemed at the outset. However, the more cases they tried, the more the two sides’ disparate views pushed them toward conflict. In time, bitter personal enmity also developed among those serving, making progress all but impossible. These soured relationships call for a brief examination of the individuals involved. After all, the treaty’s commands would be fleshed out by the men who served on and staffed the arbitral commission.

On the last day of June, 1797, Congress approved the structure of a staff for the Article Six negotiations soon to start in Philadelphia. The president was authorized to hire a “proper person, to act in behalf of the United States,” staffing

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the Article Six Commissioners.42 This role was filled by the twenty-seven-year-old Philadelphia Federalist John Read.43 The government's interest in the proceedings was clear in the direct responsibility given Attorney General Charles Lee. Congress directed him to "counsel such agent, and to attend before the said commissioners, whenever any questions of law, or fact, to be determined by them, shall render his assistance necessary."44 The country was watching, and those representing its interests in Philadelphia should take care. No doubt William Smith, Read's British counterpart as agent representing the creditor-claimants, felt similar scrutiny from home. Griffith Evans was tapped as the commission's secretary, a position responsible for maintaining its minutes and correspondence but little affecting the substance of claims or responses.

Both pairs of initial appointments made by King George and President Washington seemed to augur well for the commission's efficacy. Henry Pye Rich and Thomas Macdonald represented Great Britain.45 William Pinkney wrote from London, where he was engaged as a commissioner to the Article Seven arbitral board, that Macdonald was "an amiable, well-informed gentleman, and carries with him the best disposition towards our country."46 Macdonald would have more

42 This position was subject to Senate confirmation; its working title evolved to "General Agent of the United States." Charles Hall, also of Pennsylvania, was appointed "General Agent" by President Adams in July, but chose not to serve. John Read accepted the position and its $2,000 per annum salary. U.S. Senate Exec. Journal. 4th Cong., 2nd sess., 6 July 1797; U.S. Senate Exec. Journal. 5th Cong., 2nd sess., 29 November 1797.
44 United States Statutes at Large, 5th Congress, 1st Session, Chapter VI, Section 1.
45 Moore, ed. International Adjudications, 3:18.
46 Pinckney's prediction that comity would rule the commission he served—"I have no fears of a fair execution of the 7th article by this country"—largely proved true. To W. Vans Murray, 9 February 1797, William Pinkney, The Life of William Pinkney (New York: D. Appleton and Company, 1853), 29–30.
influence on the board’s tenor and trajectory—not at all in the way Pinckney expected—than any of the six men who eventually served.

The United States' initial appointees were Thomas Fitzsimons47 and James Innes. Fitzsimons, himself an immigrant to the colonies, served with distinction in the Revolutionary War and was regularly elevated to positions of note by his neighbors. During the early 1780s he served in the Continental Congress, where he was prone to lament the Confederation's assumption of debts that were beyond its ability to repay. In 1788 he declared “that resource at an end. When no person will trust, there can be no debt contracted.” Fitzsimons married into a family of prominent Philadelphia merchants and extended its successes. He was a confederate of Robert Morris, and like his friend, warmly supported the Bank of the United States. Indeed, Fitzsimons fretted that Morris's failure would unspool his finances, too. (He would declare bankruptcy not long after the commission broke ranks, later recovering some of his former holdings if not the prestige that attached.) Fitzsimons also represented the Philadelphia area in Congress, where he was a chief lieutenant of Alexander Hamilton for three terms.48 He lost to Democrat John Stanwick in 1794, a defeat James Madison approvingly called a “stunning change for the aristocracy.”49 Fitzsimons's loss of his legislative position freed to serve on the arbitral commission. He came to its work expecting better from both Great Britain and the Virginians in her subjects’ debt. Two years into his term as commissioner he

48 Fitzsimons, like James Madison, divided the years leading up to the Constitutional Convention between the Confederation Congress and his state legislature. He signed the Constitution. Henry Flanders, "Thomas Fitzsimons" Pennsylvania Magazine of History and Biography 2, no. 3 (1878), quote at 310.
49 Flanders, “Thomas Fitzsimons,” 313.
declared to his friend Oliver Wolcott, "[i]ndolence or avarice seems to have rendered the great majority of this people unfit for popular government."\(^{50}\) The sentiment appears to have come directly from his experience with the commissions' actions.

Any doubts about how seriously the United States took the Article Six Commission were quashed with the appointment of James Innes.\(^{51}\) No Virginian was better prepared to parlay Virginia's high stakes in Philadelphia than Innes, a Revolutionary hero and attorney equally renowned for advocacy and oratory. His lifelong entanglement with British policy began during his student days at William & Mary, when he submitted strongly worded essays to the Virginia Gazette.\(^{52}\) By 1775 Innes's deeds matched his words, as he raised a company of volunteers to help protect the colony's materiel from the retreating royal governor, Lord Dunmore. One of the House of Burgesses' last official acts was to thank Innes and his band for their "Alacrity, fidelity, and Activity."\(^{53}\) These were all harbingers for a valiant military career that began with a lieutenant colonelcy of the Fifteenth Virginia Infantry and ended five years later as a leader of the militia assembled at Yorktown.\(^{54}\)

\(^{50}\) Fitzsimons to Oliver Wolcott, 24 July 1800, in Gibbs, ed., Memoirs of Oliver Wolcott, 2:390.
^{53} Carson, James Innes and His Brothers of the F. H. C., 87.
^{54} Shepard, "James Innes."
Innes's lawyering likewise distinguished him and embroiled him in controversy with Great Britain. He read law, probably with his friend St. George Tucker, under George Wythe.\(^5\) He was not long practicing in Virginia county courts before joining Richmond’s more distinguished appellate bar. He also served in the House of Delegates briefly in the early 1780s, and as Attorney General of Virginia beginning in 1786. He bested John Marshall for the latter position,\(^6\) but the two joined forces to support ratifying the Constitution, in 1788, and against the propriety of paying pre-war debts in the leading cases of *Jones v. Walker* and *Ware v. Hylton*.\(^7\) Innes was given the honor of sealing the Federalists’ case for ratification on 25 June—only five spoke after him—something more striking since, as he admitted, he had neither spoken in nor much attended the previous three weeks of debate.\(^8\) A man of “stature so vast as to arrest attention in the street,” Innes’s speech “in full blast” made a lasting impression, humbling even Patrick Henry.\(^9\)

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\(^5\) Innes and Tucker, brothers in William & Mary’s F. H. C. Society, a precursor to the fraternities born or reborn in the nineteenth century, would remain lifelong friends. Tucker wrote the epitaph for Innes’s tombstone, which concludes with an acknowledgment of “the important trust” Innes was fulfilling on the arbitral commission when he died. Carson, *James Innes and His Brothers of the F. H. C.*, 2–11, 159–160.

\(^6\) A decade later Marshall and Innes were both considered for appointment as attorney general of the United States. Carson, *James Innes and His Brothers of the F. H. C.*, 157.

\(^7\) Innes also participated in another litigation inextricably bound with British policy: the interminable Fairfax litigation. Shepard, “James Innes.” Innes to Tucker, 27 April 1795, Tucker-Coleman Papers, Series 1, Special Collections Research Center, Swem Library, The College of William and Mary.

\(^8\) Innes, Virginia’s attorney general, had been engaged in prosecutions in the Court of Oyer and Terminator. His remarks hoped for fellow feeling between the two sides, both of which included “brave officers whom I have seen so gallantly fighting and bleeding for their country”; emphasized that though he was open to persuasion, he understood the Constitution’s supporters to have effectively parried its critics’ fears; proposed subsequent amendments as the proper course; underscored the interests Virginia shared with northern states; and recommended Virginia respect its fellow states’ previous votes to ratify and not demand “such alterations as the ancient dominion shall think proper.” Emphasis in the original. Speech in the Virginia Ratification Convention, 25 June 1788, *DHRC* 10:1519–1524.

\(^9\) Henry and Innes were nearly universally acknowledged as Virginia’s top orators—and not always in that order. Innes was thirty-four when he closed the ratification convention; ten years later, he was dead, his health problems unquestionably complicated by his girth.
One stanza in Innes's speech, in which he spoke to Great Britain's sustaining interests in America, foreshadowed his arbitral work of a decade on. "Will she," Innes asked of Great Britain, "passively overlook flagrant violations of the treaty?"

Will she lose the desire of retrieving those laurels which are buried in America? Should I transfuse into the breast of a Briton, that amor patriae which so strongly predominates in my own, he would say, While I have a guinea, I shall give it to recover lost America.

It would not have aided his cause to speak of debts directly. Innes instead turned to metaphor to underscore British interests. America was lost to Britain, but millions of guineas yet hung in the balance. These sums would not be overlooked, and so, for Innes, "[o]ur national glory, our honor, our interests" all recommended ratifying the Constitution and opening federal courts to British creditors holding pre-war debts.60

Innes's appointment to the Article Six Commission was the second time the Jay Treaty called on his service. In 1794 President Washington dispatched him to Kentucky to stifle a growing tumult over John Jay's failure to secure navigational rights to the Mississippi River.61 He wrote a last will and testament before his trip west—"remember me should the scalping knife of the tawny tenant of the wilderness prevent my return," Innes wrote Tucker. Ironically the will was proved shortly afterward when Innes died in Philadelphia, engaged in the commission's work.62

__Grigsby reports that "[h]e was believed to be the largest man in the state." The History of the Federal Convention of 1788, I, 324, 326.60__

__Speech in the Virginia Ratification Convention, 25 June 1788, DHRC 10:1522.60__

__Attorney General Edmund Randolph recommended to Washington sending "some sensible and firm man" to "urge every consideration, proper to allay the prevailing ferment" on 7 August 1794. The following day he wrote to Innes extending the offer, one Innes accepted later than month. Papers of George Washington, vol. 16, 537, n. 2.61__

__Innes to Tucker, 26 October 1794: Innes to Tucker, 10 June 1798: Henry Tazewell to Tucker, 10 November 1798, Tucker-Coleman Papers, Series 1, Special Collections Research Center, Swem Library, The College of William and Mary.62__
When the "Four Original Commissioners" could not agree on a fifth, names were drawn from an urn. The British had proposed John Guillemard, a Briton then residing in Philadelphia. The American alternative was the famed former Congressman Fisher Ames of Massachusetts. Ames had risen from his sick bed on 28 April 1796 to speak in favor of funding the treaty's commissions. Many thought the speech decisive. In an oration still taught today, he emphasized the nation's honor and the promise of renewed international trade. But the highlight was a description of the dangers inherent in future British and Amerindian conspiracy: "The blood of your sons shall fatten your cornfield!"

Guillemard's name was pulled. John Adams was less than sanguine about what would follow. "Chance, or, if you will, Providence, has added to two Scotsmen a Godwinian descendant of a French refugee, and justice, I fear, will not be heard." The United States's bad luck was just beginning: Innes died on 2 August 1798. Samuel Sitgreaves, then representing Pennsylvania in Congress, was nominated in his place. An attorney admitted to the bar on the day the Treaty of Paris was signed—3 September 1783—Sitgreaves was a Federalist in his fourth year in Congress. He had recently been elected a manager of Senator William Blount's impeachment proceedings, the nation's first. He resigned his seat in Congress to

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63 Miller, *Treaties and Other International Acts*, 250.
66 *Biographical Dictionary of the United States Congress*. A Federalist who had recently joined the Democratic-Republican Ranks, Blount represented Tennessee in the U.S. Senate. Though many details of his plot remain obscured, he was charged with conspiring to invade Louisiana, then controlled by Spain. Blount was expelled by the Senate and impeached by
serve on the Article Six Commission, but remained involved in high-profile prosecutions. Sitgreaves begged the board’s leave when his work on the John Fries treason trial heated up in May 1799.67

Sitgreaves was soon Thomas Macdonald’s chief antagonist. The British leader’s encomium for Innes, written after the board devolved into bickering, implicitly dates its erosion with Sitgreaves’s arrival. “[A] man more truly honorable never existed,” Macdonald wrote of Innes. He praised, too, Innes’ “frankness of mind,” “manly eloquence,” and “correct judgment.” He enjoyed the esteem of Washington and Virginia, “the state to which he belonged.” Fitzsimons and Sitgreaves could only suffer by the comparison.68

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Thomas Fitzsimons hosted the commission’s first two organizational meetings at his home. One of Philadelphia’s most respected leaders and most successful merchants, Fitzsimons no doubt extended hospitality to his new colleagues. For two years to come these men would grapple over debts long owed to the House. By then a member of the Tennessee state legislature, Blount did not attend his impeachment trial, held after Sitgreaves’s departure in December 1798. The Senate accepted the argument of Blount’s counsel that impeachment was not a proper punishment for Senators. Sitgreaves had chaired the House committee that drew up articles of impeachment in addition to helping to manage its prosecution. Melton, The First Impeachment, 114–15, 128–138, 195.

67 John Fries led a violent response, or “Regulation,” to direct taxes in Northwestern Pennsylvania in 1799. He and two compatriots were tried for treason, and convicted, in late spring 1799. The verdict was set aside on a technicality but a second jury also convicted. President Adams pardoned Fries, averting his sentence of death. Bouton, Taming Democracy, 249–256.

68 This was all the clearer in retrospect, as Henry Pye Rich outlined in one of the final letters exchanged among the commissioners. “[D]uring his cooperation,” Rich wrote of Innes on 2 September 1799, “we had the satisfaction of seeing some Resolutions on leading questions pass with unanimous consent: I grieve to add that what has since occurred leads me to believe that this would not have been so without the influence of our late Colleague’s example, and of that persuasive eloquence which he possessed in a superior degree.” Moore, ed., International Adjudications 3:21, 308.
British merchants. But for two Thursdays in May 1797 they got acquainted over the
dining table of a transatlantic merchant. On the following Monday, 29 May, the
board began its work in earnest at its permanent home at No. 3 South 6th Street.
Their first action was to recite the oath the Jay Treaty outlined. The president of
Pennsylvania’s Court of Common Pleas presided.69

From this first official meeting also emerged a call for claims over the
signature of the board’s secretary, Griffith Evans. The notice was printed half a
dozens times during June in newspapers on both sides of the Atlantic.70 The call
included an excerpt of Article Six in the apparent hope that it spoke for itself. In
spite of a similar call published by William Smith, agent for the claimants, the
language raised more questions than it answered.71 Claimants were soon petitioning
the board for more specific instructions. Their submissions were slow to arrive,
giving James Innes the chance to convalesce, his colleagues the ability to escape the
yellow fever epidemic in late summer, and British commissioners Macdonald and
Rich the opportunity to call on Washington at Mount Vernon in October 1797.72

69 Moore, ed., International Adjudications 3:22.
70 Moore, ed., International Adjudications 3:25, n1.
71 William Moore Smith published a broadside on 8 June 1797 announcing his address—“on
the southeast corner of Chestnut and Fifth Streets,”—calling for claims, and providing
instruction on what details were necessary to support a claim. Having received from Phineas
Bond, Esq., His Majesty’s Consul General in America, a notice published at Philadelphia, the
8th of June last, by William Moore Smith, Esq. . . [London] [1797] Eighteenth Century
72 Innes had been absent from the commission’s weekly or twice-weekly meetings “for some
weeks which seems absolutely necessary for his health,” as Thomas Macdonald wrote in
August of 1797. Macdonald to George Washington, 19 August 1797, Papers of George
Washington, Retirement Series, 1:305; The Diaries of George Washington, ed. Donald
Jackson and Dorothy Twohig (Charlottesville: University Press of Virginia, 1979) 14 October
1797, 6:262.
Virginia offered commissioners not only respite from yellow fever but much of their early work. The pace of claims quickened during the fall of 1797 and spring of 1798; the largest quantity submitted by Scots storekeepers in the Virginia Piedmont. Filings joined increasingly deep piles but departed them infrequently. The board took up its first several dozen claims one at a time, often focusing on minor details of rules and procedure. Before long the British commissioners realized that a piecemeal approach was little better than none at all: The claims were too many, time too short. Instead they hoped to establish broad guidelines that would speed their work by applying to scores of claims. Eventually, real precedent would emerge from specific cases. As British commissioners attempted to persuade their colleagues more generally, Macdonald urged the board to accede to a series of "notes" on 25 July 1798.

With his first note Macdonald hoped to return the commission to first principles—namely, the 1783 Treaty of Paris. The treaty's fourth article took a broad view of pre-war obligations, speaking of debts "fairly contracted" before the peace that "remain unpaid" after it. These premises set the board on a heading altogether congenial to Macdonald and the merchants he represented. Debts were "all debts"—of whatever nature—"; an impediment included "every cause of delay"; it was debtors' responsibility to prove their insolvency; finally, no recourse to courts was required before the board would countenance a claim. The notes proposed a clean sweep of the key controversies in favor of creditors. The United States delegation thought, correctly, that Macdonald's principles would decide nearly every claim in
the creditor's favor. To revisit the metaphor of a collegial, appellate court, Macdonald's notes suggest a judge filing a friend-of-the-court brief in a case destined for his own court's next docket. However, Macdonald's brief would decide not only the instant case, but the vast majority of all that followed.

Commissioners from the United States were little impressed by Macdonald's proposed notes. For their part, each claim deserved to stand on its own ground. Novel, complex details needed to be explored and litigated in serial fashion, each case mulled with as much time and care as it required. Beyond their substantive objections, the Americans seem to have been offended by the boldness of Macdonald's move. On another level, however, Fitzsimons and Innes probably welcomed the exchange. As it had been for a generation, time was on the debtors' side. An appropriation by Congress as the claims ramped up was suggestive. On 19 March 1798 $300,000 was earmarked for meeting merchants' obligations. (Close to $25,000,000 would be claimed before the commission closed its books.) Perhaps Congress, too, was counting on the commission's two-year charge expiring before it made much headway.

This contretemps over a new approach divides the commission's work rather neatly. From May 1797 to July 1798, the commission awaited business and settled details. During these early months the agents practicing before the commission bottled their dislike for the other side—but only barely. As early as April 1798 the United States' agent had been compelled to "acknowled[e] the great impropriety of

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74 *United States Statutes at Large* 1:545.
certain passages in the observations” he submitted in response to a claim. Not a month later William Smith, Read’s counterpart, had been found guilty of similar intemperance in arguing that a case was too plain to admit argument. The board lectured these two that it would not have its work “inflamed[ed] by that contemptuous tone which nothing can justify.” No, its commissioners were “bound to insist” on a “close and cool adherence to argument and material detail.” And so they did, mostly, during their first year together.

During the commission’s second phase, from the summer of 1798 to the summer of 1799, satisfactory, bilateral answers failed to appear. Though alternative readings abound, historian Bradford Perkins correctly diagnoses the drafting of Macdonald’s July 1798 memorandum as the moment “the board became an acrimonious debating society.” The death of the universally esteemed James Innes less than two weeks later only catalyzed the change. The commission’s squabbling over the Dulany, Inglis, and Allen claims charts the commission’s demise. But none is more significant, or more closely tied to the Virginia Piedmont’s stores, than that of William Cunninghame & Co. It was also a fulcrum of sorts for the board: Begun while civility reigned and Innes lived, it was decided after both were gone. Any chance that the board might pull a common oar perished with them.

The accounts of Scots shopkeepers in Virginia’s Piedmont arrived with increasing frequency during the board’s first winter in Philadelphia. Appropriately, a claim from William Cunninghame & Co., the firm with the broadest reach into the

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75 Moore, ed., *International Adjudications* 3:45n.
76 Smith also earned the board’s censure for comments made in filing a claim for Ware, executor of Jones, on the obligation of Hylton and Co.—the very controversy that had inspired the seminal Supreme Court Ruling from two years earlier. Moore, ed., *International Adjudications* 3:29.
77 Perkins, *The First Rapprochement*, 120.
Virginia countryside, would test the Commonwealth's policies on pre-Revolutionary debts. Put simply, the Cunninghame claim distilled the Virginia way of debt during the two generations before Independence. With fourteen stores scattered throughout the "new tobacco country" of the Virginia Piedmont, the firm's accounts were affected by all of Virginia's legislative efforts to shelter pre-war debts. The memorial its attorney Thomas Gordon drafted spoke of the firm's debts cumulatively and claimed nearly £3,000,000 in Virginia currency, more than ten percent of the board's claims in toto.

Taken up in the spring of 1798 and finally resolved in early August, the claim raised potent questions about the treaty's definition of a "legal impediment" to collection and the appropriateness of awarding interest that accrued during the war. The Cunninghame memorial recited a series of roadblocks: Virginia's debtor relief legislation, the 1777 Loan Office Act, the 1782 Act barring British subjects from Virginia courts, and the "you first" repeal of prior laws obstructing the collection of prewar debts. This last repeal of debtor relief still awaited Great Britain's honoring its commitments under the Treaty of Paris.

None doubted the broad reach of the issues raised by the Cunninghame claim. Attorney General Charles Lee personally drafted the United States' initial response on 3 April. Though Read signed it, he also attempted to endow it with the

80 William Smith, agent for the claimants, would later implore merchants to abide by the principles espoused in the Cunninghame matter. 8 January 1799, Moore, ed., International Adjudications 3:39.
81 Since claims often had a long life before the board, their dates can confuse. In the case of Cunninghame, for example, its first filings were made during the spring of 1798, but it was not settled finally until December of that year. The board applied the guidelines Macdonald proposed in July to settle the claim. Moore, ed., International Adjudications 3:77–78.
government's full imprimatur by appending a letter from Lee describing his own handiwork. Lee's response makes high art of what lawyers call arguments in the alternative, advancing five evidentiary thresholds creditors must clear and nine details that would exempt the United States from payment. The former category included the solvency of the debtor in 1783 and the "incompetency of the ordinary courts" to require payment. The latter reached such details as a firm's failure to sue and a court having properly settled a dispute. Under Lee's analysis creditors must have fulfilled each of the five evidentiary details to collect. The United States would avoid payment if it proved any of the nine exemptions.82

Like so many Virginians before him, Lee's purpose was to broaden the conversation surrounding pre-war debts. His most ambitious effort in this vein was an unambiguous attempt to limit the scope of what he called "an extraordinary tribunal." Pounds sterling were not the only stakes in play, and he lectured the commission on the dangers of overreach:

For if an error unfortunately occur on this point it may lay a foundation for disappointing all the good consequences that have been expected from the article and perhaps for renewing the dissensions between the two nations which it is so desirable should be forever composed.

The commission should suffer no illusions about the United States's view of the board and of itself. With no other avenue of appeal, the new nation would simply disregard any overreach: "though they shall decide a case to be cognizable before, yet if it appears to either nation that it is not, either has just right to disregard the award."83 As Jefferson espoused after becoming president a few months later, when

one disagreed with a judicial interpretation, the proper course was simple: advance your own.84

So were premonitions of "bad faith," "absurd decisions," "corruption," and "flagrant partiality," all of which Lee's April memo raised through a long citation to Vattel's work on international arbitration.85 The British commissioners received them not as high-minded theory but rather as low insults. In their 18 April response they took care to "prohibit all allusion to such topics in the future." The ban was effective only until Lee could draft a response, which he did less than a week later. Certainly, Lee huffed, the board did not mean to suggest that the United States could not argue a certain claim was improperly before the board. (Lee drafted this chest-out memo on a Tuesday; Read forwarded it to the board on a Thursday; both may have well been among the thousands to debut the new, patriotic ditty "Hail Columbia" on Wednesday at the Chestnut Street Theater.)86 The board resolved that such arguments could in fact be made, but promised nothing about their prospects. Both the tone and the prolixity of this exchange help us understand why the board was mired in debate throughout its work. What is more, Lee's introduction of honor,

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84 Whether called departmentalism, coordinate review, or horizontal judicial review, "Jefferson's opinion indicates that the executive, like the judiciary, possesses the power to adjudge what is constitutional within its own sphere of conduct, and thus has the implicit duty to make constitutional determinations." David W. Tyler, "Clarifying Departmentalism: How the Framers' Vision of Judicial and Presidential Review Makes the Case for Deductive Judicial Supremacy," *William and Mary Law Review* 50, no. 6 (2009), 2240.

85 Swiss political theorist and philosopher Emmerich de Vattel's *The Law of Nations*, published in 1758, is considered a founding treatise in international law. It was well known by Virginia's intellectual elite toward the end of the eighteenth century and was cited in the constitutional convention and in Pennsylvania's and New York's ratification conventions. See Davis, *Intellectual Life in Jefferson's Virginia*, 52, 94, 102.

and its absence among British creditors and commissioners, reminds how broadly Virginia's culture of debt swept.87

Let us return, as the board at long last did, to the merits of the Cunninghame claim. Here were squarely presented the two key questions of Virginia's legal impediments and the appropriateness of awarding wartime interest. Macdonald laid before the board a resolution on 9 July 1798 that fulsomely addressed both. It began with a précis of the General Assembly's efforts to flummox creditors, proceeding then to review adverse actions by courts across the Commonwealth. Federal and state court decisions alike were cited on an array of issues.88 The weight of this evidence meant, for Macdonald, that each debtor had to show that the claim against him was groundless. Otherwise the debt would stand. The positions Macdonald would solidify in his "notes" that same month led ineluctably to the conclusion that most of the Cunninghame firm's claims should be paid. They would also, as the United States commissioners feared, solidify the vast majority of claims in Virginia.

Instead of taking up Macdonald's resolution as scheduled on Friday, 3 August, commissioners attended the funeral of their colleague James Innes. (Macdonald had written his "notes" in part so that Innes could have their full sense in spite of his increasingly rare attendance.) The following Wednesday Fitzsimons shared a dissent emphasizing that even if Macdonald's evidence was true broadly, the claimants retained the burden of proof in each specific claim. Additionally, he

87 Breen, Tobacco Culture, chapters 3-4.
88 Macdonald concluded his resolution with the kind of flourish that added little to the board's comity. "To all which evidence of the existence and actual operation of lawful impediments to the recovery of British debts, nothing has been opposed but an averment that the legislature of the State of Virginia were ignorant of their own laws: and an argument to prove that according to the theory of the law, and constitution of the United States, such legislative acts ought not to have passed, nor such judicial decisions to have been given." Moore, ed., International Adjudications 3:66.
wrote, such a claim as significant as Cunninghame’s deserved an audience before a fully staffed commission.89

Another important claim involved an old Maryland law that compelled the extinction of debt in depreciated paper money. The Maryland controversy began to get traction before the board during the first week of August. Daniel Dulany sued, and then petitioned the board, for the difference between the sterling debt he held and the value of the paper currency he received in payment. Maryland, and the agents representing her before the commission, considered the debt fulfilled. For their part there was no claim to answer. Like Cunninghame’s case, whose timing it paralleled, the Dulany matter was of the first importance. An analogous Virginia provision, of course, touched the majority of claims then appearing before the board. On 6 August, the Monday after Innes was laid to rest, the board resolved that these losses should be repaid. “[T]he Board are [sic] bound,” they wrote, “to award relief wherever the right is good in justice, and the remedy without fault in the creditor is gone at law.”90 Fitzsimons, alone, lodged a “protest” against the Maryland decision reflecting his “infinite concern.” Perhaps his only recourse was “to withdraw from the board . . . rather than give countenance to a resolution which (in my opinion) was so manifestly unjust.”91 He would therefore aim to deprive the board of its quorum, “one the commissioners named on each side and the fifth commissioner.”92

Instead he and his colleagues abandoned Philadelphia to avoid the dread yellow fever. Perhaps one in ten Philadelphians remained in the city during the fall

of 1798: some 1,200 died. The commission’s prospects also suffered during its recess. Macdonald had been writing; Fitzsimmons and Secretary of State Timothy Pickering, conspiring. When the board returned to work in October, Macdonald presented a resolution that twinned the Cunninghame and Dulany cases. War interest should be paid—the second front opened by the many-splendored Cunninghame claim—and Dulany could collect. Moreover, Macdonald’s brief went further to deny the commissioners’ right to withdraw. The resolution passed on 11 January 1799. Fitzsimons, his new colleague Samuel Sitgreaves in tow, then made good on earlier threats to withdraw from its work to prevent adverse decisions. “In fine, on a Consideration of all the different principles set up by the British Commissioners,” they reported a few weeks later, “it will be found difficult to imagine a Case, but that some one or more of those principles will avail to secure an award for the claimant.”

The delegations agreed, as 1799 began, that their progress to date was unimpressive. “The mass of business not at length brought before the Board,” Macdonald wrote on 11 January, “will demand a steady course of uninterrupted proceeding.” Fitzsimons and Sitgreaves wrote Pickering in March that “[w]e have not yet proceeded far in the Examination of the proofs of Debts.” The pace, if anything, suffered during the board’s final six months. It continued to meet, for form’s sake, occasionally settling a claim over the Americans’ objections. More commonly, however, Fitzsimons and Sitgreaves “seceded” to prevent adverse decisions. In February the pair absented themselves to block a decision that a New

93 Miller, “The Federal City, 1783–1800,” 197; Fitzsimons and Sitgreaves to Secretary of State, 12 March 1799, 14, “Correspondence, 1799.”  
94 Fitzsimons and Sitgreaves to Secretary of State, 12 March 1799, 14, “Correspondence, 1799.”
York law had prevented Bishop Charles Inglis, a British citizen, from rightfully collecting his debts. The American commissioners' publication of the record in this case—a circumstance that recalled the Senate's debate over the Jay Treaty itself—would contribute to the last parting of the commissioners in late July 1799.95

Several other important claims dealt directly with Virginia's trials with prewar debt. In May the three British commissioners, in a case brought by the firm Lidderdale, Harmen, and Farrell, allowed creditors to pursue claims against the Virginia Loan Office Act without first returning to court. After reciting the results in Jones v. Walker and Ware v. Hylton, the latter of which eviscerated the loan office's sequestration of debts, the board established that "it would not be incumbent on him," speaking of the creditor, "to exhaust every means of payment which the laws of the country furnished." At bottom, creditors whose past suits had proved unavailing were not required to begin new rounds of litigation before approaching the Article Six Commission.96

Andrew Allen's case presented the fundamental question of when, exactly, the United States became a sovereign nation. Allen was an early, strident critic of the Intolerable Acts, and served on Pennsylvania's Committee of Safety. Independence proved too much for him, however, and he resigned from Congress in

95 The Inglis claim, like the Cunninghame matter, raised a host of questions. Was he a British subject or an American citizen? When did Inglis become an American? When did the colonies become sovereign states? Could a country yet unrecognized by Great Britain claim one of His Majesty's subjects as its own citizen? Moore, ed., International Adjudications 3:256.

96 The debtor in Lidderdale's case was Thomas Mann Randolph, a well-known Virginian whose son Thomas Mann Randolph Jr. would marry Thomas Jefferson's daughter Martha. Part of one of Virginia's most renowned clans, the family "were in many ways representative gentlefolk of the last prerevolutionary generation." Thomas Mann Randolph Sr. left $64,000 in outstanding debts to Thomas the younger and his two brothers. Cynthia Kierner, "'The Dark and Dense Cloud Perpetually Lowering over Us': Gender and the Decline of the Gentry in Postrevolutionary Virginia," JER 20, no. 2 (Summer 2000), 186, 190.
the middle of June 1776. By the end of the year Allen had made clear his affinity lay still with Great Britain. Accordingly, his estate and debts were confiscated by the Pennsylvania legislature in March 1778; he remained in the Commonwealth and was pardoned by the governor in 1792. The United States maintained that Allen, having deserted the Revolution, impliedly disclaimed any property he held. He was "civilly dead to the United States," which, as a sovereign after 4 July 1776, was capable to seize his estate. The British majority argued that the United States was a nation only after the Treaty of Peace, and that Allen should be made whole. Put simply, the question turned on "[w]hen the United States became independent and took their place among the nations of the earth."99

The British majority's answer was that American independence began on 3 September 1783, the date the Treaty of Paris was signed. When Macdonald pushed this argument forward on 9 July 1799 it appeared to undermine the United States' understanding of itself—as fundamental an affront to the new nation as could be imagined.100 The Declaration of Independence established the United States' sovereignty, according to the American commissioners. The American minority argued that July of 1776 was the accepted date given "the celebration in every part

98 Perkins, The First Rapprochement, 118.
99 The same debate over the proper date of Independence nearly ended the Paris negotiations. British peace commissioner Richard Oswald had not been instructed to recognize the United States's independence before beginning their work in earnest—a step the Americans demanded. The issue was finessed by Oswald agreeing to deal with Jay, Franklin, and ultimately Adams as representatives of the United States. Americans deemed this tantamount to recognition; Britons did not. Both 1776 and 1783, in other words, could be reasonably maintained as the proper birth date for the United States' nationhood some years on. Incidentally, Oswald was a Scots merchant who had lived in Virginia before the war. Robert Middlekauff, The Glorious Cause: The American Revolution, 1763–1789 (New York: Oxford University Press, 1982, rpr. 2005), 592–593. Moore, ed., International Adjudications 3:244.
100 Moore, ed., International Adjudications 3:243.
of the country of the ever glorious and memorable 4th day of July 1776 as the anniversary of their sovereignty." But Macdonald and his countrymen viewed the years from 1776 to 1783 as a period when colonies were in rebellion. Much hung on whether the treaty struck in that city in 1783 granted or acknowledged independence—both in the narrow context of pre-Revolutionary debts and the broader consideration of the United States' self-understanding. (Patrick Henry had reached his highest rhetorical pitch in refuting the British position on 1783 in the *Jones v. Walker* argument.) The offense finally drove Samuel Sitgreaves and Thomas Fitzsimons from the commission's work entirely, a step they explained in writing on 19 July. Arbitration was over, recrimination just begun.

Neither the British majority nor Fitzsimons and Sitgreaves papered over the past months' difficulties in their summer correspondence. Early efforts at professionalism yielded to unmistakable dislike. A final, blistering treatise penned by Macdonald ensured that no one would part the arbitral commission friends. Read on 31 July—the last time the commission would share a table—the report went beyond policy differences to impugn the United States commissioners' good faith. In the end, the British delegates deemed their colleagues little better than the colonial debtors who ran from their bills. Fitzsimons and Sitgreaves, in Macdonald's telling, had hoped to ennoble those past sins by ignoring their own oaths to "honestly, diligently, impartially, and carefully examine, and to the best of my judgment according to justice and equity decide" the claims laid before them.¹⁰¹ The

imprecations halted not only the Article Six Commission but the arbitral commission settling loyalist claims an ocean away.¹⁰²

The American commissioners had been charged with operating in bad faith; their response was produced in haste and reads like it. The “uncharitable and indecorous imputation on their motives and integrity” was unjustified; in fact, Fitzsimons and Sitgreaves had “at least equally fulfilled the duties of personal deference, moderation, and politeness.” The two Pennsylvania Federalists admonished their British colleagues with language that Virginia debtors might have as easily applied to their creditors. Both had broken “the rules that should at all times prevail in the intercourse of Gentlemen with each other.”

The letters continued for several weeks, their tone eroding with each exchange. Macdonald sarcastically wrote in response to one U.S. submission, “[w]e had yesterday the honor of receiving your letter of fifty-five pages.”¹⁰³ In the last letter written, the British argued that the Americans had dithered purposefully, because “Delay is certain gain . . . and every hours [sic] of delay may remove a witness or destroy a document.” The two sides were “diametrically opposed”; the Americans’ “interpretation [was] altogether inconceivable” to their British colleagues.

The Article Six Commission was a failed experiment, but both commissioners and special agents reported the news with heads held high. Thomas Fitzsimons looked forward to publicizing the American commissioners’ “disagreement in every

¹⁰³ A later missive was even more biting: “Your suspension of our official business have left us leisure for inferior occupations, we have again perused your long letter of the 2d instant.” Moore, “The United States and International Arbitration,” 90.
point," and "speedily"—the better to win the press battle aborning.\footnote{Fitzsimons to Oliver Wolcott, 3 September 1799, in Gibbs, ed., \textit{Memoirs of Oliver Wolcott,} 2:262.} William Waller Hening had more than earned the satisfaction he took in the American commissioner's stand. He forwarded the published record of the Inglis case to James Madison with the prediction it would "afford you much satisfaction in the perusal."

The United States' representatives "have not yielded to the very extraordinary interpretation," he continued, "sought to be applied to the treaty of 1794 by the commissioners of his Britannic Majesty.\footnote{29 July 1799, \textit{Papers of James Madison, Congressional Series}, Volume 17, 256.} Hening was just then representing the debtors' interests as carefully while leading the corps of special agents investigating debts in Virginia.

A proper post-mortem for the commission centers on the intractable policy differences that had grown up around pre-Revolutionary debts. But it also allows for the perverse incentives of grating personalities and the political carnival that was Philadelphia during the last years of the eighteenth century. True, British merchants cast a wide net when they submitted claims. (Even Grenville confided to Rufus King that the claims were seriously bloated.)\footnote{Perkins, \textit{The First Rapprochement}, 120.} True, the United States' commissioners proved no more pliable than Virginia's debtors, legislators, judges, or jurors. They gave no quarter even when doing so "made sport of logic and candor," to borrow a phrase historian Charles Ritcheson applied to some among these earlier dealings.\footnote{Ritcheson, \textit{Aftermath of Revolution}, 238.} Seen in the hyper-partisan context of Philadelphia, where even competing treatments for yellow fever were fodder for the daily sheets, it could have scarcely been otherwise. Jefferson—without irony, one supposes—wrote Madison as...
the rift widened between the American and British delegates that the British were
"using that part of the treaty merely as a political engine."108

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Virginians' pre-Revolutionary debts were dyed in international intrigue, even
public spectacle. It was folly to imagine that these issues could be wrung out of the
claims—that they could ever again be simple private contracts. The publication of
the two sides' motives and justifications—increasingly common as the board's
working relationship soured—are the clearest index of the public debate. The
commission helped keep busy Philadelphia's many printers, several of whom who
had moved south with the government at the beginning of the decade.109

And not exclusively for attribution, either. Adams believed that Macdonald's
"squibs, scoffs, and sarcasms in what were then called the federal newspapers,"
according to Adams, were attributed to Macdonald but might have been penned by
Hamilton in order to embarrass his administration by tarring it with the brush of
unpaid debt. William Smith, agent for the claimants, was also thought guilty of
writing broad-ranging, anonymous critiques.110 Macdonald's and Rich's friendship
with William Cobbett no doubt catalyzed their interest in fighting in the 1790s
"paper wars." In addition to his own editorializing, Cobbett ran a thriving printing

109 John Swain and John Fenno, the latter of whom published several of the tracts inspired
by the commission's work, were two such printers. Kenneth R. Bowling, "The Federal
in Bowling and Donald R. Kennon, eds., Neither Separate Nor Equal: Congress in the 1790s
110 The comment appears in "To the Printers of the Boston Patriot," a draft essay Adams
wrote in 1801 and expanded in 1809. His purpose was to defend himself from attacks
launched by Alexander Hamilton, among others, though the treatise was not published. The
Works of John Adams 9:248; Scribner's Monthly 11, no. 6 (April 1876), 864. I am grateful to
Scott Reynolds Nelson for the latter reference.
operation which prepared several of the British commissioners' pamphlets. He likely contributed to their writing, too.  

* * *

Turn-of-the-century Philadelphia was indeed a glorious place to take up one's pen. It is well, perhaps, that the Article Six Commission never approached a full-time operation. Its commissioners and staff could not have wanted for more arresting extracurricular doings than Philadelphia's during the last three years of the eighteenth century. Not since the Constitution was ratified a dozen years before 1800—and Independence declared a dozen before that—had the "Metropolis of America" seen anything similar. Many of the events and debates renewed the fundamental questions raised then: George Washington retired, returned, and died. Adams and his fellow Federalists looked to fireproof their political gains with the Alien and Sedition Acts passed in July 1798. His vice president, in league with Madison, repudiated these statutes through the Kentucky and Virginia legislatures respectively. Marshall returned from France a hero, having repelled the efforts of "Messrs. X, Y, and Z" to shake down the new government. Thaddeus Kosciuszko, heroic for quite different reasons, spent a triumphant fall and winter 1797–1798

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112 President Adams asked Washington to return to Philadelphia in early November 1798 to oversee military preparations to face a growing threat from France. He departed for Mount Vernon on 14 December 1798 and died there exactly a year later. On the 26th his funeral procession wound from Congress Hall to the New Lutheran Church. There Henry Lee III, selected for the honor by Congress, eulogized him as "[f]irst in war, first in peace, and first in the hearts of his country. . ." Also known as "Light Horse Harry," Lee was the older brother of Charles Lee, then much engaged in the Article Six Commission's work. Miller, "The Federal City, 1783–1800," 203–205.
living on Pine Street, five blocks from the commission’s base of operations. Congress passed the Bankruptcy Act of 1800, relieving many debtors, Robert Morris among them.113 Jefferson—and Aaron Burr—were elected president in 1800, inviting Hamilton to play a unique and disruptive hand in the House of Representatives. Until the question was settled in late February 1801, in historian James Roger Sharp’s phrase, “the country teetered at the brink of disintegration.”114 A new nation and new parties were constantly looking for footholds on shifting ground while the Article Six Commission sat.

The commission’s failure was obvious even among all these competing headlines. Lord Grenville and Rufus King, the U.S. ambassador to Great Britain, were about the business of negotiating a lump sum settlement as early as the fall of 1800. Efforts to ameliorate the Article Six Commission’s shortcomings in some new, different process only highlighted the intractability of the issues in play. Removing Macdonald from the negotiation—and the negotiation from Philadelphia—was unlikely to alter its fundamental difficulties. Grenville and King floated proposals including better defining Article Six, beginning anew with five different commissioners, explicitly approaching the claims one at a time, and modifying sundry other procedural details. None took hold. Only a truly new approach was worth the effort. Grenville’s casual comment to King about a possible lump sum payment led to negotiations along those lines. Ultimately the Convention of 1802

113 In a 16 January 1799 digest of Philadelphia’s news Jefferson sent James Madison, the arbitral commission flowed intuitively from a discussion of the Bankruptcy bill. “[T]he bankrupt bill was yesterday rejected by a majority of three,” he wrote. “the [sic] determinations of the British commissioners under the treaty (who are 3. against 2. of ours) are so extravagant, that about 3. days ago ours protested & seceded.” Papers of Thomas Jefferson vol. 30, 623. The bankruptcy statute was repealed in late 1803, eighteen months before it was set to expire. Mann, Republic of Debtors, 248–252.
substituted a £600,000 payment for the approach attempted by the Article Six Commission. Helping to manage the negotiations to pay the debts was Secretary of State John Marshall, whose early legal career depended so heavily on their not being paid. The United States’s official account of the settlement called it “the first installment in satisfaction of the monies which the United States might have been liable to pay in pursuance of the sixth article of the British treaty in 1794.”

Unsurprisingly, perhaps, the British delegation saw claims with new eyes when scrutinizing them an ocean away and three years later. Their belief in the dignity of every shilling claimed by merchants eroded when they convened as the board established pursuant to the Convention of 1802. (Great Britain’s three Article Six commissioners were rechristened as this board.) The commissioners were no longer pressing their case to an adversarial court but evaluating each debt with their clients. This new board deemed a relatively small fraction of debts good—and paid an even smaller fraction out of the American government’s concession. Yet this total was described as the “greater part of the immense debt which was justly due” when the 1783 treaty was signed. True, “dilatory litigation” and “fraudulent contrivance” both were “notoriously prevalent” in the colonies and the states they became. The commissioners emphasized that merchants failed to properly manage the risk of debtors’ insolvency. Merchants likewise abandoned discretion in bringing forward claims in “more than the amount” that could be supported by the record or “ultimately ascribed to the operation of those laws and legal practices after the Peace” the Jay Treaty decried. Scots storekeepers had long tacked an “advance” of a

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115 An Account of the Receipts and Expenditures of the United States, for the Year 1803 (Washington: Printed and Published by order of the House of Representatives, 1803), 48. Emphasis added.
hundred percent or more onto the wares they sold in the Virginia Piedmont; the
British commissioners regretted that a similar approach distinguished the
merchants' submission to the board. The debts that merchants had long marked up
Macdonald and his two colleagues now suggested be finally written down to the
amount tendered by the American government.

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"Of all portions of our national history," Henry Adams wrote when that
history was but half its modern length, "none has been more often or carefully
described and discussed than the struggle over Mr. Jay's treaty." The pact has
yielded that distinction to other episodes in decades since, but it is far from
neglected by historians. No monograph—at least none a publisher would be willing
to print—could exhaust the rich quotes the debate produced. Unlike the treaty
broadly considered, however—as legal scholar Richard B. Lillich points up in
introducing Adams's quote—the arbitral commissions it created nonetheless saw
their declamations dwindle into obscurity. Legal scholars, of whom Lillich is one,
periodically turn to the commissions for their novel answers to questions of
international law or separation of powers. The Article Six Commission is the least
mentioned among the three. Unlike the St. Croix River Commission or the Article
Seven Commission, which resolved loyalists' claims of lost property, the private

117 One such: "Damn John Jay! Damn every one who won't damn John Jay. Damn every one
who won't put lights in the windows and sit up all night damning John Jay!" Quoted in
Parties in the Seaport Cities in the Federalist Era" (PhD Dissertation, University of Virginia,
1967), 269.
debts commission proved unequal to its task. Even the writers who turn to it, however, have uniformly overlooked its most interesting detail.

To get at the circumstances of pre-Revolutionary debts—to empower the General Agent and commissioners to press the United States' positions—Congress authorized another class of agents. These investigators would be selected by the Attorney General—in practice, General Agent John Read did the recruiting—paid according to the president's direction, and work "in different parts of the United States." The Virginia Bar included ample suitors for Read's blandishments, but other states, such as North Carolina and Georgia, required him to look a bit harder. In Georgia, for example, Read leaned on his old Princeton chum George Woodruff, then serving as United States Attorney for the district of Georgia, for any suitable references. "His duties will principally consist of inquiries into the situation of the debts claimed from the United States," Read wrote, "whether they are fair and honest, whether all due credits have been given, and whether the debtors were solvent at the peace." The balance of Read's letter elaborates on the role, which he was personally performing in the absence of special agents resident in Georgia. Read asked Woodruff for a detailed précis of state laws that touched the repayment of pre-Revolutionary debts and "points settled" by state and federal courts in suits for debt. He asked about a specific case or two, hoping to prove that their results drew from

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119 Appropriately, given that the preponderance of British debts were owed by Virginians, seventeen of twenty-five Special Agents of the United States were tasked there. Message from the President of the United States, Transmitting a Roll of the Persons Having Office or Employment under the United States. Washington, D.C.: William Duane, 1802.

120 Read's 26 January 1801 letter to William Duffy, who served in North Carolina, was a concerted effort to keep Duffy at work. Read clearly viewed replacing him as no mean task. One concession Read offered, which will be discussed below, was the ability to recruit "under-agents" to help facilitate his research. William Duffy Papers, (1786–1809), State Archives of North Carolina, Raleigh.
“principles of law influencing the court without distinction of persons.” Woodruff could not have mistaken the full-throated defense Read hoped to mount during the negotiations to come. “It is of great importance to me to be well acquainted with every thing [sic] that has passed in the several States on this subject,” he said by way of conclusion.121

Few better understood what had passed on Virginia’s pre-Revolutionary debts during the last generation than the nineteen men who served there as Special Agents of the United States. We turn now to their stories, which, like the stories they collected, are yet largely untold.

121 John Read to George Woodruff, 5 September 1798, Box 31, Folder 1, Read Family Papers, Library Company of Philadelphia. Emphasis in the original.
The Jay Treaty’s sixth article presented different challenges for creditors and debtors. The charge was simpler in London and Glasgow, especially given the Article Six Commission’s congenial interpretations: Firms whose profits turned on careful bookkeeping would present those accounts to the arbitral commission and await payment. But how would Virginians embrace the treaty’s invitation to prove that they were insolvent at the peace, or that their creditors had been dilatory in pursuing payment? Who would chase the details on millions of pounds of debts accrued in small increments throughout the Commonwealth? Who would evaluate Virginians’ responses to long-overlooked obligations of yesteryear?

The answer might have been obvious at any meeting of Virginia’s county courts. During the last years of the eighteenth century, Virginia’s bar was replete with ambitious, mid-career attorneys amply experienced in the Commonwealth’s way of debt. Many of these “children of the Revolution” were on the make in 1797; the appointment as a Special Agent of the United States offered them both a stipend and an opportunity to represent their neighbors’ interests in a deeply personal, but inherently political, process. They were of Virginia, but special agents for the United States.

This chapter seeks to understand the perspective they brought to research on Virginia’s pre-Revolutionary debts by analyzing their collective biography. In the next we proceed to analyze several individual special agents’ experiences before and after their service. I begin by describing my approach, who it embraces, and why.
then offer a broad aperture on their experience in early national Virginia, beginning with the era and political circumstances of their appointments. This I follow with a description of their social milieu, service in the General Assembly and war, and their educational background, which often led to a career in the law. I then turn to an analysis of their financial health, an unavoidable context for their conversations across the Commonwealth from 1798 to 1801. This collective biography concludes with a look at some interesting connections among the agents that evolved during their careers, and their politics.

This broad view prepares us to approach about half of the special agents on their own terms. The agents were not simply local leaders, but also neighbors and fellow travelers of the debtors they interviewed. Their shared experiences inevitably flavored the afterlife of Virginia debts they assembled for the United States.

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Historian and biographer Annette Gordon-Reed recently affirmed the deep roots and continuing reach of history written through individual experience. Biography, she wrote, helps us do history “in a fashion that is inclusive of all the various participants in the country’s beginnings.” And when we tell the United States’ story “through the lives of its people,” we are in league with “myriad others . . . throughout the country’s first full century [who] tried to do just that.”1 Though the “biographies” of Virginians they wrote were brief, and driven by particular demands, the Special Agents of the United States who investigated pre-Revolutionary debts

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nevertheless told the nation's story through their neighbors' lives. To understand their efforts we should understand them as both authors and subjects. The approach that holds the most promise in making sense of these nineteen Virginians' work is a collective biography, or prosopography.

The tradition of collective biography reaches back to the bookshelves of turn-of-the-nineteenth-century Virginia and before. Johnson's *Lives of the Poets*, a critical and biographical look at fifty-two British writers published between 1779 and 1781, was among Virginia booksellers' best-selling volumes two decades later. It was also a part of at least some of the special agents' collegiate training. The Commonwealth's

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2 Several agents' reports on mercantile claims "render their subjects—if not always admirable or lovable—at least understandable to readers." "Writing Early American Lives as Biography," 494.

3 The history of revolutionary and early national Virginia has been distinguished by several important prosopographies. Daniel Jordan's *Political Leadership in Jefferson's Virginia*, a study of the Commonwealth's representatives in Congress from 1800-1825, offers a chapter whose timing and focus presages my own (Charlottesville: University Press of Virginia, 1983), 34-67. More recently historians have suggested that collective biography can pay particular dividends for legal historians. "[Studies in prosopography," writes Harry N. Scheiber, "of lawyers, judges, or such officers as justices of the peace, located far down the structure of officiodom . . . serve to enrich our understanding of the working legal system . . . They cast light in a unique way upon the problem of class bias in the behavior of legal institutions and actors: and they give us a better understanding of what 'discretion' can mean in the workaday operations of the system." "American Constitutional History and the New Legal History: Complementary Themes in Two Modes," *Journal of American History*, 68:2 (September 1981): 345.

homegrown authors also turned to biography in their own writing, “implicitly interpreting Virginia history as the essence of innumerable biographies.” Politics, too, inspired. Both George Washington and Patrick Henry were the subject of early-nineteenth-century biographies that mixed the personal and the political.5

Modern historians have since settled on a somewhat more sophisticated approach—one which centers on posing a series of common queries to a group of similarly situated women or men. As described by Lawrence Stone, the method has particular strengths in examining “the roots of political action” and “social structure and social mobility.”6 Similarities and discrepancies among a group—whether it comprises leading citizens or common folk—have proven exceptionally useful to historians in their attempts to identify some of the underlying causes of broader social and political change.

Genealogy, too, is collective biography of a kind. Those who look to assemble their family’s history—by means that might include, for example, the special agents’ Reports on British Mercantile Claims—would recognize many of the prosopographer’s tools. Both distill a historical actor’s doings purposefully, whether to support historical analysis, family beginnings, or moral uplift. The last drove John B. Dabney, the son of Judge John Dabney, a special agent commissioned to investigate debts in and around Lynchburg. "For anything like extended biography I

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am not sufficiently informed," Dabney wrote in 1850, "nor, indeed, for the purpose I have in view would the private history of the individual of whose character I shall give you a rude outline, be of any essential importance." For him, family history was best understood as "a gallery of moral portraits." 7

Nineteen Virginians were charged with serving as a kind of collective amanuensis for their neighbors' experience of debt in the last quarter of the eighteenth century. The stories they collected were organized around two sets of facts: the dates, locations, and amounts the British merchants claimed; and the details that the Jay Treaty’s sixth article affirmed would moot old debts. But the reports filed by these special agents were informed, of course, by their own experiences—their family lives, careers, politics, finances, and, inescapably, their own debts.

★  ★  ★

Somewhat like their effort to divine which Virginians' debts the Article Six Commission should resolve, our prosopography on the special agents begins by determining who counts. The seventeen Virginians officially appointed by the Attorney General form the core of this group, and contribute the vast majority of the reports reprinted by the *Virginia Genealogist* from 1962 to 1989. These were not the only Virginians to investigate their neighbors' debts, however. John Read, the "Agent General" for the United States, authorized special agents to "employ a person under you to collect the facts for your reports." Thomas Venable, the brother of Special Agent Richard N. Venable, and William Munford, close colleague of uber-

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agent William Waller Hening, no doubt sub-contracted as "under-agents" in this fashion.8

The twentieth agent to report on Virginia's pre-Revolutionary debts, William Duffy, presents something of a different question. Duffy was a North Carolina attorney commissioned to investigate pre-Revolutionary debts near his home in Hillsborough. Inevitably, the well-trafficked Virginia-North Carolina border brought indebted Virginians into his jurisdiction. The *Virginia Genealogist* reprints those reports, and I have included them in my analysis of Virginia's unmet obligations. Their author, however, I allow a category of his own. Details from his experience that would apply to the work of special agents, broadly considered—such as the correspondence with John Read quoted in the previous paragraph—come in. However, my focus on Virginians' roles in accumulating and investigating their debts exempts him from the prosopography ventured in this chapter and more in-depth treatment in the next.9

Virginia's special agents grew up with their state and nation. Born, in the main, during the late 1760s and early 1770s—the average year of their birth was 1770—these nineteen Virginians came of age in a fascinating moment in time. The

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8 As we've seen, John Read so authorized William Duffy. John Read to William Duffy, 26 January 1800. William Duffy Papers, (1786-1809), State Archives of North Carolina, Raleigh. Read's hope that the special agents would closely supervise any hirelings was realized in interesting fashion by the Venable brothers. Seventeen years old and a Hampden-Sydney student in 1800, Thomas was nearly a generation younger than his brother. His work on prewar debts was a summer job, and very likely a good one. He graduated from HSC in 1803, took a medical degree from the University of Pennsylvania, and died in 1809. Thomas Venable was the penultimate of fourteen children Nathaniel and Elizabeth Woodson Venable had between 1756 and 1784. He was born 17 November 1782; his brother Richard, 16 January 1763. Elizabeth Marshall Venable, *Venables of Virginia* (New York: J. J. Little and Ives Company, 1925), 37.

Revolution was to most of them a childhood story, but the Constitution's ratification was a drama they absorbed directly. The substance and the heat of this month-long contest, on which the nation's future turned, would have escaped few of the special agents. Those who were preparing for the practice of law—Christopher Clark qualified for the bar just weeks after Virginia voted to ratify; William Waller Hening, the following spring—would have been particularly rapt. The three youngest agents to investigate prewar debts, William Munford, Thomas Venable, and Conrade Webb, were literally children of the Revolution; they would have been less fluent in the contest over the Constitution.

Many of the special agents were new to their careers, and much engaged in public life, when the Jay Treaty was negotiated, ratified, and, especially in Virginia, overwhelmingly rebuked. Choosing sides on the questions it called was among the first public stands many took. If adherence to the treaty's principles was a qualification to research the debts its Article Six commissioners would review, General Agent John Read’s recruiting efforts would have been exponentially more difficult in Virginia. Put simply, those who investigated pre-Revolutionary debts came of age in an era of deep, and ever deepening, political rifts.

Nearly all attorneys, many with practices steeped in actions for debts, the special agents would have understood the stories told by the debtors within the context of this professional experience. The debts are themselves legal stories, of course: narratives of escape, if told from the perspective of overburdened Virginians or, conversely, tragedies of financial chicanery in the view of British merchants. Following that experience after the interviews around 1800 affirms the long reach of prewar debts in individual families, and in Virginia's political economy as a whole.
The special agents also likely viewed debt as a family matter, since more than half married within a decade of conducting their interviews on fellow Virginians' debts.

There was a "new wine in old skins" quality to Virginia politics around the turn of the nineteenth century. A system that empowered members of county courts and the House of Delegates—the lower house of Virginia's bicameral state legislature—survived the Revolution essentially unchanged. Virginia had perfected, over many generations, an approach to staffing county courts. To those in power the system promoted accountability to a community's leading families. But to those unqualified for consideration, the system no doubt felt incestuous. The careers of several special agents affirm that Jefferson's reflection on "these monopolies of county administration" was apt the Commonwealth over. "I know a county," he wrote John Taylor, "in which a particular family (a numerous one) got possession of the bench, and for a whole generation never admitted a man on it who was not of it's [sic] clan or connection." Indeed, Jefferson might have gone further to say that jobs often passed from father to son and beyond. The third president was himself the subject of similar speculation on the part of one special agent's family. Special Agent Charles Bates' brother alluded to Jefferson when he hoped "some illustrious Demigod or other, whose breath creates and destroys," could be prevailed upon to assist in finding him a government post.

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12 Frederick to Charles Fleming Bates, 26 September 1803, reprinted in Bates et al. of Virginia and Missouri, 56. The seven Bates brothers offered Jefferson, a friend of their father's, a deep bench from which to select government appointees. Thomas Fleming Bates helped cement his reputation in Virginia by fighting for its Independence in spite of his Quaker faith. His children played important roles in nineteenth-century Virginia, in the
Virginia's inward-looking institutions were soon obliged to weigh matters of national and international relevance: electing and instructing U.S. Senators, for example, was a new duty embraced by the General Assembly. The conservative approach that left the Commonwealth's government structurally similar to its colonial antecedents dovetailed with emerging positions on the Washington and Adams administrations' divisive questions. These policy positions were voiced by—even better, filtered through—a carefully selected cadre of the best men.

The nineteen Virginians who investigated the Commonwealth's pre-Revolutionary debts were well, if not all widely, known. Attorneys active in their county courts, or perhaps called to represent their neighbors in the House of Delegates, they were professionals—not, barring a few exceptions—planters. Though a select few could claim membership in Virginia's leading families, most only aspired to the Commonwealth's first social, professional, and political rank. They were the less-well-known sons and nephews of some of Virginia's notable families or public servants whose reputation and legal practice stopped at the county border. They were related to, were mentored by, and corresponded with Virginia and Democratic-Republican leaders and members of Virginia's legal elite. They had the reputation and connections that made an appointment as a special agent possible—

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13 Special agents embodied both ends of The Old Bachelor's chosen metaphor for the Virginia bar. The Old Bachelor prepared robustly but it backfired. "... when I came to the bar of my county, I found that I was like a seventy-four-gun ship aground in a creek: while every petitifogger, with his canoe and paddle was able to glide around and get ahead of me." The Old Bachelor, (Richmond: Thomas Ritchie & Fielding Lucas, 1814), 3.
and the means and prospects that made its piecework and quarterly paycheck attractive. They included both men with the financial capacity “to live for their country” and those “who may be truly said to live on (their) country.”

Family and chronology both imparted a liminal quality to the special agents’ place in the Commonwealth.

Put differently, the Virginians who served as special agents investigating pre-Revolutionary debts were men “not permitted to continue long in private life.” Nevertheless, local infrastructure was more a part of their careers than international politics. Almost by definition they were well known to Virginia’s elected officials. The invitation to serve as a special agent was but one example. They laid out towns, received and granted commissions for jails and “Poor Houses,” managed subscriptions for canals, built much-needed roads, bought

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18 In January 1807 George Craghead was named one of thirty-one commissioners to receive subscriptions to support a series of canals between the Roanoke and Meherrin Rivers, which run roughly parallel from Southside Virginia to northeastern North Carolina. *Statutes 16 / 3* p. 345–346.

slaves in recompense for slaves executed for crimes, managed lotteries to fund new schools for young women, and served as founding trustees for academies and colleges. They were just as likely to give their security in support of a new clerk of court or petition the governor to right a wrong such as the penalty of death for horse theft.

These state- and locally-driven appointments make plain that special agents were deeply rooted in their communities. They were the kind of "citizens" whom county courts understood participated in the push-and-pull of local leadership—capable of wrangling often remunerative public projects, but also bound by the public scrutiny that followed them. This quality became most obvious when individuals were tapped to lead nascent endeavors like public improvements that ran by subscription and the colleges that sprang up in Lexington and Farmville. Both the elected and the elect understood that affiliating with these men may have been a harbinger of successes to come.

21 Blake B. Woodson, along with his brother Tscharner, managed such a lottery in Prince Edward County in 1817. Bradshaw, History of Prince Edward County, 162.
22 William Munford joined a particularly impressive group—John Marshall, William Wirt, John Wickham, George Hay among them—as a trustee of the Hallerian Academy, in Richmond; with William Waller Hening, he was named a trustee of the Academy for Female Education the following day. Statutes 16 / 3 p. 335; Christopher Clark was a founding board member at Washington College in December 1796; he had studied at its predecessor Liberty Hall Academy. Hening's Statutes at Large 15:2, 44–45; Brent Tarter, "Christopher Henderson Clark," Dictionary of Virginia Biography 3:262. As will soon be clear, Hampden-Sydney was fairly covered up with special agent-related families.
23 Charles Marshall joined three others in giving a $3,000 bond in support of Francis Brooks' appointment as clerk of Fauquier County Court. Calendar of State Papers, 25 March 1793; Richard Venable was one of the attorneys in John Abbott's case—and one who joined Judge John Tyler in recommending clemency to Governor Beverly Randolph, 20 September 1791. Calendar of Virginia State Papers and Other Manuscripts, vol. 5 (Richmond: 1885), 367–368.
Virginia's House of Delegates was more closely connected to the electorate—each county sent two representatives to Richmond—and more powerful than any other arm of the Commonwealth's government at the turn of the nineteenth century. It was also where one was most likely to cross paths with those experienced in reporting on pre-Revolutionary debts. Nine of Virginia's nineteen special agents served in the General Assembly at some point in their careers; eight served in the House of Delegates. Two served in the Senate; one, William Munford, served his Southside neighbors in both bodies. Many of those who did not serve in the General Assembly were friends or business partners with their county's delegate.

The Commonwealth's insular institutional life made many of the special agents' seats family affairs. More than half had brothers or fathers who served. William Munford followed his father in the House of Delegates. After a short stint in the Senate, he became clerk of the House of Delegates, a position he in turn bequeathed to his son, George Wythe Munford. Second, the potency of personality and family led to idiosyncratic tenures. Two former special agents served in the

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26 Fifteen years separated Robert Munford's retirement and his son's election. Three of those who investigated prewar debts served in the House while Munford was clerk.
House in three different decades; their reputation, more than their ambition, probably explains these late-in-life calls to Richmond.27

Given the close connection between public life and military service in early Virginia, it is no surprise that special agents and their families served in the conflicts that defined the long nineteenth century. Richard N. Venable served as a lieutenant in the Revolutionary War.28 William Waller Hening and his son Dr. William Henry Hening both served, in their way, in the war of 1812. William was the deputy adjutant general of Virginia’s militia, Young William ministered to troops as a physician. Edmund Jennings Lee and Blake B. Woodson were the favorite uncle and stepfather, respectively, of Robert E. Lee and Thomas Jonathan “Stonewall” Jackson. Lincoln’s cabinet, which worked so hard to defeat the Confederate states in the early 1860s, included the brother of Charles F. Bates. Edward Bates, whose political career blossomed right along with his new home state, Missouri, was Attorney General of the United States from 1861–1864.29

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27 They were Richard N. Venable and William M. Watkins. Venable’s return to the House may have been connected to the Constitutional Convention of 1829–1830; he was the only former special agent to serve. Watkins was at least enthusiastic enough about serving to mount a challenge to the election of 1831. He prevailed and replaced Richard J. Gaines six days into the General Assembly session. Cynthia Miller Leonard, comp, The General Assembly of Virginia: A Register of Members (Richmond: Virginia State Library, 1978), 355.

28 Venable, Venables of Virginia, 36.

29 James I. Robertson Jr. Stonewall Jackson: The Man, the Soldier, the Legend (New York: Simon & Schuster Macmillan, 1997), 8; Emory Thomas, Robert E. Lee: A Biography (New York: W.W. Norton & Company, 1995), 31; Edward, nine or ten years of age when his brother executed his will, went on to a notable career in politics. He held an array of statewide positions in Missouri, represented that state in Congress, and served as Attorney General under Abraham Lincoln from 1861 to 1864. Bates had reached the apex of Missouri politics and retired from public life before becoming a contender for the Whig party’s nomination for president in 1860. Doris Kearns Goodwin, Team of Rivals: The Political Genius of Abraham Lincoln (New York: Simon & Schuster, 2005), 43–46, 21–27. Bates’s mastery of patronage politics brought two remarkable literary minds into his orbit: The Clemens family were allies in Missouri, where Samuel Clemens’ brother Orion clerked for Bates in St. Louis; Walt Whitman fulfilled a similar position for Bates in Washington D.C. William Baker, Mark
special agents and their kin also knew the more personal combat of the code duello. Charles F. Bates's brother was killed in a January 1806 duel in Pennsylvania inspired by internal Republican politics. Chief Justice John Marshall interceded on behalf of his grandnephew, Charles Marshall's grandson, when prevailing in a duel forced him to leave behind "totally fair prospects" in Virginia.30

The special agents were a well-educated lot. They took their undergraduate course, with few exceptions, at Hampden-Sydney,31 Princeton, and William and Mary. Several attended the first two in succession; in its earliest days, Hampden-Sydney functioned not unlike an academy and pipeline for the College of New Jersey, as Princeton was then known. Richard Venable and three of his brothers attended Princeton, for example, in the late 1770s and early 1780s.32 William Morton Watkins and Edmund Jennings Lee, too, studied there. Some among the agents, however, had different experiences. Christopher Clark attended Liberty Hall Academy, later to become Washington College, then Washington and Lee, which he would one day serve as a trustee. Conrade Webb attended the Baptist-affiliated College of Rhode Island, known today as Brown University.33

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30 Bates, Bates et al., 22.
31 Algernon Sidney, half of the duo for whom the college is named, spelled his family name regularly but not uniformly with an "i." Like many of the sources pertaining to its early history, the college so spelled it until the late 1920s. I have uniformly used "Sydney," as Hampden-Sydney has since. John Luster Brinkley, On This Hill: A Narrative History of Hampden-Sydney College, 1774–1994 (Farmville, Virginia: Hampden-Sydney, 1994), 30.
33 Brent Tarter, “Christopher Clark,” Dictionary of Virginia Biography: William T. Hastings, Conrade Webb of Hampstead, 13–26. Webb may have had an altogether different exposure to the debate over the Jay Treaty if, as Hastings posits, he arrived in Providence in the fall of 1794.
These students, with the possible exception of Clark, had their family’s financial backing in pursuing their studies. Those in sorrier circumstances ended up, like William Munford, at William and Mary. Contrasting the warm fire and company of his mother’s home with his “frozen grate,” failing walls, and permeable shoes, Munford felt “Condemn’d at distance from his native home / In Alma Mater like a ghost to roam.”34 His son John’s letters home a generation later echoed the poem’s message if not its meter. In the spring of 1824, John helpfully wrote that he would not need a coat for the summer; later in the year, he offered to forego traveling home over the winter break.35 The Munford family’s prospects had little improved during the first quarter of the nineteenth century.

Almost all of the special agents began “pouring over the mouldey [sic] records of Law” with a more senior attorney or at the new law school at William and Mary after college.36 Here the connections, and often the capabilities, of those who would be special agents really shone: They studied under some of the Commonwealth’s ablest attorneys. William Watkins studied with Creed Taylor, a respected attorney and judge even before he established his private law school at Needham.37 William Munford enjoyed perhaps the best preceptor of them all. Seeing both Munford’s promise and his penury, George Wythe invited him to board at his home and tutored

34 “A Mournful Soliloquy of a Poor Student,” in *Poems and Compositions in Prose*, 20.
36 Joseph C. Cabell to David Watson, 7 June 1799, “Letters to David Watson,” *VMHB* 29, no. 3 (July, 1921), 263. Born in 1778, Cabell was a contemporary of those who served as special agents. His verdict on legal study was set in the key of turn of the century politics: “Do you remember what Thom. Paine said about Burke’s Treatise on the French Revolution? The observation may well be applied,” Cabell continued, “to this celebrated study of ours.” Paine’s *Rights of Man*, published in 1791, was an unsparing defense of the French Revolution prized by Virginia Republicans. (London: J. S. Jordan, 1791).
him in the law. Munford would long cherish his experience with the first faculty member at the nation's first law school. And though his experience may not have been typical of the special agents who could afford all the trappings, his fine preparation was borne out in a distinguished career in court and in print.

The Article Six Commission needed Virginia attorneys almost as keenly as these men needed work. Chapman Johnson contemplated his future as an attorney at the height of the special agents' service, asking a friend whether there was any probability that many of your lawyers will die, or that the Court Houses will be made larger, in the course of two or three years? Because unless one or the other events takes place, you will have no room for me, in the house, and I should hate to speak to the Court and Jury through the windows.38

William Wirt, himself a widely admired practitioner in Virginia courts, famously wrote just after the special agents concluded their work that “[t]he bar, in America is the road to honor.” Respect often stood in for remuneration, however. Less frequently cited is Wirt's more evocative description of the congestion on this career path. “[A]lthough the profession is graced by the most shining geniuses on the continent,” he wrote, “it is incumbered [sic] also by a melancholy group of young men, who hang on at the rear of the bar, like Goethe's sable clouds in the western horizon.”39 Several of the younger men who signed on to report on prewar debts had loitered similarly during court week. William Munford, who turned twenty-five in 1800, was one such. He almost certainly signed up to research debts “[s]ince,” as he


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wrote in a contemporary poem, "lawyers now so woefully increase / And many
tongues divide the scanty fees . . . courts no more with heaps of wealth abound."\(^{40}\)

Once they completed their training and hung their shingles, Virginia attorneys inevitably dealt in debt. For years a poor postwar economy had kept the bar busy with suits for collection, as creditors resorted to the law for payment from overdue and generally less-well-off debtors. Practices flourished, but reputations suffered. Additionally, around the turn of the century legal business began to ebb just as newcomers to the profession reached new heights. Just before 1800 there were a good many young, enterprising attorneys experienced in debt and looking for work. Precisely who the Adams administration ordered, in other words.\(^{41}\)

At least two in three of those who investigated Virginia’s pre-Revolutionary debts were attorneys.\(^{42}\) The profession became increasingly specialized during this period: agents included both denizens of local, county courts and those focused on the appellate practice based in Richmond. (Concern about the impermeable quality of courthouse cliques—what John Pendleton Kennedy would remember as the “pillar of the sovereignty of the state”—drove a reform that created new district courts in 1788.\(^{43}\) Though appellate work was the more lucrative and respected calling around

\(^{40}\)“The Attornies’ Petition,” in *Poems and Compositions in Prose*, 146.
\(^{42}\)Charles F. Bates, Christopher Clark, George Craghead, John Dabney, Robert Hening, William Waller Hening, Edmund Jennings Lee, Charles Marshall, William Munford, Thomas Nelson, Richard N. Venable, William Morton Watkins, and Blake B. Woodson were trained and practiced as attorneys.
\(^{43}\)John Pendleton Kennedy, *Swallow Barn, or a Sojourn in the Old Dominion* (New York: G. P. Putnam & Company, 1853), 170. Eighteen district courts supplemented but did not supplant the county courts. A.G. Roeber argued in 1981 that the reorganization “marks the end of the period when justices of the peace had any political impact upon the legal future of Virginia.” The experience of those who served as special agents, and their relations, supports those who have argued that Roeber underestimated the persistence of local oligarchy. A. G.
the turn of the nineteenth century, experience and contacts in a special agent’s
assigned “district” were key. Attorneys like George Craghead, James Jones, and
Charles Marshall spent much of their time before county courts, “that inferior and
useful magistracy which has always been so much a favorite of the people of
Virginia.” Competing with the “new men” who populated the local bars kept these
attorneys in perpetual motion among banal dockets.

Thomas Nelson, Richard Venable, and Edmund Jennings Lee practiced often
at the “seat of law learning” in Richmond. Lee, in particular, distinguished himself
as an appellate advocate, arguing frequently before the Supreme Court of the United
States. Some attorneys, like Richard N. Venable, plied their trade in both
vineyards. His diary in 1791 and 1792 records appearances in the Henry, Franklin,

Roeber, Faithful Magistrates and Republican Lawyers: Creators of Virginia Legal Culture,
1680–1810 (Chapel Hill; University of North Carolina Press, 1981); J. Thomas Wren, “Re-
Evaluating Roeber: Change and Stability in Virginia Legal Culture, 1776–1810,” Southern
Historian 8 (Spring 1987), 14–23.
44 Richmond’s appellate bar was also tough to crack without the proper connections. Shepard,
“Breaking into the Profession,” 395. For another treatment of Richmond’s appellate
fraternity see Frank L. Dewey, “Thomas Jefferson’s Law Practice,” VMHB 85 (July 1977),
298–301.
45 Kennedy, Swallow Barn, 170. Marshall’s career reminds us that many reasons led
attorneys to embrace a local practice. Though uniformly praised for eloquence and skill, and
possessed of impressive connections—he was the brother of Chief Justice John Marshall—
Charles Marshall apparently suffered from a kind of paralysis that made travel difficult.
This would have also greatly limited his reach as a special agent, of course. Still, his practice
in and around his native Fauquier County was robust, including representing George
Washington’s interests in the area. Thomas Keith Execution and receipt book, 1767 October–
1794 February, Virginia Historical Society, Richmond. Keith was the deputy sheriff of
Fauquier County.
46 “How like you the county Court practice?” James Innes wrote to St. George Tucker. “Is it
not grating to your feelings? I so cordially despise it that I have half a mind to turn itinerant
preacher.” 20 September 1783, Tucker-Coleman Papers, Special Collections Research Center,
Swem Library, The College of William and Mary.
47 “Diary of Richard N. Venable, 1791–1792,” 135–138. T. Michael Miller, Visitors from the
Past, 111.
Halifax, Prince Edward, Charlotte, and Mecklenburg county courts as well as the General and Appeals courts in Richmond.  

William Munford presented a succinct indictment of Virginia's county court system in a 1797 address to his Mecklenburg County constituents. The county courts violated the Virginia Declaration of Rights' separation-of-powers principles, he argued, and enjoyed impermissibly broad appointment powers. When legislators served as judges—and thereby defined their own court's duties, powers, and pay—"the mystery" of county courts' broadening authority was "at once solved." And how the courts' authority had grown—"wonderful to tell!"

From the county courts magistrates at present, all the militia officers in the counties, as well as the clerk of the court, the sheriff, the coroner, and the constables, derive their appointments; and in addition to all this, vacancies in their own bodies are supplied by their own recommendations; and the sheriff is chosen from among themselves; a concentration of powers the most enormous and extravagant imaginable—The magistrates of the county courts may truly be said to be a perpetual body, not elected by the people, but subsisting by their own appointment, engrossing to themselves one valuable office, and acting as electors of a multitude of other offices both civil and military! 

County courts undermined the Commonwealth's pretensions to democracy and to Republicanism, in Munford's view. Modern historians echo the concern. Special-

49 "An Address to the People of the County of Mecklenburg," in Poems and Prose on Several Occasions, 182–184, quote at 183–184.
50 Describing the modest structural changes effected by the new Constitution of 1776, Brent Tarter writes that "[i]t left the undemocratic and unrepresentative county and parish government structures exactly as they had been." The Grandees of Government: The Origins and Persistence of Undemocratic Politics in Virginia (Charlottesville: University of Virginia Press, 2013), 108.
agents to be learned the importance of connections and reputation in the county courts that incubated their careers.\footnote{The justices indeed disposed a great many favors," Rhys Isaac has written of the county courts, "none of which was likely to lead to spectacular wealth, but all of which might be of vital assistance to a man battling to overcome financial difficulties or striving to better himself in the world." Such was the posture of many special-agents to be. \textit{The Transformation of Virginia}, 93.}

If practicing before county courts was useful training for digging into yesteryear's debts, staffing them was better still. Several of the most capable agents worked as clerks, county attorneys, or justices of the peace. Robert and William Waller Hening, Edmund Jennings Lee, William Munford, and Blake B. Woodson all served as court or county clerks during their careers.\footnote{William Waller Hening married the daughter of Spotsylvania County's clerk; William Morton Watkins was the son of the longtime clerk of Prince Edward County.} George Craghead served as deputy commonwealth's attorney in Nottoway County; Charles Marshall, as commonwealth's attorney in Fauquier.\footnote{Notes on Southside Virginia, 76, 78; \textit{Calendar of State Papers}, 7 May 1793, 362.} John Dabney, Thomas Miller, and William Morton Watkins served as justices of the peace in their hometowns.\footnote{\textit{Calendar of State Papers}, 21 August 1793, 491.} William Satchell served as deputy sheriff.\footnote{\textit{Calendar of State Papers}, 12 November 1792, 139} This position entailed the collection of debts and execution of property of those unable to pay, a pointed introduction to the special agents' research. (Execution was the process of seizing and selling property to satisfy a debt.) Each of these positions permitted—required, really—the incumbent to maintain a private law practice. As William Wirt lamented shortly before resigning a judgeship, such posts were often "a very empty thing, stomachically speaking." Honor was welcome, of course, but it "will not go to market and buy a peck of
It was no accident that this "very clerky" cohort, in particular the Hening brothers, produced the most richly detailed reports on prewar debts. Their many personal contacts, experience in often arcane pleadings, and feel for a clerk's office organization aided their research.

The appearance of special agents in Virginia communities around the turn of the century probably elicited a range of responses in prewar debtors. These were their neighbors, and often the most distinguished among them. Another response would have been equally reasonable, given the extensive role many of the agents played in debt and other litigation before contracting with the federal government. Francis Walker Gilmer, about a decade younger than most of the special agents, and a neighbor to some, wrote that "[o]ur advocates . . . are too frequently the 'petty fomenters of village vexation,' who know no other object of laws, than to produce fees to lawyers, a purpose which is answered all the better, by the obscurity and perplexity of the system." Few pre- Revolutionary debtors whose paths crossed with local attorneys could have been certain about what would follow.

Even those special agents who did not practice law could transfer valuable lessons from their professional lives. James Eastham's work surveying his Halifax county neighbors' land was particularly relevant preparation for recording their pre-

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58 Francis Walker Gilmer's conclusion indeed matches the experience of the Special Agents of the United States. Given the breakdown of the Philadelphia commission, the fees earned by special agents were in fact one of the very few results of the effort to carry out Article Six. *Sketches, Essays, and Translations* (Baltimore: Fielding Lucas, Jun., 1828), 60.
Revolutionary debts. William Satchell was a carpenter and contractor on the Eastern Shore, another calling likely to impart a broad perspective on one's community. We can only wonder if he reflected on his work as a special agent while building the county's poorhouse in the year after his reports were submitted. His fellow agents who made their living in Virginia courts well understood the thin line between advocate and client, creditor and debtor. William Munford, attorney, debtor, and investigator of pre-Revolutionary debt wrote a poem titled "The Attorneys' Petition" pleading for higher fees for his colleagues at the bar: "Nor will th' expense be much; at least 'twere better / Than building jails to hold a luckless debtor." Munford’s concern about debtor's prison was not ginned up for literary effect. Although well-connected attorneys on the make when they spoke with Virginia debtors from 1798 to 1801, a striking number of the agents died homeless, even penniless in the quarter century that followed. Chronic debt was far from done with Virginians in 1800. And its paradoxes were on full display with the special agents, a group that included members of two or three wealthy Virginia families. Those who best established reputations and won their neighbors' esteem fell the furthest.

59 Eastham surveys of Melchizedek Spragins Property, 1797, and White and Thweatt Property, 10 October 1810, in Spragins Family Papers, Virginia Historical Society, Richmond.
60 Whitelaw, Virginia's Eastern Shore, 2:327.
61 "The Attornies' Petition," in Poems and Compositions in Prose on Several Occasions, 147.
James Eastham knew the sound of the sheriff's knock, the difficulty of serving as security for a friend, even the health problems that plagued many Virginia debtors. When Spiers, Bowman & Company looked to collect £177.2.5 from his friend Melchizedek Spragins by compelling the sale of two slaves, Eastham, who had co-signed the loan, begged to postpone the vendue. He knew the patience of Spiers' agent was exhausted, however; perhaps he thought of conversations from a decade earlier in sharing the same with his friend.62 Thomas Miller would have gladly traded places with his fellow special agent when, five years later, his situation brooked no further compromise. Miller's mounting debts to John Hopkins Bernard forced him to mortgage his property with Philip Lightfoot. Bernard would receive $2,250 over the course of two years from Lightfoot, who in turn received Miller's "lot, houses, garden, stables . . . tan yard, warehouse . . . a lot of ground

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<th>OTHER AGENTS APPOINTED BY THE ATTORNEY GENERAL, VIZ.</th>
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<td>IN NEW JERSEY.</td>
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<td>Henry Boggs, resident at New Brunswick.</td>
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<td>IN VIRGINIA.</td>
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<td>William Watkins, Charlotte C. H.</td>
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<td>Edmund J. Lee, Alexandria,</td>
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<td>Charles F. Bates, Richmond,</td>
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<td>James Eastham, Halifax C. H.</td>
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<td>Charles Marshall, Faquier C. H.</td>
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<td>Thomas Nelson, York,</td>
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<td>George Craghead, Lunenburg C. H.</td>
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<td>Conrad Webb, Petersburg,</td>
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<td>Blake B. Woodson, Farmville, F. Ed.</td>
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<td>Wm. W. Hening, Fredericksburg,</td>
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<td>Christopher Clark, Lynchburg,</td>
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<td>Thomas Miller, Port Royal,</td>
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<td>Richard Venable, Prince Edward C. H.</td>
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<td>Wm. Satchell, Northampton C. H.</td>
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<td>John Dabney, Lynchburg.</td>
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<td>IN NORTH CAROLINA.</td>
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<td>Wm. Slade, Edenton,</td>
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<td>Wm. Williams, Fayetteville,</td>
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<td>Robert H. Jones, Warrenton,</td>
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<td>William Duffy, Hillsborough,</td>
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<td>Daniel Carly, Newbern.</td>
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<td>IN SOUTH CAROLINA.</td>
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<td>John Hagood, Charleston.</td>
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<td>IN GEORGIA.</td>
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<td>John Young Nacl, Savannah.</td>
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Note—The gross amount of compensation made to the above special agents for the year one thousand eight hundred and one, is

Figure 4: The names and hometowns of Virginia's special agents, as submitted in an 1802 report to Congress. Message from the President of the United States, Transmitting a Roll of the Persons . . .

where the said Miller now resides, and the following negro slaves viz. Aaron, Daphney, Solomon, Franky, . . ."63

It is no surprise that the special agents' careers are littered with mortgages, deeds of trust, and other obligations that promise to pay tomorrow. Blake Woodson executed mortgages with his neighbors in hopes of preventing real estate from being seized and sold.64 Agents' families' failing circumstances also complicated their accounts, as in Charles F. Bates's untimely decision to purchase his father's estate, Belmont.65 Edmund J. Lee and two of his brothers were imprisoned for debt during their lives. Even when another brother's bad lawyering was to blame, they seemed unmoved by the imposition. Christopher Clark, the only agent to serve in Congress, was homeless within two decades of leaving Washington, D.C. Edmund Jennings Lee likewise lost his Alexandria home, though he was able to recover it with the help of kin. Blake Baker Woodson owned dozens of slaves and hundreds of acres—his plantation straddled the Cumberland / Prince Edward county line—but was looking for work in western Virginia by 1825. The notoriety William Waller Hening achieved as a legal scholar did not guarantee his solvency. Toward the end of his life he sold his legal library and mortgaged his future legal fees. His colleague and collaborator William Munford fared better, but not by much. A letter home from his college-aged son underscores how families experienced debt collectively. "I wish I could find such a cave of Robbers as Ali Baba found," his John Munford wrote, "that I might assist

63 Indenture, 1 January 1815, Minor Family Papers, 1657–1942, Virginia Historical Society, Richmond.
64 Creed Taylor Papers, University of Virginia Special Collections, Charlottesville Virginia; Virginia Historical Society, Richmond.
65 The Bates family's story concludes Chapter Five.
Special agents may have understood their turn-of-the-nineteenth-century research as keeping rapacious merchants at bay, but many proved powerless to blunt the effects of debt in their own families' experiences.

Each special agent was assigned to a specific district of the Commonwealth composed of the county or counties that surrounded his hometown. Their homes were literally the center of their project. More than that, they were also a potent symbol of success for Virginians. When homes were lost, or consigned to ruin, the message was equally clear. Among the nineteen Virginians who investigated pre-Revolutionary debts were those who built their county's finest estates as well as those who died homeless. Shifting fortunes and sales under unwelcome circumstances connected pre-Revolutionary debtors in Virginia and those charged with reporting on their accounts around 1800.

Like their neighbors, many of the special agents embraced the convention of naming their estates. We know the choices made by more than half—choices that help explain the stories our subjects told themselves about themselves. They waxed topographical ("Mount Prospect," in the hilly sector west of Lynchburg, and "Mount Laurel," in flatter Halifax); international ("Vaucluse," a name not unique

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67 P. Burwell Rogers, "Tidewater Virginians Name Their Homes," *American Speech* 34, no. 4 (December 1959), 251–257.
69 Virginians had long named their homes unconstrained by geography. Rogers, "Tidewater Virginians Name Their Homes," 251.
in Virginia;\textsuperscript{70} agricultural ("Richland," in Virginia's fertile Southside);\textsuperscript{71} and inspirational ("Do Well," near Charlotte Court House).\textsuperscript{72} More than half inherited their estate—and its name—another sign of the special agents' position in Virginia society.\textsuperscript{73} In at least one case, the house took on the owner's name.\textsuperscript{74}

The special agents' experience was never more like that of the debtors they investigated than when selling—or buying—their homes under trying circumstances. Christopher Clark went from "Mount Prospect" to "The Grove" to homeless in about five years. Nor was Clark the only former special agent to sell real property in order to meet a debt.\textsuperscript{75} Edmund Jennings Lee lost his Oronoco Street Home in Alexandria to debt, only to reclaim it a few years later.\textsuperscript{76} For Charles F. Bates, buying the family home was nearly as unwelcome as Clark's sale. His effort to redeem a fraction of his father's debt replicated countless "auctions" described in the special agents' reports.\textsuperscript{77} Just as many special agents managed to, as William Morton Watkins's home commanded, "Do Well." (He being one.) Conrade Webb's

\textsuperscript{70} Abel Parker Upshur and Strother Jones, who built homes in the Eastern Shore's Northampton County and south of Winchester, respectively, were among those to settle on the name of a famous spring, and "department," in southeast France.


\textsuperscript{73} Charles F. Bates, John Dabney, William Munford, and Richard N. Venable, perhaps among others, were the second generation to call their estates home.

\textsuperscript{74} Alexandria's Lee-Fendall House today bears the name of Edmund Jennings Lee; he lived there while serving as a special agent. T. Michael Miller, "Visitors from the Past: A Bi-Centennial Reflection on Life at the Lee-Fendall House, 1785–1985," Copy in Alexandria Public Library Special Collections Branch, Alexandria, Virginia.

\textsuperscript{75} William Waller Hening and Blake B. Woodson experienced similar fates in their last years. This is the "Lee-Fendall House" mentioned above. Miller, "Visitors From the Past."

\textsuperscript{76} Bates's purchase of "Belmont" on terms not of his choosing had considerable effects on his family, his estate, and his slaves. I discuss this in more detail below.
“Hampstead,” built around 1820, was the pride of New Kent County. Likewise, the Venable family’s “Slate Hill” was so central to the birth of Hampden-Sydney College that it was eventually sold to the school.78

William Munford might have envied Venable and other sellers among the special agents. A poem he wrote in his own estate’s honor—sort of—conveys his ambivalence to “The Disasters of Richland.” Published in 1798, it describes how time, the elements, animals, even staff conspired to effect the house’s decline. “For Satan, sure a scheme pursuing,” Munford wrote, “Brings all things on this land to ruin.”79 Munford’s poem may be read as a commentary on the fading glory of many Virginia estates, the declining prospects of the Commonwealth’s best men and families, and the psychological effects of both. Its concluding stanza—“And when to Richland house you go, / Reader, the likeness you will know”80—suggests all these themes. His home, perhaps like Virginia more broadly, was increasingly unrecognizable to itself as the nineteenth century began.

Richland was also the site of one of countless connections among the special agents the record reflects. Those who served as special agents were inevitably bound one to another by social, political, and professional connections. Virginia’s ratification convention, for example, included three relations of those who would investigate debts a decade on.81 More than twenty years later, a 26 December 1811

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78 The Venable family hosted the February 1775 meeting during which the school’s founding was outlined. The college honors the site both on its campus and its Web site. http://www.hsc.edu/About-H-SC/History-of-H-SC/Slate-Hill-.html Accessed 1 February 2015.
80 “The Disasters of Richland,” in Poems and Compositions in Prose, 177.
81 They were John Marshall, brother of Charles Marshall; Henry Lee, brother of Edmund Jennings Lee; and William Watkins. The first two voted in the affirmative, the last, in the negative.
fire consumed the Richmond Theater with 600 of Richmond’s most notable citizens inside. Seventy-two lost their lives, including Abraham Venable, the brother of Richard N. Venable. John Dabney’s cousin Richard Dabney sustained life-altering injuries while rescuing many of his fellow theater-goers. Only a small fraction of Richard N. Venable’s diary survives, but it includes a report on a social call to what was by then already William Munford’s former home.

These kinds of social connections helped drive the careers of those who would serve as special agents. When Munford resigned his practice in Pittsylvania County in 1798, he handed off cases to John Dabney. Christopher Clark managed the impeachment of Samuel Chase soon after his election to the House; Edmund Jennings Lee, appellate advocate of note, served as an expert witness. Some of the agents were connected both personally and financially. Samuel Woodson Venable’s will joined three, after a fashion: Richard N. Venable, special agent and the decedent’s younger brother, witnessed the will; William Watkins, special agent and the decedent’s brother-in-law, inherited through it; Blake B. Woodson, special agent

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83 Venable’s testimony suggests that, three years before Munford wrote the “Disasters of Richland,” at least, the estate was in good form. “I take a view of the improvements made by Munford, all of which have the appearance of magnificence, but alas how changed!” May 15, 1792, “Diary of Richard N. Venable, 1791–1792,” 138; Baine, Robert Munford, 5.
85 Munford to Dabney, 23 November 1798, Munford Family Papers, 1799–1964, Section 1, Virginia Historical Society.
86 Tarter, “Christopher Henderson Clark,” 262–263.
and neighbor, appeared for purposes of identification. Woodson had recently sold Venable two tracts of land now destined for one of his daughters.87

The birth and early life of Hampden-Sydney College was also an occasion for close work among several families that would contribute special agents to the Article Six Commission’s work. Southside Virginia was an important wellspring of the state’s cultural and political self-understanding during the Revolution, as it would remain for generations. Here a small college established by and for Scots-Irish Presbyterians of the Southside helped catalyze their leadership in the two generations after independence.

The Venable clan can fairly be described as the first family of Hampden-Sydney College. A “special meeting of the Presbytery,” held 1–3 February 1775 at the Prince Edward County home of Nathaniel Venable, arranged the college’s birth.88 Richard N. Venable was eighteen years old during this two-day meeting—perhaps not old enough to sit in, but certainly able to see, at close hand, the significance of his father’s and uncle’s undertaking. Richard and his three brothers would serve a cumulative 123 years on Hampden-Sydney’s board. From 1807 until Abraham’s death in the Richmond Theater Fire of 1811, the four served simultaneously.89

87 The Watkins received 800 acres on Difficult Creek, a third of a lot in Richmond, four hundred pounds, and an enslaved young man named George. Venable, Venables of Virginia, 45–46, 50, 46–47.
88 The meeting included members of the Hanover Presbytery as well as several laymen. It convened in Nathaniel Venable’s office, which was moved to the Hampden-Sydney campus in 1944 and is known as the “The Birthplace.” Brinkley, On This Hill, 9–10; J.B. Henneman, “Trustees of Hampden-Sydney College,” VMHB 6, no. 2 (October 1898): 175.
89 Richard served considerably longer than his brothers, a remarkable forty-seven years. Cousin Joseph Venable, whose father was also among those to found the college, also served from 1792–1812. Henneman, “Trustees of Hampden-Sydney College,” 175–179.
If any Southside family contended with the Venables for collective leadership at Hampden-Sydney, it was the Watkins, who were also represented during the college’s 1775 founding. The clerk of Prince Edward’s courts for more than three decades, Francis Watkins was joined on the board by his brother, Joel, when the college applied to the General Assembly for its charter in 1783. Among his new colleagues was his brother-in-law William Morton, of Charlotte County. The two married each other’s sisters, in fact, and William Morton Watkins was named after his uncle.

William Watkins and Richard Venable also developed deep personal connections through Hampden-Sydney before they served as special agents. Venable and Henry N. Watkins—William’s cousin—married sisters. (Henry Watkins and William Watkins were cousins, the connection between two sets of brothers-in-law on the HSC board.) William Watkins, in turn, married Samuel Venable’s daughter, and became Richard Venable’s nephew, by marriage.90 The college’s board seemed committed to making up for the limited romantic horizons—then as now—of Hampden-Sydney students.

Hampden-Sydney was created in the image of Princeton—then, the College of New Jersey—by Samuel Stanhope Smith, its first president. The three Venable brothers helped cement the practice Smith encouraged of taking a second degree at Princeton.91 Richard Venable received his degree from Princeton in 1782; William

91 Hampden-Sydney first offered degrees in 1786. J.B. Henneman, “Trustees of Hampden-Sydney College (Continued),” VMHB 7, no. 1 (July 1899): 33; Brinkley, On This Hill, 30.
Watkins followed him ten years later.\textsuperscript{92} Though Hampden-Sydney came into being as a kind of satellite for Princeton, by the turn of the nineteenth century Virginians—particularly those from Prince Edward County—may have reversed that presumption. Instead, a short course at Princeton could suffice to reify Virginia kinship, a kind of postgraduate course in common belief.

To what end do we trace these connections, residing somewhere between internecine and incestuous? Though they seem exceptional—particularly to any who attempt to make them plain—they differ perhaps in degree, but not in kind, with other Virginia communities around the turn of the nineteenth century. Service to Hampden-Sydney may have put its leaders in more direct contact with each other—with each other's sisters and daughters—but it chiefly outlined otherwise typical relationships for the historical record. We can say, without much exaggeration, that those who led Hampden-Sydney around the turn of the century shared a story.

As we have seen, the Special Agents of the United States stepped into a riven Commonwealth in 1799 and 1800 and 1801. Talk of politics was ubiquitous, and often conducted at a clamorous pitch. When David Watson complained of feeling like a "Tick in a tar barrel" when discussing politics, Joseph C. Cabell offered little consolation. "You will excuse my bringing you into the region of tar," Cabell wrote his friend, "as it is nowadays a mark of ill breeding to converse of [sic] write on any other subject."\textsuperscript{93} These raw feelings just before the turn of the nineteenth century reminded many, Joseph Cabell included, of the treaty that the agents' research aimed to resolve.

\textsuperscript{92} Henneman, "Trustees of Hampden-Sydney College (Continued)," 34.
\textsuperscript{93} Cabell to Watson, 7 June 1799, "Letters to David Watson," 263.
The state of the public mind during last summer and fall resembled what it was on the adoption of the British Treaty. The people glowed with indignation at the enactment of laws directly violating their Constitution and notwithstanding the efforts of a party to cool the resentment by artfully diverting their attention to the conduct of a foreign nation, they were resolved to repel the injuries their liberties had suffered.94


The Federalist Party in Virginia was dormant: in the view of one of its leaders, perhaps literally so. “What are the federalists about?” Charles Lee wrote to his brother in 1800. “Are they asleep . . . [i]t is high time if they mean any thing [sic] they had begun.”96 Lee’s fears were realized with the election of Jefferson, after which no one in Williamsburg, Federalist or no, slept much. There the “sore disappointment” that followed a false report of Jefferson’s election soon yielded to “joy almost bordered on madness” when it was an accomplished fact.97 “You cannot imagine with what paroxysms of Joy we received the news of Mr. Jefferson’s election,” Joseph C. Cabell wrote David Watson. An impromptu parade of William and Mary students flowed through the town of Williamsburg.98 The special agents came of age as the Republican philosophy cohered.

94 Cabell to Watson, 7 June 1799, “Letters to David Watson,” 263–264. As his editorializing makes clear, Cabell was “happy in fraternizing with my brother republicans.” Ibid., 263.


Those appointed special agents were, with rare exception, reliable Democratic-Republicans. Any other result would have been phenomenal in the one-party state Virginia became in the last few years of the eighteenth century. Additionally, much of their research centered in Republican strongholds in Piedmont or Southside Virginia. Here, in Prince Edward County, for example, Jefferson collected 345 of 349 votes cast in the election of 1800. These kinds of margins were ensured by a robust party organization that included many of those serving simultaneously as special agents investigating pre-Revolutionary debts.

During the summer of 1800 the Democratic-Republican caucus in the General Assembly and other “respectable people” met in Richmond. They established a general, statewide committee of five notables; this group, in turn, would work with county committees. Five “friendly characters” would comprise each jurisdiction’s committee, sharing with party leaders, and their neighbors, “such information as they shall deem necessary to promote the Republican ticket.” Five men currently working as Special Agents of the United States were tapped to serve the party in their communities. The inevitable political talk that distinguished their research

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99 Underscoring their opposition politics and their more parochial reach, those who would become Special Agents of the United States were notably absent from the appointment politics of the Washington administration, broadly considered. One compilation of petitioners for appointment during the 1790s, for example, altogether omits those who would become special agents. Brothers of the more prominent agents—Edmund Jennings Lee and Richard N. Venable—did appear as nominees and those forwarding recommendations. John W. Herndon, “Applications of Virginians for Office During the Presidency of George Washington, 1789–1797,” WMQ Second series 23, no. 2 (April 1943), 174, 200–201, 185, 204.

100 Bradshaw, History of Prince Edward County, 176.

101 Calendar of State Papers and Other Manuscripts, vol. 9 (Richmond: 1890), 74–87. The Calendar is composed principally of correspondence received by Virginia governors. The note that accompanies the Republican caucus report acknowledges that it is an outlier “deemed of sufficient interest to print” (74). Since party and government essentially ran parallel in this era, the inclusion is apt. Bradshaw, History of Prince Edward County, 175.

102 Calendar of State Papers, 76. They were Christopher Clark (Bedford), John Dabney (Campbell), Blake B. Woodson (Cumberland), Thomas Miller (Goochland), and William
trips was valuable to Democratic-Republican party leaders. “[P]oliticians relied on their networks of friends, scattered throughout the states, to collect and report prevailing sentiment,” as historian Joanne Freeman has written. Only the census would approach the special agents’ exposure to Virginia debtors, and voters. They were important parts of what modern political operatives would call the Democratic-Republican ground game. And a successful one, at that—only nine of the Commonwealth’s counties supported John Adams in the fall of 1800.

* * *

It is well to begin our look at those who served as Special Agents of the United States as a group. Analyzing the special agents collectively can help make clear their background and allegiances, and even tell us something about the commonwealth from which they sprang. However, like the great mass of claims submitted by British merchants to the Article Six Commission, they deserve to be distinguished. As they learned while interviewing their neighbors—and as their own lives often tragically proved after the turn of the nineteenth century—crushing debts were an experience many Virginians shared, but none experienced in just the same way. We now look to several of the special agents’ unique personal and professional trials with debt.

Munford (Mecklenburg). Robert Hening was nominated for Stafford County’s local committee but does not appear on its final roster (80, 83–86).

103 Freeman’s description tracks the work of special agents quite well. She continues, “Mingling among the people and listening to their conversations, these local men were collectors of gossip.” “Slander, Poison, Whispers, and Fame: Jefferson’s ‘Anas’ and Political Gossip in the Early Republic,” JER 15, no. 1 (Spring 1999), 42.
Chapter Five

On the Make and On the March:
The Special Agents of the United States' Trials with Debt

"'Perseverando Vinces' ought to be your motto, and you should write it in the first page of every book in your library. Ours is not a profession in which a man gets along by a hop, step, and jump. It is the steady march of a heavy-armed legionary soldier."

William Wirt to Francis Walker Gilmer, 29 August 18151

During the summer of 1815 Francis Walker Gilmer was about the business of establishing a new law practice in Winchester, Virginia. He was fortunate to have the detailed advice of William Wirt, one of the Commonwealth's ablest attorneys, orators, and writers. A brother-in-law and close friend, Wirt hoped to inspire and instruct Gilmer all at once. His letter opens with a metaphor in which Gilmer, "at last fairly pitted upon the arena," would literally take the bull by the horns. He quickly proceeds to a dozen pointed hints not out of place in modern self-help books or legal skills programs. Answer correspondence promptly; speak plainly; "live in your office"; "Be patient with your foolish clients, and hear all their tedious circumlocution and repetitions with calm and kind attention."2

Even Wirt, for whom the law had "smoothed my own path of life and strewed it with flowers," and Gilmer, who enjoyed the patronage of neighbor and family friend Thomas Jefferson, knew that thriving at the bar took sustained effort in

2 Wirt's suggestions emphasize efficiency, organization, and one's reputation among his neighbors. The trait he most credits for his own success is one Robert Munford's politicians would embrace: "Enter with warmth and kindness into the interesting concerns of others," he writes, "whether you care much for them or not: not with the condescension of a superior, but with the tenderness and simplicity of an equal." "Letter of Mr. Wirt," 606.
early-nineteenth-century Virginia. This was the challenge faced by those who served as Special Agents of the United States, most of whom were between ten and twenty years older than Francis Walker Gilmer. And this is the context in which we should understand their decision to accept the short-term appointment as special agent. Most were lawyers, and most at one time or another struggled to sustain a profitable practice. They knew their communities and the law surrounding debt. Already shuttling to and from their surrounding counties' court days, they were unafraid of the position's peripatetic demands. After all, every neighbor they interviewed about yesterday's debts could become tomorrow's client.

Unsurprisingly, given his success at bar and prolixity as an author, Wirt is relatively well known to us today. Far less so the special agents of whom we learn in this chapter. Though well known in their communities and beyond during their own lives, even those who had a considerable effect on Virginia's way of debt from the Revolution to 1800 are today largely lost to history. The brief vignettes that follow, focused on a given agent's relationship with debt, look to fill that gap. They also underscore the not dissimilar circumstances the special agents shared with the debtors they interviewed from 1798 to 1801. Indeed, a closer look at the men who conducted the investigations underscores the Reports on British Mercantile Claims' principal lesson: All manner of late-eighteenth-century Virginians were heavily in debt (and well into the nineteenth century, too). Indeed, we might wonder if the special agents whose fortunes fell after 1800 reflected on their brief but evocative

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3 Among Wirt's first biographical treatments was Francis Walker Gilmer's own *Sketches of American Orators*, which he published the year after receiving Wirt's letter. (Baltimore: Fielding Lucas, Jr., 1816).
memory project. These conversations were far from the special agents’ last words on crushing private debts.

* * *

Christopher Clark, Lynchburg, 1767–4 November 1828

Family connections and able lawyering propelled Christopher Clark to a success that debt unraveled late in his life. Indeed, in the view of one acquaintance, it was his demise. Clark joined the bar in Bedford County, where his father served as a justice of the peace, in late May 1788. Within six months, and with his father’s help, no doubt, he was named the county’s commonwealth’s attorney. He held the position for fifteen years, including while serving in the House of Delegates and its Courts of Justice Committee. He also served briefly in the House of Representatives, but long enough to help manage the impeachment of Justice Samuel Chase. (Clark spoke on a 1792 Virginia law that Chase overlooked, which should have postponed Callender’s prosecution until the following court. “[T]his was one of the means he had determined to pursue in order to convict Callender,” Clark said from the floor on 21 February 1805, “regardless of the dignity of his station or the innocence of the man.”)

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4 I introduce each special agent with his geographical assignment, which most often correlates with his own residence, and his birth and death dates, when known.
5 Brent Tarter’s entry on Clark for the Dictionary of Virginia Biography bristles with compelling detail: my précis of his life owes much to it. “Christopher Henderson Clark,” 262–263.
Clark's election as a House manager less than three months after taking his seat suggests his relationships with John Randolph and Thomas Jefferson were both on firm footing. No great surprise: Jefferson and Clark were neighbors. Jefferson's Poplar Forest was close to Clark's home from 1805–1815, and Clark moved next door, in nineteenth-century terms, in 1815. The third president was also among Clark's many notable legal clients. His thriving practice played a role in his 1806 resignation from the House of Representatives. In other words, when Clark evaluated Virginians' pre-Revolutionary debts—and for another two decades afterwards—he was doing very well indeed. Beginning in 1819, however, he could have identified with the most luckless of debtors to British merchants. The Panic of 1819 visited him in particularly stark terms, joined by family tragedy, in the death of his second wife, and financial hardship, in the failure of several neighbors' estates for which he was partially liable. New debts and complicated lawsuits followed. In the summer of 1820 he declared a kind of bankruptcy, ceding all his real property to his creditors. None of the forces that exempted pre-Revolutionary debtors from their obligations saved Clark a generation later. He was "destitute" for a long eight years until his death on 4 November 1828.

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7 *Annals of Congress*, 8th Congress, 2nd session, 678. The effort to impeach Chase was unsuccessful, and for Democratic Republicans, embarrassingly so. Representative John Randolph, who parted political company with the Jeffersonians in 1805, was a prime-mover in the impeachment effort; his reputation suffered proportionately. Clark's allegiances in this period are difficult to divine, since his election as a manager probably owed much to Randolph's support. Additionally, he later supported Randolph for the Ambassadorship to Great Britain, but even Jefferson's personal secretary, William Armistead Burwell was circumspect about his motives. Knudson, "The Jeffersonian Assault on the Federalist Judiciary," 61; Gerard W. Gawalt, ed., "Strict Truth": The Narrative of William Armistead Burwell," *VMHB* 101, no. 1 (January 1993), 121–122; Tarter, "Christopher Henderson Clark," 263.

8 Tarter, "Christopher Henderson Clark," 263.
John Dabney, Lynchburg, 1770–1816

John Dabney's development was a closely held enterprise, an endeavor directed by a few especially influential Virginians. Family talk of "the quiet tenor of his [father's] undistinguished career" aside—it was warmed-over false humility, of course—George Dabney Sr. was the first among the important influences in his son John's life. From "The Grove," in Hanover County, George Dabney established significant business and political connections with the likes of Thomas Nelson and Patrick Henry. The latter's views on the Constitution and the federal government it created helped set Dabney's political course, and his son's. John Dabney reached his majority the same year Virginia debated the Constitution's ratification.

Dabney's education began in earnest, however, when he joined Reverend John Blair's classical school, in Richmond. A friend of Dabney's father, Blair—half of Richmond's famed "Two Parsons"—was comfortable around those easy in the exercise of power. He and fellow Reverend John Buchanan were honorary members of "The Barbecue Club," a summer Saturdays gathering of Richmond's elite. Political talk was punishable under club rules, but its score and ten members were the men to see on an array of public questions. (John Marshall, "the first citizen of Richmond," sat at the head of the Barbecue Club's table.) Blair and Buchanan held their own in witticisms, drink, and—in Blair's case—pitching quoits during a meeting described in George Wythe Munford's mid-nineteenth-century

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remembrance.\textsuperscript{11} No doubt young John Dabney learned more than Latin while under the influence of Parson Blair.

George Dabney Sr. had an even closer ally in mind for John's legal training: Edmund Winston, judge of the General Court and his cousin and childhood playmate.\textsuperscript{12} Winston was closer still to their common political ally Patrick Henry, also the judge's first cousin. (When Henry died in 1799, Winston was named an executor of his estate; within three years he had married Henry's widow, Dorothy Dandridge Henry Winston.\textsuperscript{13}) Dabney "read" law at Judge Winston's side. Virginia notions of training and allegiance came full circle when Dabney was elected by the General Assembly to fill the seat Judge Winston resigned in 1813.

A family connection may also have affected how John Dabney approached his charge as a special agent investigating prewar debts. George Dabney Sr. lived to an impressive eighty-four years of age—ample time to share the umbrage he felt at Revolutionary debts that went unpaid to his employer, Governor Thomas Nelson.\textsuperscript{14} If John Blair Dabney's family history adequately captures his "great indignation," the subject may have been aired often. Nelson had personally covered the Commonwealth's bad credit, the Dabneys understood, funding men and materiel during the war. Every Virginian knew it was one thing to lean on a private creditor during the "total prostration of public credit." In a phrase with ample eighteenth-

\textsuperscript{11} George Wythe Munford, \textit{The Two Parsons: Cupid's Sports; the Dream; and the Jewels of Virginia} (Richmond, Virginia: J. D. K. Sleight, 1884), 326–341. Quoits, a popular pastime in early nineteenth-century Virginia, involved pitching a heavy round ring toward a peg, much like horseshoes.


\textsuperscript{14} George Dabney Sr. outlived his son by eight years, dying in 1824. "The John Blair Dabney Manuscript," 32.
century applications, Dabney summarized, “such was the desperate condition of our affairs.”

But John Blair Dabney’s example suggests that it was something else entirely not to make that creditor whole when times improved. Did he think of his father’s discomfiture with Virginia’s treatment of Nelson while speaking with her citizens of other unmet obligations? (For that matter, would Thomas Nelson think of his father’s debt while conducting his own interviews?) Perhaps an arbitrary repayment of debts was more glaring when the creditor and his issue were comrades. “While men, not worthy to unloose the latchet on General Nelson’s shoe, have been . . . enriched with the spoils of the treasury,” the Dabney family history snarls, “the descendants of that disinterested patriot, who had sunk an opulent fortune in support of the revolutionary cause, were suffered to languish in want, to wrestle with all the privations of indigence unheeded and unpitied.” Nelson had paid a hefty ransom to extract Virginians from their dependence on Britain. He should be repaid.

John Dabney established his own reputation for professionalism and leadership in Southwest Virginia, winning election to the Virginia Senate and his later appointment to the bench. But unlike his well-known mentors, and the Nelson family, for and with whom the Dabneys worked in the late eighteenth century, John Blair Dabney has all but escaped our memory and historiography.

Robert Penn Warren’s use of his doppelgänger as a character in the 1950 novel *World Enough and Time* may be as close as Dabney has come to notoriety.\(^{18}\)

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**Robert Hening, Falmouth, Stafford County**

Robert Hening was, like his brother William Waller Hening, immersed in the legal business of the Commonwealth. His experience in Virginia courts well equipped him to approximate his brother’s serious, almost scholarly approach to investigating prewar debts. It also meant that he, like his brother, was a character in the reports in addition to an author. He appears prominently in the reports for Virginia debtors Rawleigh Browne and George Waugh, whose estates Hening executed.\(^{19}\) William Waller Hening also leaned heavily on his brother’s local perspective in reporting on the debts of Hunters & Taliaferro, a Virginia firm, to Rebecca Backhouse and McCall, Smellie & Co. It was Robert, after all, “who attends

\(^{18}\) *World Enough and Time* is a deeply researched historical project—a “long and complex novel, which demands close attention from even the most sympathetic reader.” (This from Joseph Blotner, Warren’s biographer, about as sympathetic a reader as one could want.) No scholar who has written on the novel explains the choice of Dabney; I have done no better in solving this riddle. Still, Warren’s story overlaps with ours in several respects. The novel is based on a politically-driven murder known as the “Kentucky Tragedy.” Its protagonist’s father, Jasper Beaumont, is a native Virginian who moves to Kentucky in 1791. Poor health and bad debts combine to do him in twenty-five years later, “the last dirty trick, dirtier than all the rest.” Its protagonist’s political mentor, Percival Skrogg, is murdered on 3 November 1836 by “a John Dabney, a member of the State Senate whom Skrogg had accused in print of taking a bribe.” Warren’s sustained research suggests Warren may have plucked the real John Dabney’s name from the record; however, nothing extant suggests that Dabney was himself involved in a similar set of events. No scholar has explained—if indeed there is a satisfactory explanation—how Virginia’s John Dabney crept into Warren’s Kentucky. If for no other reason, Dabney’s experience reporting on pre-Revolutionary debts makes him at home in a novel that depends in nearly measure on history and storytelling. Robert Penn Warren, *World Enough and Time* (1950: reprint Baton Rouge: Louisiana State University Press, 1999), 7, 20, quote at 20; Martha Emily Cook, “From Fact to Fiction: A Study of Robert Penn Warren’s *World Enough and Time*,“ Master’s thesis, Vanderbilt University (1966): 45–46.

\(^{19}\) V20:N1:59; V15:N2:120. Hening was also “interested” in Waugh’s estate, meaning that he stood to benefit from its provisions.
the court of King George County," having taken over his brother's practice after his 1793 move to Charlottesville.\textsuperscript{20}

This exchange suggests how work as a special agent may have affected some of the nineteen after their turn-of-the-century service. Robert Hening's intelligence from King George County offered inordinately detailed and, for any hoping to justify a debtor's action or inaction, helpful background. Together with his business partner, John Taliaferro owed more than £2,000 to British merchants at his death. His substantial real property may have given these creditors hope, but little in the way of repayment was forthcoming. William Hening's report on the claim answers—a bit defensively—the question implicit in these details: Just how did Taliaferro's heirs manage that? His brother had the answer: John Taliaferro Sr. owed a "considerable debt" to William T. Alexander; when Alexander married John Taliaferro Jr.'s sister, he "made him a present of the debt." Thus returned to the Taliaferro family's books, Taliaferro the younger was "entitled to a credit against the assets in his hands." Alexander's personal interests had, in other words, cohered with those of his new family, and Virginians' broader hopes to keep British creditors at bay. All of which was sanctioned by the King George County court.\textsuperscript{21}

If the Taliaferro family business was dodging debts, the Henings were expert in following those efforts. Both the attention to detail and welcome result Robert Hening worked toward in this case would have elicited applause from Virginia's heavily Democratic-Republican legal culture. Indeed, when Fredericksburg's

\textsuperscript{20} William Hening typically also cites another of his own reports on Bell & Stanfield's effort to collect from James Hunter's sons, and similar attempts ventured by Robb & Co. to collect from Taliaferro's heirs. V30:N1:53–54.

\textsuperscript{21} If these facts weren't confounding, and, for the debtor's family, convenient enough, John Taliaferro Sr. was also William T. Alexander's guardian. V30:N1:54
General Court found itself looking for a clerk in 1806, Robert Hening's experience investigating pre-Revolutionary debts could only have been a boon to his chances. His family name and connections didn't hurt, either. He was appointed and for several years added to his income by taking depositions and copying deeds, mortgages, wills, case records, and the all-inclusive "sundry papers." Robert Hening was in good company among special agents living in the professional shadow cast by older brothers. But he was unique in joining his as a Special Agent of the United States. Their investigation of pre-Revolutionary debts reflects much of the same attention to detail and seriousness of purpose that qualified any to serve as a successful attorney or clerk of court in early-nineteenth-century Virginia.

* * *

*Edmund Jennings Lee, Alexandria, 1772–1843*

Edmund Jennings Lee, a scion of one of the Commonwealth's most respected families, was in the first rank of the special agents by the end of his career. Lee's family goes a long way toward explaining his nomination to serve as a special agent: His brother and law partner Arthur Lee served as attorney general from 1795 to 1801. (In an episode that conveys Virginians' ambivalence about debt, Edmund was recommended for another federal post by another brother, Harry Lee, in 1809. Lee

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22 Hening noted his fees, from 18 cents for a short document to 70 or upwards for longer pieces, in an account book. Box 2, Folder 7, Collected Fees, 1806–1810, Fredericksburg, Virginia District Court Ledgers, 1787–1840, Special Collections Research Center, Swem Library, The College of William and Mary.

23 Thomas Venable did share in his brother Richard N. Venable's efforts, but he was not appointed "special agent," and his work did not approach the impressive detail offered by either Hening or his own brother.
wrote from prison, where debt had led him. Nor was he the only Lee brother to be incarcerated for unpaid debts.) Edmund Lee was certainly the most widely esteemed attorney among the agents, though that respect did little to guarantee his solvency, which was in great doubt toward the end of his life. A relatively young man when he investigated pre-Revolutionary debts, Lee went on to serve as the Clerk of the Circuit Court for the District of Columbia and as Mayor of Alexandria.

Lee’s law practice, like those of so many other Virginia attorneys, would have been seriously diminished without the debt pervasive in the Commonwealth. Commonly, attorneys’ own affairs, and those of their family, were heavily engaged in their work. Richard Bland Lee demonstrated admirable restraint in reporting on one such overlap in a September 1805 letter to his brother Charles. An oversight on the part of their brother—and Charles’s law partner—Edmund Jennings Lee resulted in Richard’s arrest. His four-sentence bulletin offers still more evidence of the ubiquity of debt in Virginia.

Lee was probably the most devout among those who investigated Virginia’s prewar debts. These qualities dovetailed in litigation inspired by the Glebe Act, passed by the General Assembly in 1802. Virginia’s Anglican parishes—Episcopal,

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24 Henry Lee III, the father of Robert E. Lee, was perhaps better known as “Light Horse Harry” Lee. The job for which he recommended Edmund Jennings Lee was judge for the federal district court for the District of Columbia. Emory Thomas, Robert E. Lee A Biography (New York: W. W. Norton & Company, 1995), 30–31.
25 Apart from a need for Charles to sign an enclosed bail bond, Richard may not have bothered his brother at all. “[I]n the course of a week everything will be reinstated and the suit dismissed,” he said by way of conclusion. Richard Bland Lee to Charles Lee, 17 September 1805, Edmund Jennings Lee Papers, Virginia Historical Society, Richmond.
26 The General Assembly disposed of Glebe lands in two stages. Baptists submitted a round of resolutions reversing the lands’ ownership to the House of Delegates during the 1796–1797 session; the House in turn referred the proposals to their constituents just as disgust with the Jay Treaty reached its apex. This first step cleared the General Assembly the following term. Three years later, legislators authorized the sale of glebe lands. Thomas E. Buckley
of course, after the Revolution—were granted land often running to the hundreds of acres. These holdings supplemented the income of parish priests and flummoxed many neighbors of other faiths or none, to whom disestablishment reasonably seemed a half-measure. The Glebe Act provided that Episcopal parishes should surrender their lands for the benefit of the local poor. The law, and the cases it fomented, had an unmistakable political tint: Jeffersonians unsympathetic to the formerly established church were on the make; Federalists, like Fairfax’s counsel, were in retreat. Edmund Lee successfully exempted Alexandria’s Fairfax Parish from giving up its glebe lands—then defended their sale on terms of the parish’s choosing in the United States Supreme Court, where he often practiced. It was not the only assignment Lee accepted early in the nineteenth century that thrust him both into pre-Revolutionary financial detail and contemporary political reality.

Edmund Jennings Lee’s rectitude—he was remembered as the type to storm out of worship over a parson’s improperly colored cassock—did nothing to save him from financial ruin. Real trouble began in 1814, when Edmund’s brother Charles died, leaving his brother responsible for a fraction of his sizable debts. Lee began a cycle of mortgages and missed payments that eventually forced him to leverage his

acknowledges the political allegiances that distinguished the two sides of the debate, but argues that “the political skill of the Baptist leaders was essential to the outcome.” “Evangelicals Triumphant: The Baptists’ Assault on the Virginia Glebes, 1786–1801,” WMQ Third Series, 45, no. 1 (January 1988), 48–49, 54–55, quote at 55. The church’s land devised to local Overseers of the Poor; its loss proved a devastating blow to the Episcopal Church in Virginia. In the case of Fairfax Parish, for example, the holding was some 516 acres. David L. Holmes, A Brief History of the Episcopal Church (Harrisburg, Pennsylvania: Trinity Press), 24–26. The case was styled Terrett v. Taylor in the Supreme Court. Michael W. McConnell, “The Supreme Court’s Earliest Church-State Cases: Windows on Religious-Cultural-Political Conflict in the Early Republic” Tulsa Law Review 37, no. 1 (2001), 8–18; Edmund Jennings Lee, Lee of Virginia, 1642–1892 (Philadelphia: E. J. Lee, 1895), 376. Miller, “Visitors from the Past.” 111.
own home, four enslaved women and men, and his entire legal library in 1829.\textsuperscript{30} Additional notes he cosigned for family added to Lee's difficulties. In 1835 he wrote to his nephew with an urgent plea. "The Banks are about to execute my person," he reported. "I have not the means of paying it and must go into Jail or give security for the funds . . . I hope it will be in your power to make some arrangement with the Bank."\textsuperscript{31} Lee had become one of many special agents to approach the experience of those Virginians with whom they spoke around the turn of the nineteenth century.\textsuperscript{32}

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\textit{Charles Marshall, Fauquier Court House, 31 January 1767–1805}

Charles Marshall is one of the special agents about whom the record is all but silent. He was a younger brother of Chief Justice John Marshall, and a twin of another brother, William. Charles seems to have suffered from poor health, perhaps paralysis of a kind. He died at age 38. Before that he practiced law at Warrenton, and often acted as agent for his brother or his family in their vast, complicated holdings among the Fairfax lands.\textsuperscript{33}

This experience probably best prepared him for the role of a special agent investigating pre-Revolutionary debts. Recording the stories of overburdened

\textsuperscript{30} Lee's library was either immense or generously valued; at \$3,000 it brought more than double the four slaves listed in the indenture. Miller, "Visitors from the Past," 121.
\textsuperscript{31} It is suggestive of Lee's woes that the cosigned note of his sister was for a mere \$401.75. Lee to Philip R. Fendall, 15 November 1835, cited in Miller, "Visitors from the Past," 121–122, quote at 122.
\textsuperscript{32} Those neighbors would have appreciated the irony of another Lee family home being purchased in 1834 by Colin Auld, a Scottish merchant. Miller, "Visitors from the Past," 123. Miller compiles a record of more than fifty of Lee's real estate transactions in Alexandria and the surrounding area. "Visitors from the Past," 134–139.
\textsuperscript{33} W. M. Paxton, \textit{The Marshall Family} (Cincinnati: Robert Clarke & Co., 1885), 53–54. \textit{The Papers of John Marshall}, vol. 2, 250 n. 2. Both family and geography would make it less than surprising to learn that Marshall was one of a very few Federalists among the special agents.

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Virginians was less taxing than his dunning of renters during the last five years of
the eighteenth century. A decades-long controversy, the Fairfax litigation began as a
question about how loyalist property should be treated in the aftermath of
Revolution and ended in two distinct visions of federal power. Though a simple
recitation of the issues is illusory, the controversy’s resonance with Marshall’s work
as an agent compels a brief synopsis.

Since the late seventeenth century, the Fairfax family had held Virginia
lands approaching 5,000,000 acres. Thomas, Sixth Lord Fairfax, remained neutral
during the Revolution and, as an elderly gentleman with no apparent heirs, avoided
being deemed an alien enemy during the war. When he died, in 1781, Lord Fairfax
left the estate to his brother Robert, now Seventh Lord Fairfax, and to Denny
Martin, a nephew who took the Fairfax family name along with its lands. Since both
resided in Kent, England, the Virginia General Assembly in 1782 took the
opportunity to order tenants to cease paying quitrent—the two inheritors were, to
Virginians, “alien enemies.” Payments should now be remitted to the state treasury,
a policy in keeping with the confiscation of Loyalist tracts that obtained during the
Revolutionary War.

About half of the enormous Fairfax tract was what its owner had called
“waste and ungranted” land; the Commonwealth began to sell this property during
the 1780s. Lord Fairfax and Martin petitioned the General Assembly in late 1785,
maintaining that their income could not legally be confiscated. Within weeks the
Virginia legislature affirmed that Northern Neck quitrents were forgiven and even
more outlandishly declared that future grants—about half of the Fairfax estate was
unappropriated—would come from the state government. In 1786, John Marshall
took up Denny Martin Fairfax's cause as counsel. In the decade that followed he began to transfer responsibility for the details to his brother Charles.34

The Marshalls got serious about collecting unpaid rents during the late 1790s. A power of attorney executed 4 July 1794, and accepted by the Fauquier Court the following fall, pledges that Charles Marshall will, in John Marshall's name, “account to the Common Wealth for the rents of the Manor of Leeds in case the same should be escheated and will prosecute his suits with effect.”35 For any renters who misunderstood the intent, Charles Marshall propounded an even clearer warning three days after the Power of Attorney was proved in county court. His “publick [sic] notice, to all those in arrears” made clear that the landlords would “proceed immediately to the collection.” The Marshalls hoped for “immediate provision” to “save the collector the painful necessity of distraining,” or seizing renters' property to pay to meet their unpaid balances. Put simply, Fairfax tenants' decades-long grace period was over.36 Suits for rent did issue in the years that followed.37

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Thomas Miller, Port Royal

Thomas Miller's first lessons on debt were no doubt somewhat different from those of most of his colleagues among the special agents. His father, James Miller,
was one of Caroline County's principal merchants during the mid-to-late-eighteenth century. He did business in Port Royal, a small town on the Rappahannock River. Port Royal sits near the river's narrows, with the Middle Peninsula and Northern Neck to the east, and the fall line not twenty miles to the west—a fine location for an aspiring merchant to learn his trade.38

James Miller's business plan included aggressively pursuing unpaid debts. During the early 1760s he and fellow merchant Robert Gilchrist levied Benjamin Catlett's tobacco crop in an attempt to settle his accounts. Seemingly uninterested in tending what the county court had decided was another person's crop, Catlett neglected his fields. And so Miller returned to court to compel Catlett to return to his tobacco. Virginia's dependence on debt and tobacco, and its keen advocates George Wythe and Peyton Randolph, gave the case real salience. That his father prevailed gave Thomas Miller an early lesson on the staying power of contracted debts.39 Miller also saw debts at work while he served as a special agent; perhaps he thought of the funds he was owed while talking with prewar debtors. In the middle of July 1800, a season when several of the special agents were at work, he heard from Henry Massie. "I expect you have been looking for the money I borrowed of you," Massie wrote. "I have been trying to get light money to forward it, but I am afraid it can't be had."40 Unlike the debts Miller and his colleagues inquired after, at least his personal debtors were considering making him whole.

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40 17 July 1800, Folder 2, Goochland Court House letters, 1751–1827, University of Virginia Special Collections.
If Miller imagined his father on the creditors’ end of Virginia’s unpaid debts, he could as easily have pictured his brothers as scofflaws. James Miller’s will, which Thomas was charged with executing, makes plain why his two brothers would not collect. “Robert Miller having spent so much of my money and his conduct is such that there is no prospect of his reforming,” Miller wrote, “therefore I must leave him to his fate.” William Miller was similarly passed over, “having abandoned himself to a constant habit of intemperance.” This language may have given some peace to their brother Corbet, “whose conduct has not by any means been correct,” but “appears to have taken a very industrious turn which I am willing to encourage.” A stipend that others controlled was preferable to no consideration at all.41

Even among special agents at once mired in debt and prone to extend credit, Thomas Miller’s approach to collecting stories was remarkably nuanced.

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William Munford, Mecklenburg County, 15 August 1775–21 June 1825

William Munford was born into a family that stories just seemed to find. Though esteemed for their public service, the family was truly distinguished in late-eighteenth- and early-nineteenth-century Virginia by its literary gifts. Both William Munford’s father, Robert, and son, George Wythe Munford, wrote works with much

to say about the Virginia of their day. These publications eclipsed William Munford's career and writings—including those reporting on turn-of-the-century conversations with Virginia debtors. His father's fiction suggests that William Munford inherited a keen ear for the stories of his fellow Virginians.

The son and student of Revolutionary heroes, Munford attained a superb education in spite of his family's trials with debt. His myriad professional and intellectual endeavors can best be understood as a broad effort to educate his fellow citizens—whether through public schools, a more accessible lay understanding of the law, or in bringing Homer to those in "homespun," to borrow a phrase from one of Munford's mid-nineteenth-century reviewers. Colonel Robert Munford, William's father, left his family unpublished plays and unpaid debts when he died before his son's tenth birthday. Though committed to her son's education, Anne Beverly Munford would not have been able to sustain it without the generosity of George Wythe. He hosted Munford in his law classes and in his home. When Wythe was named Chancellor of Virginia in 1792, Munford followed him to Richmond to see their collaboration through.

Within five years of completing his study in law—St. George Tucker directed his final readings—Munford's impressive trajectory was fixed. Among his first positions on public policy was his opposition to the Jay Treaty, which led his neighbors to choose him as an elector for president in 1796. Soon he had begun an

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42 William Munford's mother and sister shared the family gift for storytelling. Richard N. Venable's diary reported on a 1792 visit to the Munford home, eight years after Robert Munford's death, that Mrs. Munford "gives us a family history." "Diary of Richard N. Venable, 1791–1792," 138. Ursula Munford, a sister dozen years William's senior, wrote but never published a novel. Baine, Robert Munford, 56.
ascent through Virginia political posts—about which more later—all the while collaborating with William Waller Hening on many publications of real use to Virginia's bench and bar. Munford's brief tenure as an investigator of pre-Revolutionary debts—he was not a special agent, but in all likelihood sub-contracted as what John Read called an “under agent”—came just as his public and publishing career took off.44

The timing and topics of Robert Munford's plays made them natural springboards for his son's investigation of pre-Revolutionary debts. In 1770, a few years before William's birth, Robert Munford wrote “The Candidates,” generally acknowledged as the first American comedy. Before the decade was out he had written another, more elaborately constructed play, “The Patriots.” Neither of these works was published or performed, insofar as we know, during the elder Munford's lifetime. His son William published them along with a handful of his father's poems in 1798. His “warm desire to rescue the memory of a father from oblivion” was vindicated, finally, in the recognition his father now receives as the country's first comedic playwright.45

44 Munford was not one of the seventeen agents officially appointed to investigate Virginia's debts; additionally, the Reports on British Mercantile Claims misspell his family name as “Mumford,” a common error during Munford's lifetime. Still, there can be little doubt that it was he who spoke with his fellow Virginians about their pre-Revolutionary debts. Munford was representing his native Mecklenburg County in 1800, a rising talent in both Democratic Republican and Virginia legal culture.
45 William Munford, ed. A Collection of Plays and Poems by the Late Col. Robert Munford Petersburg: William Prentis, 1798, xi. Though the Prologue is not attributed, it seems equally clear that it was written for the play's 1798 publication, and by William Munford. Baine, Robert Munford, 58.
The pathbreaking quality of Robert Munford's plays has drawn ample interest from scholars of literature and history alike. However, few have remarked that his son published the collection at a time of high partisan intrigue and evolving national self-understanding. As a good Virginia Democratic-Republican, William Munford understood that "The Candidates" could be particularly inflammatory if viewed through his party's late-eighteenth-century kerfuffle with the Federalists. His prologue sought to defuse such comparisons: "[H]ow could he mean you, Who, when he wrote, about you nothing knew?" Neither should the play be read as "[d]epreciating the wisdom of the land." These were "former times," Munford wrote somewhat defensively. Demeaning one's neighbors' forbears was no way to get ahead—or sell books—in turn-of-the-century Virginia. In a phrase that might apply just as well to the reports on Virginia's prewar debts, Munford assures his father's readers that "Virtue is not in our story lost." In any event, William Munford would do the Republican party's work in his own publication appearing the same year.

Robert Munford finds farce—even slapstick—in a pre-Revolutionary election for the Virginia House of Burgesses. "The Candidates'" names go a long way

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toward explaining the plot, which finds Wou'dbe navigating the obstacles posed by Strutabout and Smallhopes, who have joined forces, and Sir John Toddy, with whom Wou'dbe is rumored to have aligned. Wou'dbe is instead committed to standing alone, until, in an Act II letter to Wou'dbe, Worthy cancels his proposed retirement and ensures their mutual triumph. The pair takes a measured approach to electioneering, parting company with their opponents' promises to “bring the tide over the tops of the hills, for a vote.”

Many of these characters are in their cups, producing a soundtrack of drunken huzzas, hiccups, and burps. (Typical stage direction for John and Joan Guzzle: “offers to help her up, and falls upon her.”)

Like the Guzzles and Sir John Toddy, strong drink is itself a character in Robert Munford's farce of early Virginia electioneering. It represents candidates' manipulation of voters and can also be taken as a metaphor for Virginians' dependence on debt relief. The former is introduced in the play's first scene. Wou'dbe underestimates the power, in early Virginia elections, of an empty promise accompanied by a full glass: “the people of Virginia have too much sense,” he says, rhetorically, “not to perceive how weak the head must be that is always filled with

50 "The Candidates," in A Collection of the Plays and Poems of the Late Col. Robert Munford (Petersburg, Virginia: William Prentis, 1798), 23. A harbinger of twentieth-century Virginia's Shad Treatment, "The Candidates" includes other criticisms of the political sphere. An obsequious deputy whispers voters' names to a candidate who pretends a long acquaintance with each—"How the devil come he to know me so well," remarks one freeholder, "and never spoke to me before in his life?"—the five senses required to thrive as a legislator are eating, drinking, sleeping, fighting, and lying; candidates, when making "promises to the people that you can't comply with... must say upon honor, otherwise they won't believe you." Published by Garrett Epps in 1977, The Shad Treatment captures the "Virginia way" of politics during the Byrd Organization's heyday and before. (New York: Putnam, 1977). (Wou'dbe serves shad at his election-day breakfast "treat.") "The Candidates," 47: 27–28; 22: 14.

51 "The Candidates," 33.
liquor.” The plot that follows tests his suggestion against the approach favored by John Guzzle, who pledges to support “the first man to fill my bottle.”

Virginians before and after Robert Munford realized the connection between a reliance on debt and addiction to alcohol. Both distracted and beleaguered women and men yet only redoubled their dire situation over time. And as James Madison wrote in his “Vices of the Political System of the U. States,” a kind of white paper for the Constitution, the promise that voters found most alluring in this period involved the cancellation of debts. Munford’s play draws the comparison all but directly through characters as powerless to resist a dram as a politician’s promise. In late-eighteenth- and early-nineteenth-century Virginia, of course, the two were inseparable come election time. In February 1801, Chapman Johnson warned David Watson, soon to stand for election to the House of Delegates from Louisa County, “I know you have opponents who will not hesitate to avail themselves of every assistance, which unmanly condescension or Whiskey can afford them.” He resorted to “harsh terms” in encouraging his friend to rise above these practices, comparing them to behavior typical of the British Parliament. “[I]t is time that Virginians, free and independent Virginians should shake off those remains of aristocratic venality.”

William Munford’s prologue to “The Candidates” advanced a similar hope that “drunkenness and monarchy” were both signs of bygone days. But the Reports on British Mercantile Claims make clear that alcohol retained a firm grip on many

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54 For more on “Vices,” see p. 78–80 supra.
Virginians into the nineteenth century. They also suggest a correlation between drink and debt, a connection that itself resonates with the themes of Robert Munford’s “The Candidates.”

Robert Munford knew from his own personal struggles that alcoholism and indebtedness often ran on parallel tracks. Both he and his father drank to excess after assuming more debts than their circumstances would bear. Robert Munford, in fact, made something of a spectacle of himself in the final months of his life. Though we can only guess at his boorish behavior, his colleagues among Mecklenburg County’s magistrates made clear their opprobrium.

"It is with sorrow and regret that they must now complain of him, from the excess of Drink & Intoxication not only neglecting the duties of a Magistrate, but frequently by his indecent and disorderly behavior interrupting the business of the Court in such a manner as to render it impossible for the Court to proceed in their necessary duty . . ."57

Given his prior service and reputation—the magistrates affirmed that he had “long been a peculiar happiness to the county”—drink must have addled Munford as thoroughly as any debtor described in the special agents’ reports. Debt, too. Among the business of the Court Munford interrupted were several suits for debt instituted against him during the final months of 1783. He died before they could be prosecuted.

William Munford spent a half-dozen years working to publish his father’s collection.58 The plays’ setting and origins both put Munford in mind of the

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57 10 March 1783. Munford resigned his commission the following month rather than see the governor carry out his colleagues’ request to “renew the Commission of peace for this county leaving out the name of the said Robert Munford.” They rescinded the remonstrance the day he resigned. Quoted in Baine, Robert Munford, 55.
dilemmas Virginians faced under their pre-Revolutionary debts. William Munford had his own literary aspirations to boot. He published his own volume of prose and poems in the same year he brought his father's plays. He compiled the Virginia Supreme Court of Appeals' decisions in Virginia Reports, a project entailing six volumes a year. And he worked on a translation of Homer's Iliad for much of his adult life. Interestingly enough, like his father's plays, this volume went unpublished until his widow and sons put it out in 1846.59

Munford, not yet twenty-five years old, also published Poems and Compositions in Prose in 1798. It was a big year for Munford, having also brought out his father's plays and been elected to the House of Delegates from Mecklenburg County. He "hope[d] the world will consider the youth of the author," but in most cases the thought was unnecessary; Munford wrote in a careful, clever fashion about all manner of topics.60 He took up the personal, as in "A Mournful Soliloquy of a Poor Student," and the political, as in "The Politician in Distress," an assault on Alexander Hamilton.61 He also included more explicitly literary efforts such as translations of Horace and Ossian as well as a five-act play titled "Almoran and

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58 Munford to John Coalter, 17 May 1792. Quoted in Baine, Robert Munford, 93.
60 Poems and Compositions in Prose, 6.
61 Munford rued Hamilton's ability to "lead our Pres'ident by the nose" and defended Virginians in Congress like James Madison and William Branch Giles, "Poor fellows not expert in wiles," 151, 152. He also lampooned Hamilton's strategy to assume states' debts: "He who to fix our final doom, / the debts of states resolv'd to assume, / and whether they said yea or nay / Resolv'd himself their debts to pay," 152.
Hamet.” The “several occasions” contemplated included the Fourth of July\textsuperscript{62} and the death of a friend.

In all, it was an impressive mélange, and one suggestive of the attitude special agents brought to their investigation of pre-Revolutionary debts. He spoke most directly to their task in “The Political Contest,” the poem written in 1798 that introduces Chapter Two. Recall that “The Political Contest” is structured somewhat like the Old Testament’s Book of Job; a debate among three contestants in which the author’s perspective is only implicit. Munford’s three characters are representative of the political debates of the day: “A” is “a wretch who is of neither party,” as he is called during the exchange; “B” is a Democratic-Republican; “C” is a Federalist. Though Munford’s Republican inclinations are on display, moderation is the true ill; the only open-minded citizen among the three ends the poem bloodied by his opponents.\textsuperscript{63} Munford is satirizing the political process, to be certain: Twice John Adams shares a stanza with a guillotine, the second time joined by Hamilton and even Washington.\textsuperscript{64} But he also conveys the parties’ positions faithfully, as in his several mentions of John Jay and the treaty he negotiated. It was a result of bribes of both Jay and “twenty senators,” said B, “[t]he signal of my country’s shame.” Many of the special agents approached their interviews on British debts agreeing that “Britain robb’d us on the main.”\textsuperscript{65} They worked, and Munford wrote, during a period one modern historian has called the “[h]igh tide for . . . party spirt.”\textsuperscript{66}

\textsuperscript{62} “An Oration on the Subject of American Independence” was delivered 4 July 1793 as Munford neared the end of his time at William & Mary. Amid its advocacy for education—including education for women—Munford conveyed his ambivalence for the federal government and esteem for France’s “proof of the force of republican principles,” 159, 162.

\textsuperscript{63} Poems and Compositions in Prose, 163–175, quote at 174.

\textsuperscript{64} Poems and Compositions in Prose, 165, 169.

\textsuperscript{65} Poems and Compositions in Prose, 166, 173.
Had William Munford omitted the complaints of a penurious student unlucky in love, it would be easy to forget that it was the work of one so young. His *Poems and Compositions in Prose, with A Collection of the Plays and Poems of the Late Col. Robert Munford,* became, with the translation of the *Iliad* that obsessed him during the last years of his life, bookends to a distinguished career in service to the Commonwealth. His was a trajectory of progressively responsible experience, in the modern phrase: Five years representing Mecklenburg County in the House of Delegates (1797–1802) was followed by four years representing five counties in the state Senate (1802–1806). He was then elected to the Council of State, a position he resigned in 1811 to become Clerk of the House of Delegates, a post until his death in 1825. He continued the practice of law during much of this service and routinely published important legal reports such as the opinions of the Court of Appeals and the proceedings during Aaron Burr’s 1807 treason trial, both examples of his collaboration with William Waller Hening. In fact, Munford’s career as an administrator and reporter of Virginia’s legal system is second only to Hening’s in early-nineteenth-century Virginia.

No doubt William Munford’s work on his father’s and his own plays, poems, and prose conditioned his approach to the stories of Virginia debtors. But given how briskly both volumes sold in Richmond, we might consider their broader reach.

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66 After reviewing the sundry issues that divided “black cockade Federalists” and “tricolored Republicans” from 1797 to 1801, Daniel Jordan argues that “[t]he experience, especially to the many young politicians beginning careers in the late 1790s” was formative. Many who served as special agents are embraced by his conclusion. *Political Leadership in Jefferson’s Virginia,* 17.

among those who served as special agents. Robert Munford reminded his readers of the political and personal excesses debt encouraged. His son’s writings underscored the political tempest that debt, and the successive international efforts to resolve them, helped stir a generation later. Munford’s colleagues walked into just such a headwind when questioning their neighbors about obligations long unmet.

Munford’s literary gifts—and the fact that he lived half of his life in the eighteenth century, and half in the nineteenth—uniquely positioned him to interpret Revolutionary debates a generation on. He conveyed this sense, after a fashion, when he was given the high honor of eulogizing his mentor George Wythe in 1806. The son and grandson of Virginians felled by debt and drink, the reluctant owner of an ironically named estate in steep decline during the 1790s, and an attorney literally steeped in the Commonwealth’s culture of debt, Munford offers us an irreplaceable context for the special agents’ reports on his neighbor’s unmet pre-Revolutionary obligations.

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Thomas Nelson, York, 1764–1803

Thomas Nelson’s service as a special agent concluded a remarkably tumultuous century for his large, wealthy, and at least insofar as names go,

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69 “I should have been happy is some older citizen, who knew him in his younger days, and joined his glorious labors at the commencement of our revolution, had now endeavored to describe his great and meritorious public services in those days of difficulty and danger,” Munford said. “But it cannot be. Most of the Heroes and Patriots of the Revolution are gone to their graves with glory . . .” “Oration, Pronounced at the Funeral of George Wythe,” *Richmond Enquirer*, 10 June 1806.
decidedly unimaginative family. As Emory G. Evans has explained to impressive
effect, the Nelsons' eighteenth century involved both a distinctive rise to
prominence—one driven by commerce—and a decline all too typical of significant
Virginia families. Both have much to contribute to our understanding of Nelson's
interviews with Virginia debtors—many of them, beyond question, longstanding
customers of his family's myriad commercial enterprises.

The story of the Virginia Nelsons begins in 1705, with the arrival of Thomas
Nelson, known to history as "Scotch Tom." Nelson settled in Yorktown and was soon
a successful merchant with a brisk business in tobacco, slaves, and an array of other
commercial endeavors from a ferry to an iron mine to a tavern. He acquired real
wealth and thousands of acres of land during the first third of the eighteenth
century. One of his sons, Thomas Nelson, Jr., earned a nickname along with a
quite remunerative position when he became deputy secretary of the colony in 1743.
While his brother William continued to grow the burgeoning family businesses, "The

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70 There "is no great fear of the name being extinct," wrote Thomas Nelson's uncle—Thomas
Nelson—after the birth of one of his eleven children in 1767. The understatement is obvious
to any attempting to isolate the Thomas Nelson who spoke with Virginia debtors about their
pre-Revolutionary debts. Indeed, the redundancy has given rise to sobriquets, which I will
indulge in the pursuit of clarity. Emory G. Evans Thomas Nelson of Yorktown: Revolutionary
Virginian (Williamsburg: The Colonial Williamsburg Foundation, distributed by the
University Press of Virginia, 1975), 22.

71 My understanding of Thomas Nelson and his forebears is much indebted to decades of
Emory G. Evans's scholarship. Beginning with his dissertation and concluding with his 2009
monograph A "Topping People," no one understood them more clearly. "The Rise and Decline
of the Virginia Aristocracy in the Eighteenth Century: The Nelsons," in Darrett B. Rutman,
ed., The Old Dominion: Essays for Thomas Perkins Abernathy, (Charlottesville: University

72 Evans, "Rise and Decline," 63–66.
Secretary"—our special agent's grandfather—held a number of key government posts. He also sired thirteen children, eleven of whom survived childhood.\footnote{Both Nelsons served on the Privy Council, but Thomas Jr.'s broad appointment powers may have been the most enviable. Evans, "Rise and Decline," 71; Evans, Thomas Nelson of Yorktown, 21–22.}

Hugh Nelson, renowned for his part in independence along with his brother Thomas, inherited the family's Yorktown store during the early 1770s.\footnote{Thomas Nelson (1738–1789) signed the Declaration of Independence, led the Lower Virginia Militia at Yorktown, and served as the Commonwealth of Virginia's fourth governor in late 1781. Evans, "Rise and Decline," 76.} Their fathers' avoidance of personal debt and energetic collection of others' accounts meant the business, and the family's finances, were in pristine condition relative to their fellow Virginians. It did not last. Inexperience, ennui, and difficult economic circumstances conspired to plunge the family deep into debt. Thomas Nelson's willingness to personally co-sign loans to the fledgling Commonwealth demonstrates how different were political and financial independence. During the 1780s Nelson approached debt in novel fashion: He paid. The results were disastrous for the family's finances.\footnote{Evans, "Rise and Decline," 72–79.}

The Nelson family's mercantile concern ensured that Thomas and his brothers and cousins also benefited from collections and executions. Such was the family's influence, in fact, that the York County court was widely renowned to keep a brisk pace in debt suits. These liquidations, like his father's, were Special Agent Thomas Nelson's introduction to debt. He confronted the family dilemma anew after his father died on the fourth day of 1789. An appointment to serve as a secretary to President Washington was no doubt a godsend. Washington also named Nelson United States attorney for Virginia in 1796. Hailing from perhaps the
Commonwealth's most notable merchants—and still dealing with the fallout from his father's estate a dozen years later—Nelson must have brought a nuanced approach to the interviews he conducted with his indebted neighbors around the turn of the nineteenth century.76

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William Satchell, Northampton Court House

One of the rare special agents not trained as an attorney, William Satchell made his fortune buying, selling, and improving significant tracts of land on Virginia's Eastern Shore. A contractor like his father—with whom he also shared a name—Satchell inherited hundreds of acres of land. His wife Elizabeth also received consideration from her family. Together they acquired ample acreage in the early nineteenth century.77 Ralph T. Whitelaw's history of the Eastern Shore78 would be considerably shorter without its detailed account of the many Satchell land transactions in the generations before and after the year 1800. Satchell's Northampton County network helped him secure public contracts such as the 1814 bid to build a jail at a cost of $3,169.59. We can only imagine whether Satchell

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77 William Satchell's grandfather, Southy Satchell, was also a contractor (338). The 658-acre plantation William Satchell Sr. left to his son and daughter-in-law in 1794 had been inherited by his mother, Sarah (340). William Satchell Sr. (185, 331, 334, 336–337, 340, 521) and Jr. (353, 362, 382) were active in Eastern Shore land deals, often "flipping" property within a few years of acquiring it from their neighbors (81). The family strategically enlarged its holdings around existing homeplaces like "White Hall" (340).

78 Whitelaw's two-volume history is organized by plat: this section of the county passed from this family to that to the next. Satchell and his kin are regular characters. *Virginia's Eastern Shore.*
thought of his turn-of-the-century interviews on debt while building this structure, which was still known as the "Debtor's Prison" a century and a half later.\footnote{Whitelaw, \textit{Virginia's Eastern Shore}, 258–259, 326–327. Satchell also supervised—and almost certainly built—the county's previously mentioned "Poor House" in 1802–1803.}

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\textit{Richard N. Venable, Prince Edward Court House, 16 January 1763–1838}

Born in 1756, Richard N. Venable was several years older than most of his colleagues when tapped to investigate pre-Revolutionary debt. Though perhaps less well known than the Nelsons or the Lees, his was one of the most consequential families in central Virginia. Much engaged in Virginia government and educational policy, in particular, Richard N. Venable joined his father, uncles, and brothers in playing an important role "on the banks of his beloved Appomattox" in the early nineteenth century.\footnote{Hugh Blair Grigsby, \textit{The Virginia Convention of 1829–30: A Discourse Delivered Before the Virginia Historical Society} (Richmond, Virginia: Macfarlane & Ferguson, 1854), 96.} Richard's father Nathaniel served in the House of Burgesses during the late 1760s; both Richard and his brother Abraham took up this calling in

Figure 5: Richard N. Venable commissioned this map of the Appomattox River, whose commercial potential long interested him, the year before he began work as a special agent. The caption reads "Drawn by J. Epperson for Mr. Richard N. Venable, July 16, 1797." Image courtesy of the Virginia Historical Society.
adulthood. Richard served in the Virginia Senate and Abraham served a brief stint in the United States Senate, leaving to assume the presidency of the Bank of Virginia.

Even among a family of phenomenal size and service—and even in a county that honored family connections—Richard N. Venable's involvement was remarkable. His contributions to Prince Edward County and the Southside only began with midwifing Hampden-Sydney College. He helped organize a public library on the college's campus, supervised contracts for county buildings, helped draft a resolution condemning Britain's 1807 attack on the Chesapeake, served on the board of the James River-Kanawha Canal Company, and late in life served as the President of the Virginia Mineralogical Society. The Venables' real wealth contributed to their real and perceived leadership in Southside Virginia, especially in matters commercial. When the Upper Appomattox Canal Company formed, Richard Venable was an intuitive choice for its founding president. His family was unsurprisingly at the forefront of what one historian calls "interlocking directorates" that drove Prince Edward's economic development.

Exemplary of special agents knowing their districts, Venable contributed both to laying out the town of Farmville and surveying the river that bisects it. When Benjamin Henry Latrobe completed an arduous journey to Prince Edward County, where he had been hired to help survey the Appomattox River, he was

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81 Abraham Venable died along with many other elite Richmonders in the Theater fire of 1811. Venable, Venables of Virginia, 35; Meredith Henne Baker, The Richmond Theater Fire: Early America's First Great Disaster (Baton Rouge: Louisiana State University Press, 2012), 20, 34.
82 Bradshaw, History of Prince Edward County, 171, 215–216, 181, 326, 305.
briefed, hosted, and accompanied by Venable.\textsuperscript{84} Latrobe described the “good sense and mildness of temper which [was] natural to” Venable in his journal recounting the trip.\textsuperscript{85}

Venable’s longevity cemented his reputation in Virginia political circles. He was an “old man” by the time he served in the Constitutional Convention of 1829–1830—distinguished enough, in fact, for Hugh Blair Grigsby to compare him to Alcibiades, a statesman prominent in ancient Athens.\textsuperscript{86} “There was much good sense in his sayings,” the twenty-three-year-old wrote of Venable with typical candor, “but no eloquence.” There could be little doubt what view Venable and John Randolph of Roanoke, who joined him in representing Prince Edward, would make of the proposed Constitution. Not one in ten among Venable’s neighbors supported loosening the Commonwealth’s restriction that connected suffrage to landowning.\textsuperscript{87}

Indeed, Prince Edward County, which Venable and Blake B. Woodson plied for stories of pre-Revolutionary debts, was among the most heavily Democratic-Republican precincts in the Commonwealth.\textsuperscript{88}

Though the Venables were wealthy by any measure, debt was still an important part of their lives. Nathaniel Venable’s will, written not long after his son concluded his investigations of prewar debts, made clear their own dependence on

\textsuperscript{86} Grigsby’s comparison was chiefly physical: “His face reminded me of the bust that I had seen of Alcibiades.” This evaluation sings in comparison to Grigsby’s unkind reviews of others’ physical attributes. Venable did not rate a substantive mention in Grigsby’s later-in-life, more substantive “Discourse” on the Convention. The Virginia Convention of 1829–30: A Discourse Delivered Before the Virginia Historical Society (Richmond, Virginia: Macfarlane & Ferguson, 1854).
\textsuperscript{88} Bradshaw, History of Prince Edward County, 175–176.
debt. "It is to be understood that the several sums herein mentioned given in money to my children," he wrote, having outlined a $100 bequest to Richard in the prior clause, "are to be paid out of my part of the debts due to the stores in which I am concerned." Richard would have understood clearly that his and his siblings' inheritance would be funded by some of the same folks he had interviewed just a couple of years earlier.

Richard Venable was perhaps the most prominent Virginian to serve as a special agent. In fact, given his age, financial wherewithal, and full civic agenda, his acceptance of the post poses a more interesting question than his nomination. Perhaps his commitment to serve his neighbors prevailed; perhaps he was equally motivated to affect the payment—or not—of pre-Revolutionary debts. Perhaps sharing the work and its per diem with his youngest brother, Thomas Venable, was part of the post's appeal. Whatever his motivations, Venable's contribution as a special agent was a brief episode in a long life distinguished by service. The circumstances of his death were somewhat reminiscent of stories from his fellow agents' reports. He "died instantly," very likely of a heart attack, and was discovered with his "face buried in a shallow stream, two inches deep."90

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William Morton Watkins, Charlotte Court House, 22 April 1773–1865

William Watkins was born in the southern part of Charlotte County. He was destined to attend Hampden-Sydney, which his father and two uncles served as

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89 Venable, Venables of Virginia, 36.
trustees nearly from its inception. After receiving his A.B. there in 1791 he went on to take the same degree at Princeton the following year. He read law in Cumberland County, where his father, hailing from Cumberland, may have had a personal connection with Judge Creed Taylor.91

Watkins's 1799 marriage to Elizabeth Woodson Venable affirmed the relationships that bound Hampden-Sydney's supporters to the Special Agents of the United States. Venable, who grew up in Prince Edward County, was Richard N. Venable's niece. His brother Thomas assisted him with those reports.) Elizabeth Venable was as much a child of Hampden-Sydney as a young lady has ever been: As mentioned previously, her father, both grandfathers, and three uncles were deeply involved in the college and its predecessor, Prince Edward Academy. Together the Watkins gave Hampden-Sydney seven additional graduates.92

The commission as a special agent investigating British mercantile claims may have been Watkins's first public service. He ultimately served as a justice of the peace before two brief stints in the House of Delegates. These posts, like Watkins's law practice, were ancillary to his thriving Charlotte County agricultural enterprise. Redoubled by his wife's inheritance, Watkins's holdings grew to include "Do Well," a home of some renown in Southside Virginia. And Watkins did: He was without question among the two or three wealthiest of the special agents—or residents of central Virginia for that matter. His home is today "the most elaborate and well-preserved example of . . . the well-to-do planter's house in the first quarter of the

19th century."\textsuperscript{93} Here Watkins lived longer than almost all of his fellow travelers among the special agents, very nearly surviving the Civil War.\textsuperscript{94}

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Conrade Webb, Petersburg, 1778–1842

Conrade Webb was the eldest of four sons born to Sara and Foster Webb, who served as "Paymaster General" of the Commonwealth beginning in 1781.\textsuperscript{95} Webb's mother's family was also very accomplished: both her father and brother were physicians, the latter also serving as collector of customs in Petersburg.\textsuperscript{96} Alone among the special agents—and certainly distinctive among Virginians of the time—Webb attended Brown University, an opportunity made possible through the connection and financial support of Thomas Shore, an uncle on his mother's side.\textsuperscript{97}

Like many Virginia debtors called to explain their outstanding pre-Revolutionary debts, Webb understood family tragedy. Both his father and mother died in the decade around the turn of the nineteenth century; Webb returned from Brown to see to the management of his family's vast New Kent County holdings. Twenty years later, between 1815 and 1820, Webb's wife and only son died. Unlike most Virginians, however, the Webbs' finances were waxing during these years. In 1820 Webb owned nearly twice as many slaves in New Kent County as he had a

\textsuperscript{95} Hastings, \textit{Conrade Webb of Hampstead}, 3.
\textsuperscript{96} Hastings, \textit{Conrade Webb of Hampstead}, 7.
\textsuperscript{97} William Hastings uncovered correspondence with Nicholas Brown, Sr. and Shore's will that outlined the details respectively. \textit{Conrade Webb of Hampstead}, 11, 10.
decade earlier; in addition to as many in Nottoway County. It was during this year that Webb built Hampstead, "the handsomest house in New Kent County."

Webb's relationship with debt was more professional than personal. His legal practice reminds us that debates over prewar debts to British merchants long outlasted the special agents' work. In 1812 Webb argued a case before Chief Justice Marshall's federal Circuit Court that much overlapped with his turn-of-the-century interviews with Virginia debtors. Thomas Shore, Webb's uncle, had co-signed a £20,000 bond as security for Christopher McConico, an agent for the Glasgow mercantile firm Spiers, Bowman & Co. (Shore died 30 October 1811; Webb represented his estate's interests in the litigation.) When McConico, in the view of his employers, failed "faithfully to collect the debts due to the firm, &c., and account fairly for his transactions," they sued Shore and James Campbell, his "sureties." At bottom, McConico was charged with collecting, but not conveying, debts due in Virginia to Spiers and Company. His sureties' "uneasiness" with McConico's conduct suggests that it may in fact not have been above reproach.

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99 He also haunted it, if his family is to be believed. Robert A. Lancaster, Jr., *Historic Virginia Homes and Churches* (1915: repr., Spartanburg, South Carolina: The Reprint Company, 1973), 261, 263.
100 The suit was filed in 1802, just months after Webb completed his investigation of pre-Revolutionary debts. "Hopkirk v. McConico, Notes, Opinion, and Decree, U.S. Circuit Court, Virginia, 12 June 1812," in *Papers of John Marshall*, 7:325. The reporter and Chief Justice Marshall's notes spell McConico's surname differently; the former is the more common, but I have retained the two approaches.
101 Fifty-nine debts claimed by Spiers, Bowman & Company are investigated by the special agents.
104 "It had been discovered," the case's syllabus explains, "that McConico had received large sums during his agency, with which the company were not credited in his stated account." *Hopkirk v. McConico*, 502.
Like so many of the debtors he was charged with pursuing, McConico struck out a deed of trust "on all his property" to settle the outstanding £3,460 balance as of October, 1799. The agreement bought him time, but not much. The deed was executed on 15 February 1800; if the defendant paid $5,000 by the fall, no sale would proceed. Its terms, however, were not met, and McConico's land was sold in March and May of 1801. Also common to the debtors whose accounts he managed, McConico's land was "much involved": "The firm were compelled to pay £490 10s.7d. to clear the trust property from prior encumbrances." McConico was left with a balance due the firm of £871 9s. 10 d. This was the sum for which McConico's securities were sued. Additionally, his creditors asked that he be required to state under oath any collections made, sums that would in turn be pursued from Campbell and Shore's estate, which Webb represented.105

A third resonance connects McConico case with the special agents' work: an allegation that the sale of McConico's estate reflected the soft fraud of an artificially low price. Webb argued that "the property, except the slaves, was sold for fifty per cent. below its value, and if conveyed to them, that it would be sufficient to satisfy the whole claim, and pray to be dismissed." Probably not for the first time, McConico was being dodged by potential debtors.106 But he gave as good as he got: McConico's departure for Kentucky "[s]hortly after the suit commenced" became the fourth

106 Hopkirk v. McConico, 502. This period was, of course, the very height of the Special Agents of the United States' research on the same pre-Revolutionary debts McConico was charged with collecting.
quality the suit against him shared with the special agents' work.\footnote{\textit{Hopkirk v. McConico, Notes, Opinion, and Decree, U.S. Circuit Court, Virginia, 12 June 1812," in \textit{Papers of John Marshall}, 325.}} Countless reports to the Article Six Commission conveyed that debtors had absconded.

The legal question before the court was whether Spiers's extension of additional credit—in the form of the February 1800 deed of trust—mooted the bond that McConico's securities had previously co-signed. (Marshall found this issue a simple one: Yes.)\footnote{\textit{Hopkirk v. McConico, Notes, Opinion, and Decree, U.S. Circuit Court, Virginia, 12 June 1812," in \textit{Papers of John Marshall}, 329.} \footnote{Marshall and Tyler's collaboration on the \textit{Hopkirk} case is an apt reflection of the compromise that drove early federal court organization. Marshall, a reliable Federalist, was positioned to cancel the locally-oriented, Democratic-Republican perspective of John Tyler, who had joined the federal bench after two decades on Virginia's General Court.}} The more difficult question was how McConico's fraud affected the sureties' liability. Marshall acknowledged that the notion that McConico " lulled into perfect security & \ldots supineness" those who backed him had force.\footnote{\textit{Hopkirk v. McConico, Notes, Opinion, and Decree, U.S. Circuit Court, Virginia, 12 June 1812," in \textit{Papers of John Marshall}, 329.} \footnote{Marshall and Tyler's collaboration on the \textit{Hopkirk} case is an apt reflection of the compromise that drove early federal court organization. Marshall, a reliable Federalist, was positioned to cancel the locally-oriented, Democratic-Republican perspective of John Tyler, who had joined the federal bench after two decades on Virginia's General Court.}} The deception did not cancel their obligation, however. "The case is a hard one, but I cannot say, that they are discharged from this liability by an agreement produced by the fraud." The creditors should be made whole, Marshall concluded.\footnote{\textit{Hopkirk v. McConico, Notes, Opinion, and Decree, U.S. Circuit Court, Virginia, 12 June 1812," in \textit{Papers of John Marshall}, 329.} \footnote{Marshall and Tyler's collaboration on the \textit{Hopkirk} case is an apt reflection of the compromise that drove early federal court organization. Marshall, a reliable Federalist, was positioned to cancel the locally-oriented, Democratic-Republican perspective of John Tyler, who had joined the federal bench after two decades on Virginia's General Court.} Webb's efforts notwithstanding, his uncle's liability was unaffected by McConico's dissembling. Marshall referred the details to a commissioner to determine the proper debt.\footnote{\textit{Papers of John Marshall}, 7:330.}

There was a final and most fundamental overlap between \textit{Hopkirk v. McConico} and the work of the special agents: Webb's arguing that the firm's agent should escape the debts that Virginians had themselves tried to escape—like a perverse Ponzi scheme whose black numbers have turned red. That McConico—
again, like several special agents—ended up on the wrong end of an action for debt may have pleased those he'd dunned in years past. Not so for Webb, however, whose uncle's estate would now be asked to pay. Even one of the special agents whose financial wherewithal was least in doubt had a direct relationship with debt in the early nineteenth century.

* * *

Blake B. Woodson, Farmville, Prince Edward, 1778–1842

Blake B. Woodson, exemplary of the special agents in several respects, could also relate to the debtors whose stories he pursued around the turn of the nineteenth century. Woodson struggled to remain solvent, eventually heading west in pursuit of new opportunities. He ended up in court for defaulting on a debt. He may have considered public service a route to a new reputation, but his abortive attempts in politics little helped his prospects. In short, Woodson was yet another example of a younger son of an established Virginia family who failed to thrive in the early nineteenth century.

Woodson's father, Miller Woodson, was clerk of the Cumberland County Court; his son Tscharner served as his deputy clerk.112 Creed Taylor, Chancellor of Virginia and one the most respected attorneys of his generation, was Woodson's brother-in-law and neighbor.113 Family connections no debt helped Blake get

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112 "Woodson Family," WMQ First series 10, no. 3 (January 1902), 191.
113 Woodson regularly checked on Taylor's "Needham" while he was attending court in Richmond or in Lynchburg after being named Chancellor in 1806. (Lynchburg was added to his duties in 1814). Even the most prosaic details of farm life stoked Woodson's storytelling. "The prospect was bad everywhere," he wrote in August 1804. "Corn in particular... began to hang its head. All nature at one time seemed to droop. But at the important crisis, as if the God of nature had just awoke, and when the whole earth was opening its bosom, there fell a
nominated to help establish Farmville, the central Virginia town just south of his home. He continued to serve as one of the town's seven trustees, who functioned like a town council.114 Only months later Woodson was commissioned to investigate prewar debts in and around Farmville as a special agent. He soon sought the votes of those he interviewed, running unsuccessfully for the House of Delegates in 1803 and 1804. He prevailed in 1807 by eight votes, serving one term.115

As was often the case, tragedy accelerated Woodson's difficulties with debt. First, his "fine old residence" burned. Soon afterward, his first wife Sarah died. Woodson sold the residual property to Creed Taylor.116 His threadbare finances—and several transactional tactics on display in his and his fellow agents' reports on pre-Revolutionary debts—were apparent in an 1827 suit decided by Chief Justice John Marshall, sitting on circuit.117 Years earlier Woodson had secured a loan from the Bank of the United States that soon became the nexus of a concentric circle of cosigners. Woodson pledged a tract of land in Cumberland County to indemnify one of these cosigners. Unsurprisingly, perhaps, the land was already encumbered; he had "executed other deeds of trust on the same land for the security of other creditors." The land was sold to satisfy one such deed, that of Samuel Woodson
Venable, but not before a conversation often repeated across the Commonwealth during this period: Would the land be worth more than its liens? Venable decided that it would.\textsuperscript{118}

If competing claims on land were typical of Virginia practice, dubious circumstances surrounding its sale were downright emblematic. Venable and Woodson were not subtle: With the latter much in arrears, the former's only potential to collect was to end up with the encumbered land itself.\textsuperscript{119} It was "struck out to him" despite a higher bid before and during the auction.\textsuperscript{120} Much like William Waller Hening's Reports on British Mercantile Claims, Chief Justice Marshall pulled the curtain on parties' effort to escape their debt: "[A]lthough the fact is not alleged in the record," he wrote, "the reduced price of property, real as well as personal, is a matter of general notoriety, and will certainly justify the defendants in avoiding the payment of this debt, if the law will enable them to do so."\textsuperscript{121} Marshall knew, as his phrasing makes plain, that Virginians often played fast and loose with sales designed to postpone or dodge their debts.

After Venable's death, his executors took steps to compel Swan—the initial cosigner on Woodson's loan—to repay it. This, in conjunction with the sale, proved too much for Marshall and his colleague on the circuit court, Judge George Hay. The


\textsuperscript{119} The common final step in the fraud was for the original debtor—Woodson, in this case—to continue using the land as though no sale had taken place. The record is quiet on whether this was the intent in this case.

\textsuperscript{120} Marshall is clear about the debtor's complicity: "A higher price had been offered for the land and rejected by Blake B. Woodson. This offer was repeated during the bidding, and again rejected... ." Swan v. Bank of the United States, 295.

\textsuperscript{121} Swan v. Bank of the United States, 297. A goodly amount of Marshall's law practice in the late eighteenth century involved litigation on debts—Marshall often represented the creditors. This fact, in addition to his Federalist inclinations, no doubt occurred to Woodson et al. when reading his opinion.
Venables’ actions “cannot be sustained when viewed in connexion [sic] with those circumstances,” Marshall wrote. The federal courts would not compel Swan, singly, to bear a debt that also bore the signatures of so many other Virginians.122

Woodson’s circumstances were as dire as Swan v. Bank of the United States suggested. Like so many of the pre-Revolutionary debtors he pursued, Woodson had headed west by the time his creditors’ cause was heard. He gave his deposition in Clarksburg, West Virginia, on 1 November 1825.123 Cumberland County had another Woodson as clerk, so Blake moved to West Virginia to become clerk of court in newly created Fayette County. Solvency proved just as illusive there, however, and Woodson’s new family was undermined by the difficulty.

Generations of Virginia children could have recalled debt’s heart-rending effect on their upbringing. Blake Woodson happened to adopt one whose recollections had special purchase with Virginians, and southerners generally:

Thomas Jonathan Jackson. Jackson’s mother Julia was widowed, poor—even homeless for a time—at age 28.124 She and her three children were less inclined to look dimly on Woodson’s proposal than some of her family. They had howled when the “sort of decayed gentleman,” fifteen years Julia’s senior, came courting, and they offered to take her children if the two decided to marry. They wed on 4 November 1830. Four months later the Virginia General Assembly carved a new county out of the New River Valley. The family was soon headed there, Woodson having been

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124 Jackson’s biological father, too, had been an attorney who fell on hard times. In 1815, not unlike several of those who served as special agents, Jonathan Jackson sold property and sought personal loans to cover serious shortages in his practice’s accounts. Robertson, Stonewall Jackson, 5, 8.
invited to serve as clerk by a Clarksburg judge. Hard times continued in Fayette County, today in West Virginia. Not long after arriving he decided the Jackson children were too expensive, and looked to take up his new in-laws’ offer to raise them. He finally prevailed in 1831, when Tom moved to Jackson’s Mill, in Lewis County, West Virginia, to live with his step-grandmother Elizabeth Brake Jackson. Three months later his beloved mother was dead from tuberculosis.

Like many of the debtors he and his colleagues interviewed, Woodson’s legal practice struggled while his debts multiplied. He experienced profound financial and personal losses, not to mention flat bad luck. He looked west for new opportunities, but experienced more frustration still. Complicated obligations were sorted out in federal court, perhaps contributing to Woodson’s migration. The last years of his life brought trouble to those around him. At Woodson’s death in 1833, “His worldly assets consisted of about fifty articles of household and kitchen furniture.” His own story had come close to replicating the most disappointing related by debtors explaining their pre-Revolutionary debts.

* * *

Charles Fleming Bates, Richmond, 1772–30 May 1808

Charles F. Bates, an attorney “in very extensive practice” in Richmond and Goochland County, was another of the special agents well suited to the role’s

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125 Named for Marquis de Lafayette, the Woodson’s new home was bona fide wilderness. Their home was located approximately 50 miles southeast of present-day Charleston, West Virginia. Robertson, Stonewall Jackson, 8–9, quote on 8.
126 Robertson, Stonewall Jackson, 8–11. Jackson was deeply affected by his mother’s death throughout his life; there is no record of him ever having spoken of his stepfather. Woodson married again on 27 December 1832.
127 Robertson, Stonewall Jackson, 11.
detailed, quasi-legal research. Bates's law practice in and around Richmond kept him much engaged with the debts of leading Virginians. When Wilson Cary Nicholas, then a United States Senator, forwarded two bonds to Peyton Randolph for collection in Goochland County, Randolph did not hesitate to forward the business to Bates. He told Nicholas after the fact. Surviving letters written by Bates's close family repeatedly complain of his being too busy to write, "absorbed in Law."128

His contemporaries deemed Bates "one of the most precise and particular men in the world." After his death it was suggested that, like some of the debtors he and his colleagues interviewed, Bates was among those "many men . . . in the habit of preserving every paper they ever had in their lives."129 These papers, and their interpretation by the Virginia Court of Appeals, told a story as engrossing as any he'd hear from a Virginia debtor.130

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128 Randolph called Bates "a very active collector"; his brother Richard Bates, whom Charles had attempted to hire as a collector, reported to their mother that "his professional duties will not permit him to leave his circuit for any length of time." Randolph to Nicholas, 10 June 1803, Papers of the Randolph Family of Edgehill and Wilson Cary Nicholas, Box 1, Folder 90, Special Collections, University of Virginia Library; Richard Bates to Frederick Bates, 3 August 1803; Richard Bates to His Mother, 12 February 1806; Tarlton Bates to "Brother," Frederick Bates, 2 September [1800?], all in Bates, Bates et al., 58, 54, 51.
130 The "very elaborately argued" Bates v. Holman comprises close to fifty pages in the Supreme Court of Appeal's reports. The report includes both of Bates's wills and the codicil he appended to the first; a précis of the case's history in the District Court and of the testimony of nine witnesses; and, of course, the Court's opinions themselves. Bates v. Holman, 512. The court reporters were William Waller Hening and William Munford, who, like Charles F. Bates, had had investigated Virginia's prewar debts during the years just past.
Virginia Courts entertained a challenge to Bates’s will—more properly, wills—for almost a year after his death in May 1808. The reflections on Bates’s fastidiousness referenced above were more than idle remembrance—they were legally significant conclusions drawn by Judge Spencer Roane toward the end of a sustained and contentious lawsuit. The controversy included two arguments before Virginia’s Court of Appeals; three opinions from its judges, including two among the most renowned in Virginia legal history; and the participation of six attorneys, likewise among the most famous the early Commonwealth produced. These actors performed in a context defined by three competing estate documents Bates drew up between 1799 and 1805.

131 The Virginia Supreme Court’s en banc rehearing was held in April 1809. Bates v. Holman, 520.
132 Virginia’s court of last resort was called the Court of Appeals from 1779–1830, the Supreme Court of Appeals from 1830 to 1971, and since that year the Supreme Court of Virginia. “An act for establishing a Court of Appeals,” October 3, 1778; and “An act constituting the Court of Appeals,” May 3, 1779, Hening’s Statutes at Large 9–10, 1775–1781; “An act to amend the several acts concerning the Court of Appeals and Supreme Court of Appeals,” Acts of Assembly, April 8, 1831; 1830 Constitution of Virginia, article 5, §3; 1851 Constitution of Virginia, article VI, §10 and §11; 1864 Constitution of Virginia, article VI, §1, §10, and §11; 1870 Constitution of Virginia, article VI, §2; bill, “On the Court of Appeals,” §1, passed June 23, 1870, Acts of Assembly; 1902 Constitution of Virginia, article VI, §88, as amended June 18, 1928; Va. Code §17.1-300 (2002).
133 In addition to Roane, whose opinion from the first hearing is not recorded, Judge St. George Tucker submitted opinions reversing the District Court after each argument. After the rehearing, Judge William Fleming wrote an opinion that agreed with Judge Tucker’s conclusions. Bates v. Holman, 502–548.
134 The first argument at the VSCA featured George K. Taylor and George Hay for Mary Heath Bates, the testator’s widow, and Daniel Call, William Wirt, and Edmund Randolph for George Holman, Bates’s executor. William Wickham joined Mrs. Bates’s legal team for the VSCA’s reargument. The assembled legal talent reprised, in large measure, Aaron Burr’s treason trial of a year earlier. Hay, Virginia’s federal prosecutor from 1803–1816, collaborated with Wirt—and President Thomas Jefferson—to try Burr. Opposite them were Randolph and Wickham, whose infamous April 1807 dinner party included attorneys from both sides along with Chief Justice John Marshall, then presiding over the Burr trial. The soiree confirmed for historian Peter Charles Hoffer, as Bates v. Holman might for us, “the incestuous nature of the Richmond legal community.” The Treason Trials of Aaron Burr (Lawrence: University Press of Kansas, 2008), 128; Bates v. Holman, p. 512.
In November 1799 Bates executed the will of a son; within four years he
replaced it with that of a father.135 Unmarried and childless at the turn of the
century, Bates viewed his estate as “principally for the benefit of Caroline M.
Bates”—his mother—“and under her own free and particular control.”136 He also
declared that his two slaves, Isaac and Charlotte, “shall be free, at all events” when
they turned twenty-one and eighteen, respectively.137 In 1801, however, their coming
freedom was foreclosed in a two-sentence codicil.138

Bates continued his every-other-autumn attention to his estate in September
1803. His siblings now received individualized bequests: His younger brother
Edward was to “be schooled at my expense,” and sisters Anna and Caroline Matilda
were to receive $100 each—Margaret, too, if she “shall be single . . . or married to a
man worth less than three thousand dollars.” Perhaps influenced by recent years’
squabbling over debts a generation old, Bates gave clear instructions about his own
obligations: Those on his books should be honored, but any other should be “proved”
at law. (Bates also made clear that the timing of his sisters’ bequests should not do
“injury to my creditors.”) These considerations followed an opening reference to his
mother’s happiness, which remained Bates’s “most ardent wish.”139 The will’s
conclusion was something else altogether.

136 “This will and codicil shew a firm and steady purpose,” in Judge Roane’s words, “to
provide for his mother and his father’s family.” Bates v. Holman, 522. Emphasis in the
original.
137 Bates v. Holman, 504.
138 The codicil’s oblique wording may reflect the testator’s discomfort: “. . . as to Isaac and
Charlotte, I revoke to, preceding part of my will but not as to any thing [sic] else.” Bates v.
Holman, 503.
139 Bates v. Holman, 504.

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I have a daughter called Clemensa, at Walter Keeble's, in Cumberland, I declare her to be free to every right and privilege which she can enjoy by the laws of Virginia. I most particularly direct, that she be educated in the best manner that ladies are educated in Virginia. I give her my lot in the town of Cartersville, and three hundred dollars, to be laid out at interest, renewed yearly, and paid when she marry or come of age.\textsuperscript{140}

An unexpected daughter by an unnamed mother, all but unmentioned in Bates v. Holman's testimony.\textsuperscript{141} (William Clarkson seems to have been the only witness to mention her: Judge Tucker's notes of his testimony convey only that Clemensa was a "natural daughter about four years of age."\textsuperscript{142}) These limitations begin our effort to, with the judges of the Court of Appeals, "take a short retrospective view of the situation and circumstances of the testator, and of his connections."\textsuperscript{143}

Bates had "formed an imprudent (though not uncommon) temporary connection," as Judge Fleming put it, with his own or another's enslaved woman.\textsuperscript{144} Clemensa lived with two families during her first few years, neither of them Bates's.\textsuperscript{145} William Clarkson's was the second. She boarded there beginning in October 1805, and he remembered three years later the extraordinary story that accompanied her. Though unmistakably fond of the child and committed to her

\textsuperscript{140} Cumberland County was incidentally the home of Judge Fleming, the president of the court, as its most senior member was designated. Bates v. Holman, 504–505.

\textsuperscript{141} Bates's provision for his daughter was one of a relatively small—but not insubstantial—number of estates that subtly challenged many among the South's intertwined racial and legal norms. Adrienne Davis explores the potential of private law to expose a slave society's hypocrisies in her "The Private Law of Race and Sex: An Antebellum Perspective," Stanford Law Review 51 (1998–1999), 221–288. The "obvious challenge" courts faced, in her telling, was how to "uphold property rights (in this case, testamentary freedom) without disrupting racial hierarchies." Bates's story serves as a kind of archetype Davis uses to present questions she seeks to answer in the balancer of her article. p. 226, 233–236.

\textsuperscript{142} Bates v. Holman, 17 November 1808 (2), St. George Tucker Papers, Folder 19, Special Collections Research Center, Swem Library, The College of William and Mary.

\textsuperscript{143} Bates v. Holman, p. 539.

\textsuperscript{144} Bates v. Holman, p. 540.

\textsuperscript{145} Only one of the nine witnesses whose statements are recounted in the Court of Appeal's spoke of Clemensa at all. Davis, "The Private Law of Race and Sex," 235.
support, Bates explained to Clarkson that he was not her father. That notwithstanding, he shared a plan to send Clemensa to Pennsylvania's Bethlehem College “till her education should be as complete as any lady's in the country.” If Clarkson suspected in the fall of 1805 that Bates was her father—and how could he not?—he omitted such thoughts from his testimony in the challenge to Bates's will. What other circumstance would explain Bates's abiding interest in Clemensa's well-being? What else would explain the alias Bates ascribed to Clemensa's father—equally unbelievable, affecting, and redolent of Robert Munford's fiction: “George Alexander Stevens Trueheart”?146

The ambiguities in Bates's and Clemensa's story are as compelling as any he or his fellow travelers heard from Virginia debtors earlier in the decade. Bates disclaimed “the fruit of his unhappy amour” in public but provided for her amply.147 The law allowed her no claim on his estate, but it did accept his inclination to extend her a bequest.148 The law also deemed her a slave; Bates saw her instead as a Virginia “lady.” His aspirations for her future depended on his second will's guiding the division of his estate. Her fate was immaterial to the analysis advanced by the

146 Bates v. Holman, p. 509–510. Like most Virginians of his era, Bates would have been familiar with Robert Munford's The Patriot, written in 1770 but first published by his son in 1798. Among Munford's suggestively named characters—Guzzle, Tackabout, Worthy—was its hero, Trueman. Seen differently, the alias Bates ascribed to Clemensa’s father is not wholly unbelievable; there may in fact have been a more personal and present Trueheart of that name. Though I have not found the given name “George Alexander Stevens,” the family name was not uncommon in central Virginia during this period.
147 Bates v. Holman, 540.
parties and judges in *Bates v. Holman*. The arguments about the testator's intent did not reach his hopes for Clemensa's future.\textsuperscript{149}

Clemensa's birth in the first or second year of the nineteenth century began a tumultuous few years for her and for her father. The historical record is more helpful in his case. Charles Bates's father Thomas died in May of 1805.\textsuperscript{150} His financial well-being apparently eroded along with his health, though he had experienced reversals as far back as the Revolution. His fortunes recovered somewhat during the late 1780s and early 1790s, but in the spring of 1795 he was compelled to secure a £350 deed of trust with everything from livestock to household furnishings. Three years later Belmont and some 500 acres would be pledged in similar fashion. Another three years and the "trust was foreclosed and the property sold at auction on July 20, 1801 to Charles Fleming Bates as the highest bidder in the sum of £799 and 5 pence."\textsuperscript{151} Like many of the debtors he'd spoken with only months earlier, Thomas Bates and his family sold their home under circumstances not of their choosing. Charles Bates paid with Isaac and Caroline's freedom.

Charles and Mary Heath Bates were married the following May. Two years later, and two days past his second wedding anniversary, Charles Bates died after a brief illness. Some months before his death, Mary Bates had given birth to a child


\textsuperscript{150} *Bates v. Holman*, 511.

\textsuperscript{151} Goochland County Deed Book #18 (October 10, 1801), 422, quoted in Elie Weeks, "Belmont," *Goochland County Historical Society Magazine* 12, nos. I & II (1980), 41–42, quote at 42. Bates' September 1801 codicil expresses the wish that the purchase's outstanding balance "be raised . . . as soon as possible." These "pecuniary engagements, perhaps beyond what he formerly contemplated," explain his rescinding Isaac's and Charlotte's manumission in the same codicil. *Bates v. Holman*, 503, 540.
who did not survive. The ground had been shifting beneath the Bates family for several years by the time they squabbled over Charles's estate in 1808 and 1809. And his serial and contradictory wills—attempts to remap the terrain—ensured that everyone with an interest had an argument to match. The wills and the arguments deserve another, somewhat more painstaking look.

Bates's first will and codicil were "addressed to" and "deposited" with his mother who, again, stood to benefit handsomely therefrom. His second will, however—that written on 2 September 1803—was "laid away smoothly in a small box, with other papers, and curious bits of coin, and deposited in a trunk" in Bates's house. None questioned that all three documents were written in Bates's hand, or that he properly executed all three. In fact—and quite importantly—he signed the second will twice. This 1803 will included standard language revoking earlier estate provisions, a "postscript" that was also executed. It was this unaltered signature on which the case and the estate turned once Bates cut out his signature executing the main body of the second will. This he did "nearly in the shape of a coffin," in the court reporters' macabre, if not inapt, description.

In its simplest form, the question before Virginia courts was whether Bates's defacement of the 1803 will also mooted its clause revoking earlier wills. If this revocation of the first will was no longer in force—there was no debate that Bates had revoked his second will—the first would govern the distribution of his estate.

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152 The marriage took place 28 May 1806; Bates died 30 May 1808.
153 Hening and Munford, the Supreme Court's reporters, analyze these competing wills in impressive detail: the paper, pen, ink, folding, and importantly, filing are all evaluated. The court's opinions are similarly attentive. Bates v. Holman, 505–506.
154 Bates v. Holman, 505.
155 Hening and Munford's syllabus of the case is admirably concise and direct on this point. Bates v. Holman, 502.
Bates's mother would remain the chief beneficiary under this 1799 will and analysis. The Richmond District Court embraced this thinking when it decided the case on first impression.\textsuperscript{156}

However, if Bates's cancellation of the 1803 will \textit{did not} disturb that document's language on revocation, the first will was moot: He died intestate. Here, Virginia law would call for a greater measure of his estate to accrue to Bates's widow, who is unmentioned in the estate documents.\textsuperscript{157} This is the claim Mary Heath Bates brought to the Virginia Court of Appeals, and the claim its judges endorsed over the energetic dissent of Judge Spencer Roane. For all Bates's efforts and the legal wrangling they spawned, his estate was settled as it would have been had he never put pen to paper.

This irony is compounded by the testimony and the Court of Appeals' opinions. The Court of Appeals' decision to admit testimony as to Bates's intent—a holding that the case solidified in Virginia probate law—does little to clarify the competing claims.\textsuperscript{158} And though the case turns on Bates's intent, neither the judges nor the one scholar who opined on the case troubled themselves over Bates's coffin-shaped cutout.\textsuperscript{159} Is there, as Judge Tucker claimed, not "one tittle of evidence"

\textsuperscript{156} Bates v. Holman, 506.
\textsuperscript{158} Bates v. Holman, 502, 506–512. Judge Roane dedicates a good fraction of his opinion to this question. 526–530.
\textsuperscript{159} Adrienne Davis, the only scholar to grapple with the Bates litigation, dismisses the notion of a fraud by another in cutting out Bates's name. However, given Judge Fleming's references to "remarks that have been thrown out on the conduct of the parties," we might wonder if this was argued by any of the half-dozen attorneys who participated in the case. (Judge Tucker's observation cited on the following page could also have conceivably addressed such a claim.) A theory that Bates's wife made the alteration would solve several of the case's difficulties, but it would also compel us to disbelieve testimony before the Supreme Court of Appeals. See in particular Frederick Woodson, for example, "understood
explaining “what passed in the testator's mind when he cut out his name in one place, and left it standing in another”?160 Why did he cancel the second will?

The closest we may get to an answer is debt. In Bates's life and death, as in the experience of so many Virginians at the turn of the nineteenth century, indebtedness is the ghost at the feast, a driving yet unacknowledged force. Nearly every actor in Bates v. Holman agreed that Charles Bates intended to cancel his second will. None, however, mentioned that it was the only one that spoke directly to the payment of his unmet obligations. Was the choice between his mother's and wife's interests a distraction from his choice not to honor his own building debts? Did the judges' focus on who would recover distract from a consideration of who would not? The record's silence on this question is even more profound than its consideration of Clemensia's future. Even if the judges of the Court of Appeals inferred that this was among Bates's motives, they were no better positioned to mention it than the Special Agents of the United States who were complicit in their neighbor's attempts to elide debts.

Indebtedness also drove individual actors in the challenge to Bates's will. Here, too, its role went unacknowledged, as in the case of Bates's mother's intent. During argument there were “remarks thrown out on the conduct of the parties” by counsel:161 Judge Tucker so lamented them by beginning his opinion with an apology.

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160 Bates v. Holman, 516. After underscoring the absence of this evidence three times, Judge Tucker writes that his analysis is independent of any of the case's testimony.
161 Bates v. Holman, 514.
There is nothing in the testimony, or in the evidence, as I conceive, to impeach the conduct or character of any of the parties: a circumstance which I mention for the sake of those who may have been hurt by the sarcasms and insinuations which were more than once indulged in the argument of the cause: and which evidently have had the effect of wounding the feelings of respectable persons, without advancing (at least in my opinion) the cause of their clients respectively.162

Judge Tucker's notes on the argument, which he carefully preserved, are of limited help in demonstrating what so troubled a judge then in his twenty-second year of service on Virginia courts.163 Though potential explanations abound, it appears that the reaction of Mrs. Bates—Charles' mother—to the discovery of his first will drew unkind inferences from counsel.164

The Richmond District Court settled Bates's estate within weeks of his death based on his second will, which was discovered in his personal effects. His first will,

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162 Bates v. Holman, 514. An explanation for this apology also goes wanting in the balance of Bates v. Holman and Professor Davis's article.
164 Thomas Bates's declining fortunes, Clemensa's future care, and a perhaps predictable squabble between new bride and her mother-in-law may have all fomented sharp words. Only the last appears in the record, however, and that only sparingly. Bates v. Holman, 508-509.
deposited with his mother, went undiscovered for several weeks more. This will, of course, made Bates's mother his "principal legatee and devisee." William Miller, perhaps a suitor of Bates's sister Matilda, recalled Bates's sister locating the will and handing it to her mother. "[O]ld Mrs. Bates appeared to be much affected when she saw the will," Miller said, "and seemed as if she would faint, and one of her daughters stepped up to her and fanned her." The court reporters' next comment, no doubt elicited by close questioning, hints at the charges leveled during the case. About Mrs. Bates's spell "the witness could not tell whether this appearance was the effect of surprise, of satisfaction, or grief." The attorneys no doubt pressed alternative claims of a mother's grief and a legatee's greed.

Bates's mother's hopes of inheriting were revived when the first will was found. Though Miller "[c]ould form no idea what occasioned the old lady's emotions," Bates's widow’s attorneys were less circumspect. Their arguments addressed this point too sharply for Judge Tucker's tastes, and earned an even more emphatic rebuke from Judge Roane. Of "[t]he circumstance now so much commented on by the appellant's counsel" he says that there is no reason to think that it was caused "by any improper or dishonorable conduct on the part of this lady, [for] there is not the least pretence [sic] for such an idea."

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165 Tucker's notes on William Miller's testimony, 17 November, 2.
166 Bates v. Holman, 509.
167 Tucker's notes on William Miller's testimony, 17 November, 2.
168 Bates v. Holman, 535-6. Tucker and Roane agreed on this point during a period where comity was in short supply in their court. Bates v. Holman contributed to hard feelings among the judges. Judge Spencer Roane treated his colleague St. George Tucker roughly in conference on 27 and 28 April, and in open court on 11 May. Roane had been irked by what he perceived as Tucker's overreaches for some time; a decree he drafted before conference proved too much. "Mr. Roane took the paper, and threw it on the floor, in a great passion, and said he would have nothing to do with it . . . and in a menacing attitude, rising from his chair, with the first of his right hand in the palm of his left, used many other harsh and
But there was, in fact, a "pretence," and more. Bates's mother was drowning in debt. Not long after the death of her husband, Caroline Bates parceled out the younger of her seven sons and five daughters to other relations; their fates, for a time, had more in common with Clemens's than the family might have comfortably acknowledged.\footnote{Goodwin, \textit{Team of Rivals}, 44.} Thus her response to the rediscovered first will, like so much else in Virginia during this period, was inextricably bound to her chronic and increasing indebtedness. Perhaps its ubiquity contributed to the record's silence. It was both unbecoming and unnecessary to affirm that Thomas Bates left his widow in dire circumstances that his son's estate might have buoyed.\footnote{A decade later Bates's family and his widow were still at cross purposes in Virginia Courts. In 1818 the Goochland County court assigned commissioners to value and apportion the 24 slaves who were a part of his estate. Bates's mother, together with his siblings, sued his widow, who had since married John H. Christian. The twenty-four enslaved women, men, and children together were valued at $11,600 and divided into two lots. The Christians received one, and the Bates family the other, with the latter further divided into nine distinct...}
Charles F. Bates's will and the legal challenges that followed do little to fill the coffin-shaped hole in the testator's intent. Bates's methodical approach to the practice of law, his obvious prior attention to his estate, and the speed of his final illness all make his last hopes for the final division of his estate an intractable puzzle. The record is quieter still on the debts that motivated several actors during the first decade of the nineteenth century. Though less arresting than unexpected interracial children or unpleasantries between wives and mothers-in-laws, this reluctance to speak of debt may be the case's most profound statement. Bates, an attorney whose very livelihood depended on the structuring and collection of debts, and for a time investigated those predating the Revolution, literally cut them out of the conversation.

Bates's second will was unique not only in its clear provisions for the payments of debts, but for its hope to provide amply for Clemensa's future. When Bates cut his name out of this will, he emptied a promise to an African American of its legal force—for the second time. These reversals are impossible to understand without accounting for the family's considerable debt. In a case made more difficult by several competing records, only one spoke of debt. And no matter that will's importance, or the important role debt played, both were all but absent from the fifty pages of argument and opinions in the record and the dozen pages of notes taken by Judge St. George Tucker. Debts, and unpayable debts to African Americans, were things that need not be named in early-nineteenth-century Virginia. The experience of Charles F. Bates's family after his death underscores the unique quality of his work as a special agent just a few years earlier.

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To no one's great surprise, the five Article Six commissioners who convened in Philadelphia in the late spring of 1797 were unable to resolve the nettlesome, decades-old questions put to them. The British delegates' demands were too exacting, in the view of their American counterparts. The British thought the Americans never intended to negotiate in good faith. In the last analysis their discussions extended the pre-Revolutionary debtors' efforts to delay, deny, and deflect collection. But they also asked Virginians to consider their unmet obligations in thousands of conversations with Special Agents of the United States around the turn of the century. These interviews describing responses to debt in late-eighteenth-century Virginia were suddenly worthless in setting the debts, but priceless in explaining them, and what came after. Put differently, the Commission's failure left the agents' reports without an audience. More than two centuries hence, no other has appeared.

The special agents, however, were more attuned to the fact that the Convention ratified on 8 January 1802 nullified not only their work but their jobs. The Republicans who reviled it from the first offered no burial at all. "You will be pleased to give instructions to the Special Agents employed under that Article [Article Six of the Jay Treaty] conformably with this Intimation," Secretary of State James Madison wrote Read later that spring. Read's work, too, was "at an end," but Madison found that he would have to do better than intimate to persuade the general agent. Nearly a year later he discovered that Read had submitted expenses during the last quarter of 1802 "to nearly $1,000"—and that figure excluded "payments to the subagents." This would not do. "[L]est it therefore should be
possible that the same course may be continued," Madison wrote, "I have to express to you the President's order that no further expense be incurred . . ." Perhaps calling Read to account for bills no one had an appetite to pay was a proper end to the special agents' work.171

The matrix of special agents' competing perspectives on their work to investigate pre-Revolutionary debts invites us to consider their response to their project's denouement. Broadly uninterested in seeing merchants made whole, suspicious of the very federal authority that sent them afield, in league with their fellow Virginians and fellow Democratic-Republicans—yet recipients of a welcome government stipend—their responses would have been rich and textured. Perhaps not inappropriate, given the detail they'd collected in recent years. Some no doubt regretted the passing of a sinecure; others may have been happy to be done with work so exclusively focused on debt. After all, as a look at episodes in, and after, several of their own lives teaches us, their service as Special Agents of the United States was in many ways a more potent distillation of their own experience. They "watch(ed)" their debtors "grow, marry, have children, lose children, do and say awful things, have hopes, be disappointed, and display kindness, pettiness, tenderness, and brilliance"—often in the same paragraph.172 William Waller Hening was the Virginian best prepared to serve as a Special Agent of the United States. We turn now to his life and times.

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171 6 May 1802, Papers of James Madison, Secretary of State Series vol. 3, 191; 8 April 1803, Papers of James Madison, Secretary of State Series vol. 4, 488.
Chapter Six

William Waller Hening and Virginia Debts

No character was more visible in the Reports on British Mercantile Claims than Charlottesville attorney, prolific legal writer, and courthouse gadfly William Waller Hening. He wrote more reports than any of his fellow Special Agents of the United States. He wrote with a uniquely rich sense of the political and procedural context for Virginia’s pre-Revolutionary debts. His ample research on Virginia’s laws, together with his practice in Virginia courts, singularly prepared him to fashion telling abstracts of individual debts. Most of the special agents “worked with their eyes down,” as S. F. C. Milsom has written of attorneys generally, “preoccupied with today’s details.” William Waller Hening’s perspective was admirably broader, encompassing not just Virginia’s experience but the national and international reach of his research.

Hening also played, and continues to play, a significant role in Virginia history and historiography. His *Statutes at Large*—the authoritative collection of Virginia laws from 1619 to 1792 published after his service as a special agent, from 1809 to 1823—are ubiquitous in modern historiography on early Virginia. Their author is the most cited Virginian about whom we know the least. Indeed, even as a special agent Hening hides in plain sight: John Bassett Moore’s exhaustive history of the Article Six Commission discussed in Chapter Three mentions him only in a

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2 *The Statutes at Large: Being a Collection of all the Laws of Virginia, From the First Session of the Legislature, in the Year 1619*, 13 vols. (Richmond and Philadelphia, 1809–1823). Commonly referred to as *Hening’s Statutes at Large*, this irreplaceable collection is the scaffold for countless histories of Virginia and beyond.
footnote—and only as the compiler of the *Statutes*.\(^3\) Hening deserves to be delivered from our annotations. While not the robust biography he deserves, this chapter aims to illuminate his life and work insofar as it informed the reports he submitted on Virginia’s pre-Revolutionary debts.\(^4\)

I offer a view of Hening’s life and career that looks outward from his work traversing the Commonwealth between 1798 and 1801. I begin by offering a brief biography. Then, with a view toward their relevance to his reportage on pre-war debts, I explore his law practice and his legal research and writing, paying special attention to two key publications. Finally, I suggest how this preparation, in addition to his deep connections across the Commonwealth, affect the process he employed in researching pre-Revolutionary debts and the product that resulted. All along, I mine the detail Hening himself adds to our understanding in his reports on pre-war debts. There, as in so much evocative writing, we learn a good bit about our author.\(^5\)

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William Waller Hening was born in Culpeper County in 1767. The area was thick with Henings, a large family whose comings and goings William followed with interest. Hening’s “preceptors,” as he described them in the reports on British debts

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\(^3\) Moore, ed., *International Adjudications* 3:199.


\(^4\) *The American Pleader and Lawyer’s Guide* (New York: Isaac Riley, 1811), “Preface.” I am grateful to Neil Hening, a direct descendant, for talking through his forebear’s life with me. I look forward to his planned Hening biography.

\(^5\) It is an unfortunate irony that one who wrote so regularly and carefully left no cache of papers. Here again, I appreciate Neil Hening confirming my sense that Hening’s papers are not extant.
he investigated, were the Rev. John Price and Adam Goodlett, with whom he studied classics in 1784. Their paths would cross again during Hening's work as a special agent. Price shared several debtors' stories with his former student, and married one debtor's sister-in-law, we learn. His instructor Goodlett, on the other hand, owed £11.10.3 ¼ to William Cunninghame & Co., a debt Hening dutifully ran to ground.6 Hening likewise reported on the debts accrued by several neighbors he would have known as a child. His father, David Hening, contributed to the support of the widow and children of Joseph Grace, who died while returning from the Revolutionary War. Nicholas Green's widow, also a neighbor, sued Hening's father in 1786 under complicated but not uncommon circumstances involving her husband's estate.7

When Fredericksburg's new District Court opened in 1789, Hening was admitted to practice alongside James Monroe, John Taylor, Bushrod Washington, and, most notably, Washington's future colleague on the Supreme Court, John Marshall.8 Marshall's second cousin and ideological adversary Thomas Jefferson

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6 Walker, "William Waller Hening" 19; Price had relocated from Culpeper to Fayette County, Kentucky by the time he shared the whereabouts of debtors Benjamin, Elijah, Taliaferro Jr. and Joseph Craig. It was the sister of William Hawkins's first wife whom Price married. V32:N4:271; V33:N1:24. Goodlett moved to Kentucky in 1795; when Hening last received one of his letters, he understood his former teacher to be solvent.

7 Hening wrote of debts both owed to merchant Robert Jardine. V27:N2:112–113. Grace's he predicted was beyond any recovery. Green's, on the other hand, he judged doubtful but not impossible. Rather defying summary, its background includes most of the more interesting details to populate claims Hening contributed to the reports. In sum, Green, whose "insolvency . . . before the war was completely established," sold slaves gifted to him and his bride by his father in law, Arjalon Price. (Hening's father seems to have been among the buyers.) Price, discovering the slaves' sale, sought to revoke his will so that his daughter and grandchildren might continue to benefit therefrom. "This fraudulent attempt of Mr. Green's father-in-law was the foundation of a long and expensive suit which terminated in favor of Hening's father in 1795," Hening wrote in the third person. No collection followed; Mrs. Green took her children to Kentucky not long after the decision. If Hening represented his father in the suit, Hening did not mention it, as he often did in similar circumstances.

8 Roeber, Faithful Magistrates, 210.
would establish a more lasting connection with Hening. Jefferson became the patron and advocate for Hening’s compilation of Virginia statutes. Indeed, a careful student of Virginia history calls Hening, who was a generation younger than his Albemarle neighbor, a “Jefferson disciple.”

The year after his admission to the bar, Hening married quite well for a fellow with his aspirations: his wife, Agatha Banks, was the daughter of the clerk of Stafford County. (Hening’s brother Robert, who also served as a special agent, became the clerk of the general court in nearby Fredericksburg in 1806.) William and Agatha had seven children, five daughters and two sons. Hening seems to have thrived as a young attorney, moving into Fredericksburg from Spotsylvania County after he and Agatha were married about a year. Within another two years he had relocated to Albemarle County. Before long he had once again chosen town living, settling close to what thirty years on would become the University of Virginia’s grounds. Hening repeated his practice after relocating first to Henrico County, then to Richmond during the first decade of the nineteenth century.

Hening was a young professional on the make during thirteen or so years spent in Charlottesville. Here he began his work as a legal scholar, publishing The New Virginia Justice in 1795. Here he became a Mason, rising to fill a couple of offices—including chairing the “Committee on Work”—while he was researching debts. Here he first embraced public service, representing his neighbors in the General Assembly beginning in 1804. And here he was based during his turn-of-the-

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11 The Committee on Work, perhaps a duty ascribed to new Mason, was an apt posting for the industrious Hening. He also held a statewide position in 1801. Brown, 94.
century investigations into Virginians’ unpaid prewar debts. These conversations about fellow Virginians’ most trying circumstances occurred while Hening’s own finances were as hale as they would be in his lifetime.

Hening’s familiarity with the courts and character of both Fredericksburg and the Charlottesville area helped suit him to investigate claims of prewar debts. His connections across the Commonwealth deepened, too, after his work on British mercantile claims. Hening was elevated to Virginia’s Executive Council after two terms in the House of Delegates. He reached the apex of the Commonwealth’s Masonic order while serving on council. In 1810 he resigned the post to become clerk of the Superior Court of Chancery, a role he fulfilled until his death in April 1828. Hening fulfilled leadership positions for the Commonwealth throughout the last quarter century of his life.

A decade of practice, much of it involving actions for debt, was a real boon when Hening began researching the British mercantile claims. Hening had witnessed, participated in, and written about—often, all three—every conceivable legal cause. Thus many of his reports all but wrote themselves, since they sprang directly from his practice. “I was employed in this,” William Hening wrote of appearing for defendants in suits for debt, “long before I received the appointment of

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special agent for the United States.” His work seems not to have blinded him to just outcomes, even when adverse to his client. When a claim was presented in the last debt case in which William Hening represented a defendant, he reviewed several possible alternative strategies—not unlike a modern law professor—before ultimately advising William Barksdale’s executors to pay.\textsuperscript{15} Indeed, so ubiquitous was he in the courts of piedmont Virginia that he resigned a post, and welcome remuneration, as a federal bankruptcy commissioner. Hening “had been consulted as a lawyer in every bankruptcy case occurring in ‘this part of the state,’” he wrote to Secretary of State James Madison in 1803, a fact “incompatible” with the commission he’d received some nine months earlier.\textsuperscript{16}

Indeed, both William Waller Hening and his legal publications, which judges and counsel alike kept at close hand, were a constant presence in Virginia courtrooms. Hening’s publication of \textit{The New Virginia Justice} in 1795 was a new turn in his career and in the practice of law in the Commonwealth.\textsuperscript{17} A ready reference for justices of the peace, Hening’s book quickly became a critical part of their work. Its title suggests its reach: \textit{The New Virginia Justice, Comprising the Office and Authority of a Justice of the Peace, in the Commonwealth of Virginia. Together with a Variety of Useful Precedents Adapted to the Laws Now in Force, To}

\textsuperscript{15} V29:N4:302–303.
\textsuperscript{16} Hening’s appointment as a bankruptcy commissioner, like his work as a Special Agent, put his income and political principles at odds; these principles may have also informed his resignation. The Bankruptcy Act of 1800, passed by a single vote in the House of Representatives, was a victory for commercially-oriented Federalists. It led, in turn, to the smaller victories for the mercantile class in bankruptcy proceedings Democratic-Republicans feared, and so it was repealed just months after Hening resigned. \textit{Papers of James Madison} Vol 4, 302. Charles Jordan Tabb, “The History of the Bankruptcy Laws in the United States,” \textit{American Bankruptcy Institute Law Review} 3, no. 5 (1995): 14–15.
\textsuperscript{17} W. Hamilton Bryson, ed., \textit{Virginia Law Books: Essays and Bibliographies} (Philadelphia: American Philosophical Society, 2000), 244.
which is added, *An Appendix containing all the most approved forms of Conveyancing, commonly used in this country, Such as Deeds, of Bargain and Sale, of Lease and Release, of Trust, Mortgages &c.—Also the duties of a Justice of the Peace arising under the laws of the United States*.\(^{18}\) Hening’s first book presaged the modern, and more concisely titled, *Magistrate Manual*. Published by the Office of the Executive Secretary of the Supreme Court of Virginia, the *Manual* is an example of the instructions, training, and oversight twenty-first-century court systems receive with a view toward consistency across jurisdictions. Virginia courts at the turn of the nineteenth century were “confined to the narrow limits of a single octavo volume of six hundred pages” compiled by William Waller Hening.\(^{19}\)

Those pages comprise a handy alphabetical compendium. Hening draws on an array of authorities—many with deep roots in common law or British procedure—to empower local justices. Entries begin with a paragraph or so that defines a term and summarizes its reach in Virginia law. After an outline of what’s to come, Hening distills relevant Virginia law, legal commentary, and court precedent into a detailed modus operandi. Most entries conclude with legal forms intended for justices to appropriate wholesale. The details are procedural and substantive, criminal and civil.\(^{20}\) The first appendix includes legal forms intended to

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\(^{18}\) (Richmond: T. Nicolson, 1795).

\(^{19}\) Virginia’s magistrates—lay officials who issue warrants and bonds, hold bail hearings, and execute other simple judicial functions—fulfill a role similar to that of yesteryear’s justices of the peace. Hening uses the titles almost interchangeably; Virginia settled on “Magistrate” on 1 January 1974. (Code of Virginia § 19.2-33). The *Manual’s* Table of Contents is available at [http://www.courts.state.va.us/courtadmin/aoc/djs/programs/mag/resources/magman/toc.pdf](http://www.courts.state.va.us/courtadmin/aoc/djs/programs/mag/resources/magman/toc.pdf) (Accessed 15 January 2015); *The New Virginia Justice*, “Preface.”

\(^{20}\) The entry for a Coroner’s jury, for example, provides the oaths to be sworn by foreman and jurors, and legal standards for every conceivable kind of demise. “Rent” and “Homicide” are each treated at length, affirming W. Hamilton Bryson’s point that the inclusion of civil matters was among Hening’s innovations. *The New Virginia Justice*, 141–146, 362–380.
be of use to layfolk "as have it not in their Power to obtain the Aid of professional Gentlemen." No doubt Hening's time among Virginia debtors in the years to come affirmed the need for accessible legal advice. Whether one hoped to avoid debt or to diagnose another's attempt to do so, no one in the Commonwealth was better prepared for the task than William Hening. His *New Virginia Justice*, which appeared in a second edition while he was so employed, underscores the influence he could exercise over the reports on prewar debts.

The *New Virginia Justice*'s immediate effect on practice in Virginia courts is suggested by the scores of subscribers who anticipated its publication. Five of the attorneys among those soon to serve as special agents were also among Hening's subscribers. Hening's confidence grew with each edition: the second's preface made it clear that Hening understood his volumes to "say what the law is," in a phrase one of his subscribers John Marshall made famous in 1803. "It must come to this at last," Hening wrote, "*that the opinions of good and enlightened men, in whatever quarter of the globe they may be, will alone be considered as settling the law.*" Hening clearly understood himself to be in the first rank of these men, and the success of The *New Virginia Justice* suggests he was not alone. Three decades after

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21 Hening introduces the appendix with a modern-sounding disclaimer to his democratizing approach: "[I]t never was my Intention, by publishing the following Precedents, to supersede the Use of Counsel, in Cases of Importance or Difficulty." *The New Virginia Justice*, Appendix I, "Conveyances."

22 They were Clark, Craghead, Miller, Munford, and Woodson. Charles F. Bates's father subscribed, as did Charles Marshall's brother, John. His brother William did not subscribe, but did endorse the volume's copyright as clerk of the United States Circuit Court for the District of Virginia. *The New Virginia Justice*, "Subscriber's Names."

23 Chief Justice John Marshall wrote, in his opinion for the Court in *Marbury v. Madison*, that "[i]t is emphatically the province and duty of the judicial department to say what the law is." 5 U.S. (1 Cranch) 137, 177 (1803).

24 *The New Virginia Justice*, Second edition (Richmond: Johnson & Warner, 1810), iii. (The third printing of The New Virginia Justice was denominated the second).
the first imprint emerged, when the fifth edition appeared, the Commonwealth ordered a copy for each justice of the peace then serving in the Commonwealth.25

Nothing better prepared Hening for his work on prewar debts than *The New Virginia Justice*. But *The Statutes at Large*, his compendium of almost 175 years of the colony and commonwealth’s laws—though it followed his work for the Article Six Commission—also deserves a mention. Hening had been preparing for such a project nearly all of his adult life. “[T]he preservation of our ancient laws” was “so very essential,” he reasoned, “to a correct view of our history”; so, too, a keen understanding of the ground “on which so much property depended.”26 Seen this way, the project was a natural outgrowth of his work to explain pre-Revolutionary debts. For some fourteen years Hening produced volumes of Virginia laws beginning with the establishment of the General Assembly in 1619 and concluding in 1792. Hening was such an able researcher that he found the Commonwealth statute’s supporting one volume a year not an imposing deadline but a depressing limitation.27

All seemed to understand that collecting Virginia’s statutes was no project for the faint of heart. The General Assembly’s intermittent, inchoate calls for a collection of the laws had gone wanting for more than a decade when Hening began assembling the material after relocating to Richmond in 1806. Success depended on marrying his wide-ranging research with Jefferson’s peerless collection. Their

mutual enthusiasm for the project made for a happy collaboration. A former
neighbor and political mentor to Hening, Jefferson had long been a prime mover
behind the idea of collecting Virginia's statutes.28 His willingness to ship
manuscripts that may have been unique down the James to Richmond29 helped
Hening produce early editions that were substantially complete.30 Hening "spared no
pains to render it as perfect as possible," as he told Jefferson in sharing the first
volume with him.31

28 The General Assembly called for the laws' publication in an act of 4 December 1795. The
committee to that end—with George Wythe in the chair and future Supreme Court justices
John Marshall and Bushrod Washington among its members—turned immediately to
Jefferson for "aid." The letter carried no surprises: Wythe and Jefferson had been comparing
notes on such a collection of the laws since the spring. Samuel Shepherd, *The Statutes at
large of Virginia*, 1:360; Wythe to Jefferson, 1 January 1796, *Papers of Jefferson*
29 Monticello became Hening's lending library during his work on the *Statutes at Large*; the
collection's sale to Congress forced Jefferson to duns Hening for several volumes. Jefferson to
Hening, 11 and 25 March 1815, 8 April 1815, *Papers of Thomas Jefferson* Retirement Series,
vol. 8:229–230, 379, 418–419. Hening would soon sacrifice his own impressive library to
30 Waverly Keith Winfree's research contributed 171 laws that Hening did not locate.
Winfree's chief contribution, however, may have been affirming how capably Hening worked
under less than ideal circumstances. Winfree, comp., *The Laws of Virginia: Being a
Supplement to Hening's The Statutes at Large, 1700–1750* (Richmond: The Virginia State
Library, 1971), xxxviii. Additional research has modified Winfree's verdict—and the title of
his master's thesis—only modestly Jon Kukla, ed., "Some Acts Not in Hening's 'Statutes':
The Acts of Assembly, October 1660," *VMHB* 83, no. 1 (January 1975), 77–97; Warren M.
November 1652, and July 1653," *VMHB* 83, no. 1 (January 1975), 22–76.
asked, in this letter, for Jefferson's endorsement of the work; he provided a praiseworthy
Hening brought a historian’s sensibility to his work, which “compilation” describes but poorly. He preferred original manuscripts to published sources—thus all the swapping with Jefferson by boat and stage; he took a broad approach, including many historical documents beyond the laws themselves; and he took care to correct the oversights and misinterpretations of his predecessors. And his aspirations were clear from the first page: Each volume included an epigraph from Priestly’s “Lecture on History” that concludes: “one of the greatest imperfections of historians in general, is owing to their ignorance of law.” His prefaces became increasingly scholarly during the series: his ninth volume begins with a lively, three-


33 Examples of documents that Hening printed include Virginia’s original charters and material related to Bacon’s Rebellion. Van Schreeven, “William Waller Hening,” 163.
Serving on the three-person committee charged with comparing Hening's work with originals—"peer review" in the most literal sense—required little effort indeed. Modern historians have also praised Hening's research in early Virginia statutes as "meticulous" and "exact." Two modern scholars have discovered additional Virginia laws passed during Hening's time period, but their scanty numbers only affirm the original's quality. Hening took his own oversights seriously, too. Apologizing for errors in the first two volumes, he hoped that "to those who have been in the habit of reading old MSS, no apology would be necessary." Perversely, Hening came closer to the penury he often saw firsthand around the turn of the century with each successive volume. The series was published under a public-private partnership that left much to be desired, from Hening's perspective. In sum, the Statutes at Large established a reputation but ruined a life. What one


35 The original committee of three included the under-agent, and future Hening collaborator, William Munford, along with leading attorneys Creed Taylor and William Wirt. All three served on the Council of State. Perhaps acknowledging their limited role, any two members of the Council could serve this function after 1819. Winfree, "Acts Not in Hening's Statutes, 1702–1732," 24.


38 Preface, Hening's Statutes at Large 3:7.
biographer calls “a modest personal estate” in 1808 had become, by the 1820s, “virtually nothing.”

Hening is today known principally, if not exclusively, for his *Statutes at Large*. However, his contemporaries understood that his masterwork was of a piece with the legal research, editing, and publishing he pursued throughout his adult life. The many editions of *The New Virginia Justice* circulated most widely, but they were joined by the fruits of a long collaboration with William Munford, who also contributed a small number of reports on pre-Revolutionary debts. Together they served as the Commonwealth’s law reporter, publishing *The Reports of Cases Argued and Determined in the Supreme Court of Appeals of Virginia* for several terms during the first decade of the nineteenth century. The next year their *The American Pleader and Lawyer’s Guide* appeared. Finally, in 1819 they collaborated with Benjamin Watkins Leigh to publish the *Revised Code of the Laws of Virginia*. Hening also brought out editions of Richard Francis’s *Maxims in Equity* in 1824, and the year following, Thomas Branch’s *Principia Legis et Aequitates* and William Hoy’s *Grounds and Maxims of the Law of England*. No capable Virginia attorney’s office would have been complete in the early nineteenth century without several of Hening’s contributions. His œuvre embodied his hope to create “a competent library of practical books.”

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40 Historian George Bancroft, to cite one example, wrote that “no other state in the Union possesses so excellent a work on its legislative history.” Van Schreeven, “William Waller Hening,” 162.

Several of these publications sought to empower the new nation’s lawyers to a legal culture all their own. The preface for *The American Pleader*, unsurprisingly, described how “a great proportion” of English publications “is quite useless to an American lawyer.” Steeping in Virginia’s colonial history—much as he had while researching pre-Revolutionary debts several years earlier—heightened Hening’s Republican inclinations. He would not only reprint the laws—he would correct the record.

I have already discovered that many of the most important incidents are totally misunderstood by all our historians—They have, indeed, from a want of access to original documents, servilely copied from English historians; and such was their disposition to disguise the injuries and oppressions of the mother country towards the colonies, that the truth was seldom told. 

Hening was also sensitive to the many ways in which politics shaded the law. As a friend and follower of Jefferson’s, Hening’s political outlook reflected the views of the Democratic-Republican majority in Virginia. Consider his comment to Jefferson in describing a lexicographer hired to transcribe the statutes of the Commonwealth too fragile to leave Monticello. Little trouble could seemingly follow from simply transcribing the laws, yet Hening felt a qualification was in order: “he is a Federalist to be sure, but then, he’s a decent man.”

William Hening was so taken with legal research that it seems to have been equal parts avocation and vocation, a method of analysis altogether natural to him. It also allowed him to indulge what seems to have been a charitable streak. In

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44 Quoted in Cappon, “American Historical Editors before Jared Sparks,” 388.
45 In addition to this episode and his solicitude for Christopher McPherson to be discussed shortly, Hening was also a member of Richmond’s Amicable Society, a group that benefited
October 1799—just as his work as a special agent was ramping up—Hening wrote to his boss John Read in the hope that their exchange of legal detail went both ways. The case of John Swoope's lost inheritance departed from Hening's exploration of pre-Revolutionary debts. Here he was endeavoring to see a debt paid and apparently, to do a kindness. "I beg leave to interest your humanity in the case of a very deserving young man" who was born in Read's hometown, now resided in Hening's, and had lived in three others besides, most as an orphan. Swoope's attempts to learn of his father's estate had been "fruitless" and frustrating. "This circumstance leads him to suppose that if he could blotted out of existence," Hening wrote, "it would give no pain to those who, in that event, would succeed to the enjoyment of his father's estate." Hening acknowledged in conclusion that Read could do well by doing good for one "very worth of the attention of all good men."\footnote{11 October 1799, Read Family Papers, Box 9, Folder 11, Library Company of Philadelphia.}

The merchants hoping to learn of their own prospects of being repaid might have wished for similar treatment.

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As his training and early career suggest, and the reports he produced prove beyond any doubt, the United States found an ideal reporter on pre-Revolutionary debts in William Waller Hening. County courthouses were the wellspring for these reports, and no one was more at home among their records or people than Hening. Different skills were involved, of course, in eliciting Virginians' stories from these two sources. Hening was superb at mining both.

\footnote{"strangers and wayfarers." Winfree, "Hening, William Waller," American National Biography.}
It was no surprise that Hening knew every possible turn in litigation on Virginia debts. His reports on British merchants’ claims frequently—and not always kindly—correct oversights in the pleadings or practice. Often Hening faulted others’ failure to go to the records—to visit the clerk’s office, rifle unbound manuscripts, compare dockets, pleadings, and orders. Confusion between debts established on account or bond was common. (A debt “on account” was established by the merchant’s running record of transactions; a debtor executing a bond promised to pay a certain amount by a certain noted date.) Landie Richardson had moved to Kentucky in 1788, but Hening found a bond he’d struck “for the precise sum” of his debt to John Glassell “among a bundle of old papers containing British suits” in the Louisa County clerk’s office. He settled a similar discrepancy in neighboring Albemarle. “Although this debt is stated to be due by account,” he wrote on a £46.16.10 debt, “among the old papers in the Clerk’s office of Albemarle is a bond granted by Nathaniel Watkins to George Keppin & Company for very near the sum now claimed.”

Not all of Hening’s reports were such good reading, but many bristle with tales of his clerk’s office excavations. He was riled by attorneys with less appetite for such work. George Keppin & Co. claimed that Daniel Tilman owed £61.18.3 for goods purchased at its Albemarle store. The firm was aware that Tilman had backed his obligation with a “Deed of Trust for four slaves in Dec. 1772,” but thought it had been destroyed. “[A] very superficial examination of the Clerk’s office would have enabled the claimants to have found this deed,” Hening wrote after finding a

47 V27:2:106.
reference to it in the county's deed book, which survived.\footnote{This account may suggest that Hening was in not blind to the notion of making creditors whole. He is aware, for example, that Tilson yet owns "one or two slaves which it is probable are comprised in this deed of trust." Beyond those slaves, however, Hening believed that "Tilman has been insolvent ever since the peace," and so any collection by Keppin is chimerical. V27:N2:108.} If only a merchant, or debtor, or clerk had secured more able counsel, or read a better researched handbook. Or had the temerity to check the local cemetery, as Hening did for a £174.13.11 ¼ debt claimed from Roger Dixon. "I have lately seen his tombstone," Hening reported. "It seems a little inexplicable that the creditor should exhibit a claim for a debt due by Roger Dixon in 1774 when he died in 1772, notoriously insolvent."\footnote{V28:N3:225.}

What little detail Hening could not track down on his own he got through one of his countless contacts. Several reports suggest how keenly Hening appreciated, in particular, court staff. But he was also very well acquainted with attorneys, sheriffs, and mercantile firms' factors, along with their agents. His extended family and ten years of legal practice between Fredericksburg and Charlottesville extended the sphere of folks he knew well enough to plumb for information. When a debt was claimed from a Virginian with a common name, for example, Hening often volunteered the backstory of two or even three locals who may or may not have fit the bill.\footnote{A £50.15.6 obligation a John Scott accrued at Spiers & Bowman's Amherst store was one such example. Hening outlined the background of two men from Albemarle of this name, one "for whom I was counsel in every case in the courts I attended." V27:N1:52-53.} The most impressive mark of Hening's connection to a community, however, was his penchant for knowing and sharing a debtor's nickname. One of his reports outlined a debt owed by "little legs" Garland Anderson; another described Charles Carter, who "from a remarkable redness in his face and was more frequently called Old Blaze than by any other name." John Walker, with whom
Hening may have felt some affinity, “possesses such a retentive memory as to have acquired the appellation Index to the Law.”\textsuperscript{51} When another wrote that Thomas Watt was “as solvent now as he ever has been since the recollection of the oldest man in the county,” we might reasonably suspect that the informant was apocryphal, a homespun rhetorical device.\textsuperscript{52} When Hening used the phrase we expect first that he would know who in fact would be the most superannuated informant in a given precinct, and second that Hening would enjoy this person’s confidence.

Hening’s report on Nathaniel Watkins’s £46.16.10 debt to George Keppin & Co. demonstrated his superior understanding of local court practice and the laws they followed. Hening reports that Watkins, sued for the debt in 1771, dodged “every process of law” until 1774. In that year his property was attached to compel his appearance in court. After one attempt was returned “no effects,” the Sheriff “afterwards returned ‘attached a spoon.’” Hening not only has the detail from the Albemarle courts; he also explains how they square with the Commonwealth’s statutes. “This by the rules of practice in our courts was sufficient to ground a judgment (see Virginia Laws, edit. 1769, page 172, Sect. xviii).” All this detail flows toward an indictment of the merchant’s approach. “Had the creditors revived this suit so late as after the courts were generally opened to the recovery of British debts after the peace, they might have received their debt. . . .” Hening showed the bond in dispute to William Watkins, the debtor’s son and executor—Nathaniel Watkins had died in 1797—then recorded his successive responses: acknowledging its veracity,

\textsuperscript{52} The profession was added to distinguish Watt from Thomas Watt (planter). The verdict on Watt concluded, “and he is not now worth a farthing.” V32:N2:96–97.
hoping to avoid paying it, looking for counsel on how to respond, then asking for nine months' grace.

Like so many of his fellow agents, Hening's relationship with debt was not merely professional. So, too, his staff. Hening was further assisted in his research on pre-Revolutionary debts by a singular character named Christopher McPherson. A free person of color, McPherson was the son of an enslaved woman named Clarinda and a Scots merchant who ran a store in the home of her mistress. Charles McPherson probably arranged for Christopher's sale as a young man to David Ross, who afforded him an education and "engaged [him] in a mercantile line of life." After training to serve as a clerk, McPherson worked for Ross for more than twenty years, including while Ross served as commercial agent for Virginia. His further role as "principal storekeeper" for Ross in Fluvanna County provided relevant context for his work "investigating British claims, &c." with William Waller Hening at the turn of the century.53

McPherson's emancipation in 1792 may have altered, but it did not interrupt, his business relationship with Ross: a religious awakening in 1799, however, very likely did. The belief that he was "that very express personage, who is set forth in the Revelations of St. John the divine,"54 and that the Millennium was imminent led him to proselytize through a series of increasingly troubled "messages of Omnipotence" to President John Adams, the General Assembly, and, eventually

54 "And I saw heaven opened, and behold a white horse; and he that sat upon him was called Faithful and True, and in righteousness he doth judge and make war.... And he hath on his vesture and on his thigh a name written, KING OF KINGS, AND LORD OF LORDS." Revelations 19:11, 16.
“Emperors, Kings, and Potentates of every nation on earth.” McPherson also had trouble closer to home, parting company with David Ross’s son in a fashion that led to lawsuits and fears for his own safety. In the late spring of 1800 McPherson prevailed upon Thomas Jefferson to write his nephew Peter Carr “to ensure him the protection of the laws.”

McPherson was working for Hening within weeks of arriving in Charlottesville. His millennialism little affected his career, which continued to thrive after leaving the Ross family’s employ. Hening took McPherson on as a clerk in Charlottesville, where he assisted in research on pre-Revolutionary debts. Hening soon joined the chorus of those testifying to McPherson’s capability, even writing General Agent John Read, in Philadelphia, on McPherson’s behalf. Hening’s testimony suggests both the confidence McPherson inspired and what may be a broad-minded approach to Virginia’s racial mores: “In a philosophic mind the light shades of differences in colour, which, from the force of prejudice has drawn a

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55 A Short History of the Life of Christopher McPherson, Alias Pherson, Son of Christ, King of King and Lord of Lords: A Collection of Certificates, Letters, &c., Written by himself, 2nd ed. (Lynchburg, Virginia: Christopher McPherson Smith, 1855), 5–8, quotes at 8, 12. McPherson published his memoir as a 40-page pamphlet in 1811. Since no copy of the first edition is known to be extant, all references are to the second, 1855 edition. McPherson describes the “Substance of the conversion and commission” he received at pages 24–30 of his memoir.

56 Jefferson to Peter Carr, 4 April 1800. The editors of the Jefferson Papers provide a helpful precis of this litigation, which continued for several years. Volume 31, 175–177. Years later Jefferson recalled McPherson, “his head always in the clouds, and rhapsodizing what neither himself nor anyone else could understand,” but “too honest to be molested by any body, [sic] & too inoffensive to be a subject for the Madhouse.” Jefferson to John Adams, Papers of Thomas Jefferson, Retirement Series, vol. 4:626–627.


58 Marianne Buroff Sheldon mistakenly writes that McPherson worked for Hening in Richmond; Charlottesville was his home until 1807. “Black-White Relations in Richmond, Virginia, 1782–1820,” JSH 45, no. 1 (February 1979), 42. Hening’s is the first on a list of 43 “Gentleman who have employed Christopher McPherson as clerk” since 1800. They include many of the Commonwealth’s most notable firms and attorneys, including the brothers of two special agents, John Marshall and A. B. Venable. McPherson, Short History, 13.
separation between him and the whites, would heighten the obligation to aid him in
his laudable pursuits."\textsuperscript{59} Hening was not alone in seeing past color, in McPherson's
case; that summer he was named an executor of John Ross's will, an honor nearly
unheard of for African Americans.\textsuperscript{60}

McPherson's experience of pre-Revolutionary debt at the turn of the
nineteenth century in Virginia was unique in several ways. The most obvious, of
course, was that as a free person of color he reported on debts in which his fellow
African Americans were capital. Another was his distinctive understanding of the
hopelessness of debt—and the equally frustrating inability of creditors to collect in
Virginia courts. By 1810 McPherson was deeply, irrevocably in debt.

My estate was put into the hands of others—my notes were protested
at bank—my other debts remained unpaid—my property seized by the
sheriffs for pretended claims, and sold for less than half cost—. . . my
family thrown into confusion, poverty and distress—myself buried alive,
as it were . . . my credit gone, and in fact, the whole of my affairs were
in the high road, going fast to ruin.\textsuperscript{61}

Countless Virginians could have matched the substance, if not the eloquence, of
McPherson's financial trials. Few, however, could have appreciated his frustration
with Virginia Courts: "I considered that under existing circumstances, in the State

\textsuperscript{59} McPherson appended Hening's letter to a petition to the General Assembly requesting an
exemption to a Richmond city ordinance prohibiting African Americans from riding in

\textsuperscript{60} Ross was the brother of McPherson's former owner, then employer, David Ross. The
appointment is doubly surprising, of course, given the legal tangle yet ongoing between
McPherson and Ross's nephew.

\textsuperscript{61} McPherson, Short History, 8. There is one additional resonance with the Virginia way that
could read as satire absent McPherson's mental health difficulties. In describing a dozen or
so suits he has or will lodge to right wrongs he has suffered, McPherson writes that "I sue
not for the justice that is due me in my private and individual character . . . but . . . for
justice . . . to be rendered to the Great Creator Almighty God, thro' his ambassador Pherson . . ."
Any of the references McPherson cited would describe his interactions in the public
sphere with similarly false modesty.
of Virginia, a man of colour at present, had but a slender chance of success, in going to law with weighty officers of the land." Many others "engaged in a mercantile line of life" would have endorsed this statement in the late eighteenth century.

McPherson's memoir, which may have been prepared while he was committed to the mental hospital in Williamsburg, is yet another unique written work that embraces those who served as special agents to the United States. Hening is there; Munford, too, in his role as clerk to the House of Delegates. Two other agents' brothers appear among McPherson's many references.

Like his former clerk, Hening also understood debt from the inside out. His role as clerk of the chancery court and many publications were not sufficient to keep up with his family's obligations. "Shortly before his death he was forced to mortgage all his property," historian William J. Van Schreeven has written. "[H]e even mortgaged his legal fees." The last debtor's story he wrote, in 1825, was his own. Ironically—Hening would have said tragically, as is suggested by his epigraphs from "Othello" and "Hamlet"—the subject of the dispute was the volume that established his reputation, The New Virginia Justice. As had been true for thirty years, Hening found his publications, and the remuneration they produced, the whim of the General Assembly. Hening believed that the fifth edition of his first book had been derailed by the Richmond Junto, a group of state's rights Democrats.

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62 McPherson, Short History, 7, 11.
63 They are Abraham Venable and John, Thomas, and William Marshal. McPherson, A Short History, 16.
65 From the latter play Hening chose Marcellus's comment to Horatio, in Scene four of the first Act: "Something is rotten in the State of Denmark." A View of the Conduct of the Executive of Virginia, second ed., (Richmond, Thomas W. White, 1826), cover page.
that included both politicians and newspapermen. Thomas Ritchie was principally
the latter, and a prime mover in the Junto. Hening accused him of derailing the
Fifth edition of the *New Virginia Justice* to secure the business of printing it for a
crony, which Hening was plainly not. Ritchie, Hening asserted, had written “a
slenderous paper” to Virginia’s Executive Council that was not shared with him, but
that he ascertained did him no favors.

Though nominally an excoriation of his rough treatment at the hands of an
adversary, Hening’s “View of the Executive” was truly inspired by his increasingly
desperate penury. In a way many of his past subjects would recognize, an
impoverished Hening staked his pamphlet on honor. He also, unsurprisingly, saw
the council’s decision-making through the lens of the law. Hening had not been
shown the infamous paper which had led the council to act. “No Judge, or
*Magistrate, or Arbitrator*, in Virginia,” he wrote, “I confidently believe, ever did such
a thing.” As the publication behind the debate affirmed, Hening would have
certainly known of such a circumstance.

Hening also indicted his adversaries by adverting to Revolutionary
principles. In fact, he compared the absence of due process to the notoriously secret
British court that even Britons hated.

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67 In simplest terms, the legislation authorizing the purchase of a copy of Hening’s *Virginia
Justice* for each of the Commonwealth’s magistrates declared that 3,000 copies would be
accepted by 1 October 1825; if delivery was not made by then, it would next be accepted on 1
March 1826. Hening’s first submission, which was timely, was not accepted due to defects in
its printing. He then sought to take advantage of the conditional date in the spring, but the
Council advised him it would no longer be accepted. Most relevant for our purposes in this
back-and-forth is the fact that Hening, as was often the case during his production of the
*Statutes at Large*, hoped to “deliver the books at a much earlier period than that
contemplated.” This was so because they were to be “*paid for on delivery,*” and Hening’s
68 “*View of the Executive,*” 9. Emphasis in the original.
How little did such of our ancestors as were profusely shedding their blood, during the revolutionary war, in defence [sic] of their country’s rights, suspect, that a Star-Chamber inquisition, which had been so long abolished in England, was to be revived in Virginia, and that a citizen, in defiance of all constitutional and legal provisions, might be deprived of his reputation and property, without being heard in his defence! [sic]69

Hening’s charges resonated with Virginians’ concerns about both the Constitution and the Article Six Commission. And they underscored the degree to which Revolutionary principles informed his outlook.

Hening’s effort to secure payment for the New Virginia Justice failed to right his finances. The most adept writer on Virginia debts and the legal system that sought to enforce them himself died nearly penniless in the home of his son on 1 April 1828. Nine days later his wife Agatha, too, was dead.70

Chapter Seven

"Much Involved":
Collecting Virginians' Stories of Debt at the Turn of the Nineteenth Century

The reports William Waller Hening and his colleagues submitted were as diverse and wide-ranging as we might expect given debt's long afterlife in Virginia. As Chapter One's opening stanza suggests, the Reports on British Mercantile Claims describe every imaginable backstory for individual pre-Revolutionary obligations. Thomas Lacy, still living in the summer of 1800, had "always been able to pay." Priscilla Parker lived, too, but her finances would not bear even a £3.7.9 1/4 bill. Dr. Anthony Irby was solvent at his death; his son, Anthony Irby Jr., was also dead, but insolvent. About Littleberry Laws—likewise dead—it could only be ventured that his debt had been "doubtful." John Lewis Jr. had "removed to Georgia," equal to his debts when he left. Lewis Parrott, "always insolvent," perhaps could afford only the shorter move to Person County, North Carolina.¹ On and on the stories run, approaching some 7,500 reports on Virginia's prewar obligations.

It is suggestive of the reports' variety that these particular stories were all rooted in Spiers & Bowman's Halifax County store. Moreover, they share two consecutive of the more than 1,000 pages the Virginia Genealogist dedicated to reports over twenty-seven years. Finally, they were all penned by Special Agent William Morton Watkins, one of the most concise reporters among the nineteen to chronicle Virginia debts. Adding the kind of detail the Hening brothers mined further complicates an already chaotic portrait.

¹ V26:N4:292.
Any attempt to synthesize such kaleidoscopic detail would rob the reports of their texture or ask too much of even the most patient reader. Instead, I present a close reading of the report on Richard McCary’s debt and highlight the more salient themes that emerge from others. After sharing the McCary report in full, I analyze carefully its structure, including the amount of the debt and how, where, and by whom it was contracted. One detail in particular—that McCary had been unable to pay his debt at the peace—is particularly relevant, for reasons I explain. I then turn to its author, William Waller Hening, emphasizing the breadth of his research and the storytelling he attempts.

The chapter then turns from the McCary report to discuss several broader conclusions the reports on Virginia’s pre-Revolutionary debts suggest. Debt, as we know, was ubiquitous in pre-Revolutionary Virginia; so, too, the importance of one’s reputation. The reports also remind us that prewar debt occupied a contested political sphere; opinions are shared by debtors and Special Agents alike. Broadly acknowledged—and practiced—_attempts to defraud British creditors are detailed. Some debtors "ran away . . . during the night"; others conveyed property to family to avoid its seizure and sale. Finally, the reports remind us that many families in pre-Revolutionary Virginia were structured around the slaves they owned, the liquor they drank, the violence they practiced—or all three.

The prior discussion might suggest, to some, that the very notion of an exemplary claim is flawed. In fact, the more reports one studies, the more reasonable that argument becomes. However, we may fairly say about William

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2 Richard Griffin left Mecklenburg County in this fashion in 1782 "to avoid the payment of his debts."
Waller Hening’s report on the debt owed by Richard McCary what is true of the
reports writ large. There was—in the phrase routinely applied to estates heavily
encumbered by debts—“much involved.”

* * *

Richard McCary, Amherst. £65.10.6, balance of bond. He removed to
Georgia about twenty years ago, just before the termination of the war.
He died in that state about two years ago, totally insolvent. At the time
of his removal he possessed no land and only two old slaves; one of
them died on the road on his journey. His circumstances were
decreasing from the time he left this state until his death. He has not been
able to pay the claims against him since the peace. Daniel McCary of
Milton in Albemarle County, son of Richard McCary, went out to
Georgia about two years ago under an expectation of receiving
something from his father’s estate but found that nothing was left by
him. From the sphere in which Daniel McCary moves (being one of the
tenders at the public warehouses in Milton for the inspection of tobacco)
it cannot be reasonably imagined that he received any estate from his
father.3

A name and a number. So began the reports on Virginians who owed pre-
Revolutionary debts at the turn of the nineteenth century. The number was the sum
still unpaid, no doubt the detail of first importance to British creditors. But the
Special Agents of the United States charged with looking into debts began with
names. They investigated not accounts but people—their fellow Virginians, many of
whose names they knew well. They collected stories.

The balances that begin these stories, and the comments on debtors’ solvency
that end them, frame reports that offer a strikingly broad aperture on late-

3 I gratefully acknowledge the example of Natalie Zemon Davis’s presenting a pardon claim
in like fashion in her Fiction in the Archives. This is but one way my project is obliged to her
eighteenth-century experience in Virginia. Even the most richly detailed reports, however, are concise and self-contained: The Special Agents of the United States present dioramas of post-Revolutionary life. We learn of Virginians acting and being acted upon, succeeding but more often struggling, answering for and running away from their debts. The reports “display alike the virtue and vices, the wisdom and folly of our ancestors,” as William Waller Hening wrote a few years later.

Richard McCary’s debt was assigned to Hening. He was, as we have seen, far and away the ablest investigator to research Virginia’s prewar debts. The details, impressions, and even judgment Hening offers about McCary’s experience are, like the story itself, representative of the reports. They are an apt introduction to the “British Mercantile Claims” reprinted by the Virginia Genealogist, helping us understand the story behind the collection of so many Virginians’ stories.

Hening shares McCary’s hometown, Amherst, and the manner in which he had contracted a debt to George Keppin & Company—by bond. (The reports on debts were organized according to claims presented by creditor firms; McCary was one of eighteen indebted residents of Amherst whose account was examined in this volume.) One of McCary’s neighbors was, like many debtors, introduced even more concisely: “Drury Tucker. £48.5.0.” This is abbreviation born of rote; the special agents submitted thousands of reports on indebted Virginians, some 7,500 of which were reprinted in the Virginia Genealogist 150 years on. But it is also possible to

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4 Ironically, perhaps, the Reports on British Mercantile Claims offer little background on the birth of debts—we cannot learn, for example, what Virginians bought, or for what purpose.

5 Hening’s description had in mind laws passed in the colony’s earliest years. This is one of many similarities between his Reports on British Mercantile Claims and his masterwork. The Statutes at Large: Being a Collection of all the Laws of Virginia, From the First Session of the Legislature, in the Year 1619. 13 vols. (Richmond and Philadelphia, 1809–1823; facsimile reprint, Charlottesville: University Press of Virginia), iii.
read the amount of Tucker's debt as an appositive. Even Hening, the most conscientious of the agents, sometimes resorted to the perspective of creditors across the Atlantic: The debtor was his debt.6

Some records report both a debtor's hometown and the location of the store with which he or she had done business, but the agents' investigations began with and in a debtor's hometown. When practicable, they interviewed the debtors themselves; barring that, agents sought their relations and neighbors, or mined their own personal or professional contacts for information. It is here that William Hening's reports distinguish themselves. His myriad contacts, and many years of work with creditors and debtors alike, qualified him uniquely to suss out claims. Hening added to this background a deep intellectual curiosity and what might fairly be called a dose of pedantry, too. For some of his colleagues, appointment as a special agent was a sinecure. For Hening, it was a research agenda, and one he took seriously. His mentions of a debtor's hometown were both record and travelogue.

Like his fellow special agents, Hening would have easily recognized the stores that contracted debts within his "district."7 The stores listed by Hening and his colleagues were complicated "sites of memory" for indebted Virginians.8 They were first, perhaps, the source of many of the goods on which Virginians of all walks of life depended. Hening's reports teem with examples of credit British merchants bestowed too loosely; many Virginians' thoughts turned to palmier days when asked

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6 V32:N2:95. Hening identified debtors in this fashion somewhat rarely; other agents were more apt to employ it.
7 Robert Hening reported that two debtors on his list of claims "reside in the district in which Wm. H. [sic] Hening is special agent." V20:N1:61.
to reflect on their local factor's store. Here they fulfilled wants as well as needs while catching up with neighbors, friends, and relations. Often the factor himself belonged to one or more of these categories, and was another cause for fond recollection.

Alexander Henderson, a "very honest man" who was "an overseer living from hand to mouth" until his death in 1795, knew such feelings. "The old man lamented with tears in his eyes," Henderson's son Richard recalled, "that he should never be able to pay his poor dear Scotch friend Henry Mitchell the debt he owed him."9

The shopkeepers' account books occasioned other, less happy memories. They gave the lie to most Virginians' pretensions to success, even solvency. The year-over-year additions to their balances were a constant irritant. Too often, in the view of debtors, these resulted from forces they were powerless to control: Rising costs of British wares, falling tobacco prices, capricious shipping schedules, and countless other variables undermined Virginians' cherished "independent circumstances."10 Debtors still living in 1800 probably passed their former merchants' stores with competing impulses to tarry and to quicken their pace.

Virginians' debts were uniformly listed by the agents in pounds, shilling, and pence. The pound was a pregnant symbol indeed around the turn of the nineteenth century. Imported from Great Britain, the denomination was forcefully appropriated by the Commonwealth of Virginia during and after the revolution. Waves of debtor-relief legislation redefined the pound on Virginians' terms: a merchant and his customers could no more agree on its value than the posture of Parliament toward the former colonies. Virginia's emissions of currency, coupled with laws compelling

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9 V27:N3:201.
10 V30:N1:51.
its acceptance as legal tender at face value, put the pound sterling and Virginia money squarely at odds. So central was this new currency that it often helped agents date their reports: John Hightower, we learn, was "insolvent ever since the paper money ceased."¹¹ Not even the most chagrined British creditors could improve on Hening's description of this the trajectory of Virginia currency: The "paper money then in circulation," he wrote of Alexander McDaniel, "nearly all died upon his hands."¹²

Events during the 1790s further complicated the pound's role in the special agents' reports. Since Alexander Hamilton's "Report on the Establishment of a Mint" and the Coinage Act of 1792 that followed it, the United States was officially a nation of dollars.¹³ The decimalization that accompanied this new currency made pounds, shillings, and pence both political and mathematical anachronisms. The great many Virginians who were both deeply indebted and wary of the new federal government's reach might have experienced contrary feelings about this new American currency. Midwifed by Alexander Hamilton, the dollar offered debtors a way to discount their obligations to the nation whose affections he and his Federalist fellow travelers most prized.¹⁴

Unlike the report on McCary's debt, many included a specific date on which the obligation was due. These dates tell a story all their own: Fall 1774, Spring 1775, a few due that summer. A reader who knew nothing of the Revolution would infer

that something significant had stanched the flow of credit and payments on
debts. The ubiquity of Virginians' debt no doubt led them to understand
"independence" in a nuanced way. Beginning with Charles Beard, and throughout
the century since his *Economic Interpretation of the Constitution of the United
States* was published, historians have debated the role the founding generation's
preferred economic outcomes played in establishing the new nation.¹⁵ The
historiographical scrum over causality obscures the effect unmistakable to
Virginians: Those who knew their scripture might have thought of the Revolution as
a latter-day "Year of Canceling Debts."¹⁶

The report on McCary's debt traces his finances, and his whereabouts, over
the course of two decades. His son, and his son's prospects, are also germane to our
reporter. These granular details are the hallmarks of the most capable investigators
to grapple with prewar debts. Their reach was not limited by chronology or
geography. With the help of "informants" throughout the Commonwealth and
beyond, they managed an impressive set of stories about debtors' experiences during
the last quarter of the eighteenth century.

Historians who discount the role indebtedness to Britons played in the Revolution will find
little solace in the British mercantile claims as reported by the special agents assigned to
Virginia. Alan Gibson has usefully summarized these competing claims in his *Interpreting
the Founding: Guide to the Enduring Debates over the Origins and Foundations of the
American Republic*, 2nd ed. (Lawrence: University Press of Kansas, 2009), 10—11, 123—134,
and passim.

¹⁶ "At the end of every seven years thou shalt make a release. And this is the manner of the
release: Every creditor that lendeth ought unto his neighbor shall release it; he shall not
exact it of his neighbor, or of his brother; because it is called the Lord's release. Of a foreigner
thou mayest exact it again: but that which is thine with thy brother thine hand shall
release." Deuteronomy 15:1—3. British merchants would have no doubt emphasized the
distinction underscored in the third verse.
Daniel McCary’s fruitless pursuit of an inheritance suggests the array of idiosyncratic detail that makes its way into the special agents’ reports. But it also reminds us of a detail common to many of the reports. The Jay Treaty’s Sixth Article, which precluded the payment of debts from those insolvent at the peace, or by creditors who had taken insufficient steps to collect, ensured that the reports would mind these details. Hening believed, like many modern historians, that British merchants cast their nets too widely in submitting claims under the Jay Treaty. Applications for payments on debts that had not interested creditors since the Revolution—“the mere sweepings of [the] company room,” in Hening’s phrase—drew the ire of special agents.17 If a Virginian’s insolvency or a merchant’s delay obviated a debt, they would be certain not to overlook it.

Leaving nothing to chance—but straining credulity, perhaps—Hening underscored both of these limitations on the debt of Alexander Henderson, who was moved to tears by his inability to make good. “At no time of his life could the amount of these debts have been recovered by process of law,” Hening writes. But Hening has just told us that “about 1783 and for a few years subsequent . . . it is supposed that as he was a very honest man he might have paid part of this had application been made.”18 Henderson was insolvent enough to flummox his creditors but not to interest his neighbors. Only the dilatory approach of his creditors stopped his paying a portion of the debt years ago. In one stroke Hening underscores Henderson’s honesty—and his own—while contrasting the questionable tactics and timing of British firms.

17 V27:N1:53.
18 V27:N3:201.
Many of the agents’ reports lapse into broader critiques. The précis on McCary’s debt is among the more subtly opinionated. We learn, for example, that William Hening takes a rather dim view of the “sphere” in which McCary’s son Daniel lives. Here the Special Agents of the United States tell us not only about their subjects, but about themselves. By making their own predilections a part of the reports, the agents allow us to tell a richer story of late-eighteenth-century Virginia.

No agent’s stories were more fulsome than those penned by William Waller Hening, the agent who reported on McCary’s debt. Hening’s neighbors, friends, family, teachers, mentors, even his own personal accounts—all were steeped in debt. His law practice centered on it. His time in three of the Commonwealth’s key towns—practicing in Fredericksburg and Charlottesville, and serving Richmond’s chancery court as its clerk—ensured that his acquaintances were many, and well connected. He knew Virginia’s steadfast legislative response to debts even before he began compiling the Commonwealth’s laws after the turn of the century. Put simply, in researching his neighbors’ prewar debts, in serving as a special agent of the United States, Hening found his moment. His research on McCary ably demonstrates the form and function of the reports. To appreciate their broad sweep, however, we must undertake a topical analysis. Here, too, Hening’s work stands out.

* * *

Each report on a Virginian’s debt reminded of longstanding ties with Great Britain. The ubiquity of debt also bound Virginians one to another. One way to appreciate the Reports on British Mercantile Claims is to try to imagine a set of

records that would comprise a more diverse array of Virginians. Had Benjamin Franklin been a Virginian, debt would have joined death and taxes on his list of “this world’s” inevitabilities.20

The professions represented in the reports affirm it. More detail-oriented agents, the Hening brothers in particular, reported their subjects’ line of work and offered their own take on their financial prospects. Virginians indebted to British merchants included women and men from every imaginable walk of life:

Army cook, bell-maker, blacksmith; boot and shoe maker; bricklayer; cabinet maker; cake seller; carpenter, chair maker, collier, dancing master; day laborer and tippling house operator, ditcher, factor, furnace manager, grindstone cutter, hatter; hireling, horse thief, overseer; preacher; rent collector, rugmaker, school teacher turned tippling house operator, shoemaker; smith; teacher; tippling house operator, tinker, violin teacher, wagon driver, warehouse tender; washerwoman, waterman, weaver, wheelwright21

These vocations are most often presented without commentary. The Henings did, however, assemble a kind of “least of these” category of their own devising. When he found a profession particularly wanting—keeper of a mill, or teacher, say—he described it as “an occupation which few submit to in this state except those in very

20 Other writers had paired death and taxes, but Franklin spoke in a particularly American context: “Our new Constitution is now established, and has an appearance that promises permanency; but in this world nothing can be said to be certain, except death and taxes.” Franklin to Jean Baptiste Le Roy, 13 November 1789; Albert Henry Smyth, ed., Writings of Benjamin Franklin (New York: The Macmillan Company, 1907), 10:69.
indigent circumstances.”22 There was still further to fall, however. One could be, in the inimitable phrase applied to William Turly, “Poor and dead.”23

Almost all of those identified by their work were folks with small debts and smaller assets. Every so often an exception appeared, as in the case of this debtor with outsized accounts and outsized opinions, in particular on the appropriateness of charging interest for the years Great Britain and the United States were at war.

He cannot think that the payment of interest during that period, as contended for by three of the commissioners, will be insisted on by Great Britain when an explanation of this article of the Treaty shall take place, and that Lord Kenyon himself would decide in favor of the principles advanced by the American part of the commission.24

Hening’s mentor was among Great Britain’s greatest antagonists; it must have been doubly satisfying for him to air Thomas Jefferson’s views. More commonly, the claims of Virginians known to the Henings and their contemporaries often omitted an avocation. What would be gained by choosing from among the various positions held over the years by men like John Marshall?25 Debtors who hailed from what historian Emory Evans called the “topping people” were adjectives.26 Middling folk were nouns.

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22 John Bland, of Amherst County, was the mill keeper Hening so described. Other professions also qualified for similar descriptions: tending a tobacco warehouse was a “business to which few submit except those drawn to it by necessity”; teaching was “an occupation to which men usually resort in this country after they have spent estates are too indolent to follow any other calling.” V32:N4:264; V31:N3:216; V28:N2:113. 23 V23:N4:272.


26 A “Topping People.” There were, of course, exceptions. James Compton, “very poor,” was signatory for a debt of only £2. Still, Christopher Clark wrote, “He stands among the doubtful.” V21:N2:101.
Another index of debt’s long reach was the overlap in debtors and creditors. For example, the merchant Ninian Menzies was himself pursued by Gibson, Donalson, and Hamilton. “[C]laims in his name are also laid before the commissioners,” Hening wrote; they included, in fact, Jefferson’s debt mentioned above. Menzies’s debt was among the smallest investigated by the agents, but that of Captain John Hylton, another merchant, was one of the more significant. Hylton’s story showed the effects of combining his fellow Virginians’ insolvency with their representatives’ unfortunate fiscal policies. “[N]early all the debts due to [Hylton’s] estate were received in this currency,” Hening writes of the quickly depreciating Virginia notes. His customers’ debts compounded his own, ensuring that “the estate was totally sunk and insolvent before the peace and unable to meet the demands of the creditors for specie debts.”

The ubiquity of debt among late-eighteenth-century Virginians, then, ensures that we meet all manner of women and men in the Reports on British Mercantile Claims. Presidents and those who worked for them, the “richest man in Virginia” and those “as poor as poverty itself”—all are a part of the story of Virginia’s relationship with debt. And the irreplaceable role of debt in their lives means that we are introduced to them in every imaginable circumstance—and a few that are perhaps beyond our imagining.

The variety in Virginians’ circumstances becomes clear when one claim produces, like a double-yolked egg, two stories. When two debtors with the same or very similar names live in a given area, the agent’s first duty is to distinguish which }

is responsible. Agents, in particular William Hening, described a pair of potential debtors for around a score of claims reprinted in the *Virginia Genealogist*. As many as three in four of these pairs had little in common except debts beyond their reckoning. The two David Andersons who called Louisa County home are exemplary.

“There were two persons of this name in Louisa at the time the debt was contracted whose circumstances were very different,” Hening begins. The first was probably not the responsible party, in his judgment, since the claim included no “Jr.”

Hening’s impressive knowledge of Virginians typically allowed for these kinds of subtle distinctions. He very often advanced a theory on which of his fellow debtors the claim in fact contemplated. No matter which of the two Virginians likely owed, Hening—as in the case of the David Andersons—told both stories.29

David Anderson Jr. “possessed a considerable estate in the mid-1780s.” He was himself a merchant—one in “high credit,” in fact. At his death, around 1791, he left an estate “much involved,” a phrase that elegantly captures Virginians’ obligations and the attendant relationships. One set of “friends” in particular led to an “embarrassment in his affairs”—another favorite phrase of Hening’s, and one that suggests debts’ financial, cultural, even personal resonance. Anderson’s difficulties spring from co-signing for ill-fated shipments of tobacco to Great Britain, and imported wares in return.30 “Embarrassment” was catching in pre-Revolutionary Virginia.

Anderson’s doppelganger, “accustomed to sign his name without any addition,” also had a hand in supplying his neighbors. But his business, and his

29 V28:N1:49.
30 V28:N1:49.
means, was meager by comparison. Hening described Anderson's finances in a way that would naturally occur to an attorney working in probate: When he died in the early 1780s, Anderson was "so absolutely insolvent" that "no person thought it an object to take administration on his estate." The attorney-agent left implicit any thought that Robert Jardine, the merchant who filed the claim, might have reasonably exercised similar restraint.31

Hening concludes his discussion of the Anderson debt much like a careful historian: He presents the evidence supporting his foregoing claims. His research—perhaps even his friendships—led him to a third story, that of David Bullock, Esquire. His 1791 suit for debt, filed against David Anderson Jr., was withdrawn when his client could produce no evidence of a "Jr." on the account. Bullock, obviously a savvy barrister, knew better than to pursue "the other David Anderson" for satisfaction. Little remained for Robert Jardine and the commissioners charged with evaluating his claim beyond these Virginians' stories.32

Ironically, then, in a culture that prized the value of one's name, there was often no telling what a name was worth. John Bourne of Orange was so poor only the gifts of friends allowed him to make the journey to Kentucky; John Bourne of Culpeper, who Hening suspected was responsible for the debt, "left a very good estate."33 It was anybody's guess, according to William Hening's brother Robert, which John Browne of Stafford contracted the £19.13.2 debt to Oswald Dennistoun & Company. Stafford County was large enough for two John Brownes, "one a very

31 V28:N1:49.
32 V28:N1:50.
33 George McCall thought their Bourne made his home in Orange, but Hening was "bound to believe they have mistaken their debtor." V28:N1:53–54.
poor man who never could have paid a debt of this amount, and the other a man of
large property.” The former died leaving no trace of it, the latter denied it.\textsuperscript{34} A more
modest £2.4.2 \% led to two William Daltons in Albemarle. One was of “low
circumstances,” but the other’s solvency gave led to a novel response among
Virginians. Though unconvinced the debt was his, “W. Dalton . . . says . . . as the
account is a small one he thinks it as well to pay it as to contend for it.”\textsuperscript{35} That one
name so often produces two very different stories, says much about the reach of the
special agents’ reports and the variety of Virginians’ experiences.

* * *

William Waller Hening and the other special agents see debts’ profound
reach in Virginians’ affairs and in their self-understanding. Giving an account of
indebted Virginians only begins with a merchant’s claim, with pounds and shilling
and pence. The agents’ accounts see debt as a prime mover in everything from their
neighbors’ moving out of state to their taking leave of this world. Before we grapple
with these effects of debt, we should understand its preeminent role in Virginians’
personal finances—and in the stories they told themselves about themselves.

Historians have long acknowledged the potency of reputation in Virginia
society. The special agents, themselves men of distinction interested in the esteem of
their peers, at times judged the quality of a claim through the prism of the debtor’s
character. No merchant’s word, no account book, could equal what neighbors knew of

\textsuperscript{34} V20:N1:59.
\textsuperscript{35} Dalton undermines the doubt about the claim’s origins, and reminds of merchants’
skepticism about Virginia’s currency, in further comments to William Hening. “He recollects
to have had dealings with Richd. Anderson, factor for the claimants, before the war and often
applied for a settlement of their accounts but it was evaded by Mr. Anderson under various
pretexts.” V29:N4:299.
their fellows. In Christopher Clark's telling, for example, Edmond Winston's £5 debt to William Cunninghame & Co.'s Amherst store was obviously void. The "eminent attorney at law," then judge, wealthy and honest in equal measure, would have answered any just debt. That he did not, for Clark, proves the merchant's mistake.36

Few adjectives were more prized by Virginians than "independent." When applied to William Routt, John Waller, and Richard Walker, all of whom left debts at William Cunninghame & Company's Falmouth store, it was a synonym for "in good circumstances."37 The notions of honor and respect were also potent forces in late-eighteenth-century Virginia, and their effect on business relationships was transparent. Bailey Washington, in Hening's telling, was "a man of honor and respect"—perhaps too much respect, in the eyes of his neighbor Thomas Fitzhugh. The favorable terms Washington secured from the merchant, terms not extended to Fitzhugh, galled him. As he explained to Hening, if Cunninghame and Company had paid as much for his tobacco as the firm had allowed for Washington's, the £100 Fitzhugh owed would be no more.38

Virginians in the middling ranks often stoked special agents' creativity in the form of similes, metaphors, and hyperbole. Some of the most evocative language in the special agents' reports describes the poverty with which many debtors struggled. Patty Graves, whose £16 debt to John Bland's firm was investigated by Robert Hening, was "as poor as poverty itself." George Graves, perhaps her husband,

36 V21:N2:100.
37 These three "moved to Kentucky before 1794 in good circumstances," Hening writes; others who departed the Commonwealth were described less charitably. V14:N3:132;
38 V14:N3:132; V11:N4:179. Washington was no blither about his debt, even though one quarter of what Fitzhugh supposedly owed. He claimed Cunninghame & Company "are in his debt."
follows her in the reports: He is a carpenter given to alcoholism who “just makes out to keep body and soul together.” One of Graves’s relations with whom he co-signed for another debt at the same store “was in some better circumstances . . . but no prudebt [sic] man would have trusted him with $20 in his best days.”39

Even a moment’s thought about the language of money—“What are you worth?”—underscores how closely it tracks more fundamental matters. So we might reasonably wonder how much of this resonance the agents intended when describing debtors of limited means. Hening concluded his report on Martin Burrass, who was “generally reputed to have run through the whole of his estate,” with one of the more cutting descriptions in the reports. “He is still considered worse than nothing.”40 We might wonder if Burrass would read that comment as pertaining only to his balance with Donald, Scott & Company. William Watkins’s phrase of choice, which he applied to many debtors in Charlotte and Halifax counties, was “Ought never to have been trusted.”41 Given the stark language chosen by several agents, it appears that what they talked about when they talked about debt was something much broader: character, reputation, competence.

Indeed, the creativity of the agents in describing Virginians’ limited means seems boundless. George Randolph’s modest debt of £2 was apparently enough to put him on the parish’s charity: “he never owned more than one suit of clothes and one week’s provision in his life.”42 Francis Alberter owed just more than £50 to two firms, but Hening was keen to manage their expectations at recovering. Alberter

41 V26:N4: 299, 301.
was “an itinerant person, a teacher of music on the violin” who “never had more property than his fiddle and bow.”43

There were many ways to be insolvent in late-eighteenth-century Virginia, and Hening’s description of the alternatives reflects his own standing in the Commonwealth’s caste system. Debtors’ backgrounds were no factor in the reports’ organization; “the richest man in Virginia” has his debts examined alongside the lowliest tippling-house operator.44 Thomas Bolkham and William Dickenson were one such pair, both in arrears to McCall, Smellie & Company. Bolkham, an overseer, “lived as is usual with them upon the annual share of his crops, without possessing any property of his own.” Hening does not describe whether other overseers were “addicted to drunkenness” like Bolkham, but it helped explain why he “grew poorer and poorer every day.” Dickenson likewise spent “his share of the crops” too freely, but in a different fashion: “dressing himself genteelly, for which he was very remarkable.”45 Hening’s detailed reports give us distinctive views of Virginians that, to British creditors, were doubtless of a piece.

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Many of the agents’ reports conflate the personal and the political. Perhaps unsurprisingly, a good many speak to the debate—both international and domestic—on whether prewar debts should be honored. These conversations measured the United States’s nascent self-understanding around the turn of the nineteenth century.

43 V29:N3:220.
44 David Ross was “generally reputed the richest man in Virginia.” V24:N3:207
45 V28:N1:52–53.
The special agents take care to report a debtor's allegiance to Great Britain, and often with a revealing turn of phrase. Debtors who continued to support the Crown behaved more or less like their neighbors; John Ballard, whom George Craghead identifies as "the British affidavit man," was a trifling fellow who "will not pay his debts." A dim view of one's debts put Tories in league with their American neighbors, of course. Hugh Walker owed almost £7 to Eilbeck, Chambre, Ross & Company's Norfolk Store. He was not incapable of paying, but "will pay no debt he can avoid." How much this notion—whose appeal bears no relation to party or international politics or the passing of time—informed the reluctance of Virginians to make good their debts is difficult to know. Charles Carter, who "always opposed paying British debts and expressly forbad his trustees paying such debts," may have had political objections.

Others were more concerned that their burden not be taken up by the new nation. Some, like David Hill, seemed to suggest that their honor precluded the United States answering the claim. William Hening related that Hill "is too honest a man to suffer the United States to pay it for him." John Read emphasized that he had paid a debt of £14 that dated from 1770; however, he told Special Agent Charles F. Bates that he was "willing to pay again rather than that the United States should pay it." His next thought suggests, passive aggressively, we might say, that Read was familiar with the provision that a creditor's negligence canceled the debt.

It should seem surprising that no application for nearly 20 years was ever made to me for the sum now said to be due, altho' for 10 years of that time

46 V19:N3:173
47 V10:N1:30.
49 V27:N2:115
I was every three or four months in Fredericksburg, was intimate with the present Mr. Glassell's father and often in association with him at his own house.50

William Hening was inclined to be more direct, and his superlative research well poised him to deflate a good many claims. When he discovered that firm had pressed an improper claim, he named names. George Keppin & Company, pursuing a £171 debt, sent their collector Benjamin Jordan to Louisa County in pursuit of John Forsythe. But Jordan's research did not extend to the Albemarle county clerk's office, where Hening found a bond in the factor's name that could have driven a suit for payment. This was, for Hening, but one of "too many instances of gross neglect" in Jordan's work, which he shared reluctantly. After all, Jordan was dead, and "perhaps the old adage de mortuis nilum bonum might have been deemed sufficient . . ."51

For Hening, however, this would not do. In what could pass for his modus operandi as the most scrupulous special agent, he concluded that "the interest of the United States is too deeply involved to suffer any facts to pass unnoticed."52 In some cases Hening had little but objections to voice: "It is probable the creditor may get his money out of these funds," Hening wrote of a James Robb claim against Thomas Merry, of Orange County. "But I hope not from the United States."53

Though objective, in the main, the reports occasionally betray special agents' skepticism at the merchants' claims. Christopher Clark writes one such report, on a debt just under £9 accrued by John Clayton. Wealthy at the peace, Clayton "since by

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50 Read's recollection also highlights how important interpersonal relationships for debtors and creditors alike.
51 V27:N2:106
52 V27:N2:106
imprudence wasted his estate.” In other words, the Treaty’s terms were no help.

Clark conveyed that fact most reluctantly indeed: “If the creditors are entitled,” he wrote, “in any case under the Treaty to demand payment of the United States, perhaps this is one.”

It is often difficult to unravel the complex set of motivations in play as Americans interrogated debts a generation old. Still, a few situations suggested that a sense of fellow feeling existed between loyalist debtors and British merchants that most Virginians did not enjoy. Littleton Ward, for example, dealt with Atchison, Hay & Company before the war. The concern “sent him, while he was a prisoner at Williamsburg in 1777 on account of his disaffection to the state, £50 paper money on loan, without having been solicited to do so by War.” He repaid the loan the following year.

Consider how much of the complex Anglo-American relationship is conveyed in the phrase “his own countrymen” in Robert Hening’s report on William Goodrick. This customer of William Beattie’s Petersburg store “joined the British in the Revolutionary War and continued with them during the whole of it (having joined as a private against his own countrymen) . . .” Writing just after the turn of the nineteenth century, Hening brooked little doubt about the phrase’s antecedent. One wonders if William Beattie’s contemporaries, living in a more nascent United States, would have shared that confidence.

55 V17:4:259
56 V9:N4:172

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Thomas Nelson's reports are perhaps the most patriotic of the lot, routinely damning "that class of people which during the Revolutionary War were called Tories." One such, James Hubbard, left a debt of £14 at John Hay & Company's Cobham Store. The verdict Nelson offers on Hubbard is deceptively simple: "He abandoned his country." That conclusion, and the obverse, could be argued persuasively by citizens in Hubbard's day and historians in our own.

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Virginians' expertise in the way of debt was singular, but they were also quite capable when it came to fraud. The two were closely related. When their debts became too much to bear, Virginians would fraudulently "convey" their estates to family or friends, safely out of the sheriff's reach. The special agents who report on Virginians' prewar debts are candid not only in acknowledging fraud, but in making clear that it is unexceptional. Fraud followed debt, and debt followed everyone.

Dozens of estate sales in eighteenth-century Virginia barely deserved the name. The special agents document these attempts to defraud creditors with striking clarity: A debtor would stage a sale of his or her effects, but decline to advertise it or even to inform neighbors—the better to avoid attracting bidders with adverse interests. A friend or a family member would "buy" the estate's holdings, but the only real exchange would be the names on a deed. No one need move, no one need pay, and no creditors need pain themselves with further attempts to collect. Virginia law, ever attentive to the Commonwealth's debtors, shielded his or successors from such collections.

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57 V10:N1:27. Hubbard's debt came due on 20 April 1775—the day after the skirmishes at Lexington and Concord.
Louisa County's George Johnson successfully evaded a debt of nearly £70 in this fashion. William W. Hening, who hailed from the neighboring county when he submitted his reports, had little doubt that Johnson had behaved improperly. Though capable of repaying his debts at the peace, and afterwards, his property had since been conveyed to his children, "generally supposed with a fraudulent design to evade the payment of his just debts." 58

Another example of a fraudulent conveyance demonstrates Hening's commitment to divining a coherent narrative—and features some of his occasionally pungent commentary on the errand he and fellow special agents pursued. Col. John Boswell, of Louisa, left an unpaid bond of £88 with Donald, Scott & Company when he died in 1788—the same year much of Virginia's debate on ratifying the Constitution turned on the fate of such debts. Boswell left an ample estate, from which his will directed "certain lands should be sold for the purpose of paying his British debts should they ever be recoverable." In the alternative, the lands would devise to Thomas Johnson. Johnson, who died in 1795, in turn willed them to his son Richard Chapman Johnson. Here began the fraud.

R.C. Johnson made a sale of the lands and it struck off to one of his brothers as the highest bidder but no part of the purchase money had been paid and the sale itself was generally considered fraudulent.

Thus far the tale approximates many similar "sales" Hening describes in his reports. But this was not the Boswell family's first appearance in his research.

In earlier reports I mentioned the anxiety which the heirs at law of Col. John Boswell seem to possess to divest themselves of property entirely

58 V15:N3:204
with a view to avoid the payment of his debts. This they have completely done. There is not now an atom of the estate of Col. John Boswell in the hands of any of his representatives.

Still, Hening's candor in describing this malfeasance did not find him recommending a collection by Boswell's creditors. Instead, in an argument that echoes John Jay's negotiations with Lord Grenville, and Thomas Jefferson's exchange of memoranda with George Hammond, Hening finds it dispositive that the merchants had erred before these Virginians. The fraud "has been long since any lawful impediments to the recovery of British debts existed and is a question merely between themselves and their creditors in which the United States surely cannot be implicated."\(^59\)

Hening had seen Virginians' fraud at even closer hand in his own law practice, including his appearance on behalf of William Cunninghame & Co. in pursuit of Henry Head's unpaid £24 debt. This obligation could have been met at the peace—that is, "if he was not such a lawless person as to resist on all occasions the officers of justice." In 1792 Head conveyed his estate to his sons, a typically empty gesture. Thus began three legal successive legal actions mounted by Hening. He prevailed at law in each, but failed to collect, the authorities "being sometimes resisted by force and sometimes the property being concealed."\(^60\)

The tide turned when Head's sons enjoined the execution of a slave who was pledged as security for a debt. Their argument was grounded in the estate's conveyance a decade earlier. Hening pulled no punches in response, reciting "the whole history of their fraudulent conduct from the time I first became acquainted

\(^{59}\) V29:N4:303–304.  
\(^{60}\) V33:N1:26.
with them." Experiences like this one can help explain Hening's candor when reviewing his fellow Virginians' attempts to defraud creditors.

Almost any discussion of fraud in eighteenth-century Virginia inevitably leads to John Robinson, the treasurer of the colony who embezzled more than £150,000 in public funds, spreading them around to his friends and family. Robinson, who died in 1766, indeed appears in claims submitted by Charles F. Bates in the form of a £5,000 debt to William Robinson Lidderdale. Bates describes suits lodged by the firm against Robinson's executors Peter Lyons and Edmund Pendleton, the latter of whom was chief judge of the Virginia Court of Appeals, president of Virginia's Constitutional Ratification Convention, and President Washington's first choice for the first federal district judgeship in Virginia.61

The report on Robinson's debt handles his misdeed obliquely: "He died in arrears to the Colony of Virginia £157,000." As we've seen, special agents routinely spend much more time on much less interesting stories: why the reticence on Robinson's embezzlement? Perhaps Bates thought the story's notoriety made a précis redundant—perhaps he thought the scandal another generation's concern. Perhaps his respect for Robinson's eminent executors—not many Virginians enjoyed a stronger "General Reputation" than Pendleton—recommended brevity. Perhaps it's most relevant that Bates was no Hening when it came to spinning a tale from Virginia's past.62

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62 V24:N2:127
Whatever explains the reports' relative silence on the Robinson affair, Bates made up in irony whatever he lacked in detail. The debt described above was, he said, "a debt of the first dignity." He meant, of course, that the Commonwealth properly stood first in line among the estate's creditors. That Robinson's actions failed to clothe himself or the commonwealth in dignity is too obvious to belabor. We could scarcely hope for a phrase that better contrasts understandings of character and finance.\textsuperscript{63}

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The simplest way to defraud one's creditors, and probably Virginians' most common response to crushing debt, was to leave the Commonwealth and their creditors behind. An untold number of debtors did exactly that in the generation after independence. Southside and southwest Virginia, the Carolinas, Kentucky—Virginians decamped to points south and west in impressive numbers. And the exodus from prewar debts was, of course, but a small part of Virginia's longer history of emigration during the eighteenth and nineteenth centuries.\textsuperscript{64}

So common was the practice, in fact, that the special agents had little trouble keeping tabs on those who'd left. They or their fellow Virginians were often traveling back and forth, ready informants for the more energetic agents like William Hening. Richard Harvie returned to Virginia for the last three years of his life, but Hening would have had little trouble following up on his client's estate if that had not been the case. Hening easily found Harvie's will, "deposited with a friend in Georgia," and

\textsuperscript{63} V24:N2:127
\textsuperscript{64} David Hackett Fischer and James C. Kelly,\textit{ Bound Away: Virginia and the Westward Movement} (Charlottesville: University of Virginia Press, 2000).
William Davenport, in whose house Harvie died, was well acquainted with his old
neighbor's new environs.65

Virginians of every financial circumstance left the Commonwealth before the
turn of the century. William Routt, John Waller, and Richard Walker "moved to
Kentucky before 1794 in good circumstances."66 James Yancey "ran away from
Culpeper County before the revolution, completely insolvent."67 They moved as a
family unless family was the only thing delaying their departure. When John
Waller's widow died in 1796, for example, "all the children not before residing in
Kentucky moved there."68

And sometimes new families emerged from among neighbors who had moved
more or less together. Brothers John and William Sorrow "moved to Georgia about
1787 and settled in the upper parts of that state." John Eades, like the Sorrows a
resident of Albemarle County until after the war, remained their neighbor in north
Georgia until his death. His widow turned to familiar company for solace, marrying
John Sorrow, "who formerly moved from the same neighborhood in this state."69

Creditors did not always accept the practice of leaving one's debt behind with
the equanimity of the special agents investigating debts. That realization was
enough to focus the mind of Thomas Step on honoring his debts. Step left Orange
County as the war began, his finances in poor shape. He crossed paths with his
sister Agatha Sims on the way to South Carolina. Sims's husband William then

65 V7:N1:20. Harvie's is also a story that reminds of the difficulty of late eighteenth century travel. Hening reports that he was "a very corpulent man and traveled with much difficulty."
66 V14:N3:132
67 V27:N2:117
68 V14:N3:133.
"paid some debts for him [Thomas Step] to prevent his being stopped on the road by his creditors." Step's experience reminds us that the decision to leave—like so many other decisions inspired by Virginians' indebtedness—affect many beyond the debtor and his family. But it is not the most striking.

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Attempts by the insolvent to escape their debts began with keeping their slaves in bondage. As the principal valuable property of many Virginians, enslaved women and men could be leveraged for sale, which only encouraged their owners to spirit them out of the Commonwealth. Again the interests were perversely at cross purposes: New opportunity for debtors meant family tragedy for the women and men whose labor they owned. John Evans mounted one such escape, and Hening's report on it is in the class of stories that deserves to be quoted wholesale.

In 1796 the agent for the Company [John Gray & Company], understanding the debtor was about to remove to Kentucky, sued out a writ from the Federal Court which could not be served by the Marshal in consequence of Evans' keeping himself concealed. Having sold his land he went off in the night with all his property. The agent being apprised of this pursued him to Fauquier County about 80 miles from his former place of residence where he overtook him. Upon application to a magistrate of that County he obtained an attachment which was levied upon several Negroes well known to be the property of Evans and which were committed to jail for safekeeping. Upon the trial of the attachment the counsel for the defendant plead that the attachment could not lie, it having been served out of the county where the debtor had resided in. The Court after hearing the arguments of counsel on both sides directed the attachment to be dismissed without cost and the Negroes to be given up to the debtor.

A federal court order to take a Virginian's slaves to pay debts to British merchants:

It would tough a fathom a more politically fraught legal action in the last decade of

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the eighteenth century. The Fauquier County Courthouse probably gave the creditors' attachment little hope of success, and in the last analysis, they would have been correct.

To sit with John Evans's slaves in a Fauquier County jail is to feel the vast reach of Virginians' debts. Did they appreciate the terrible irony of being forced to join his escape? Did they discuss their role in this narrow drama, if no other, not as actors, but assets? Did they resolve to author their own escape at some future point? Did they sense that Evans was as powerless as they, in his way? Did they enjoy his future hanging in the balance of a court's mercy, even briefly?

Evans was but one Virginia debtor who attempted to "escape" his slaves while fleeing debt. For Marbill Stone, of Amherst, the secret to successfully absconding with one's slaves was employing several steps, which Hening described in some detail. Stone first moved from Amherst to Franklin Virginia, only to continue to Georgia seven years later. When the war ended he "possessed several slaves and other personal estate," but his finances were in decline. "Before he left this state," Hening reports, "he removed one or two slaves privately to Georgia."72

Joseph Hawkins, "generally distinguished by the appellation of the Negro Merchant," also owned slaves whose lives were upended by debt. In the mid-1780s, Hening writes, in a phrase only slavery comprehends, Hawkins owned "ten or twelve slaves of different sizes." By the end of the decade he had moved to Fayette County, Kentucky. The report does not make clear whether Hawkins's enslaved people were sold in Virginia or removed to Kentucky. Either outcome held dire possibilities for

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72 V29/N3:223-224.
relationships sundered and the untold dangers of circumstances beyond their control.  

Epas. White leveraged slaves to avoid his debt in a different fashion. James and Robert Donald & Company sued White for a £36 debt contracted at their Mecklenburg County store. They prevailed, but in April 1774 the Halifax County Court enjoined the judgment. White’s argument, which the court endorsed, was that Donald & Company had knowingly sold him “a Negro woman . . . subject to convulsion fits and no service to White.” It was a tragedy within a tragedy for the enslaved woman—but an opportunity for White to escape a fraction of his debt.  

Not all those whose lives were upended by debt have a voice in the reports. Enslaved women and men suffered their owners’ debt in unique ways. Suits for debt were indelible reminders that the relationship that determined the lives of slaves was not theirs with their owner, but rather their owner’s with whoever happened to own his or her debt.

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Connections among chronic indebtedness and several late-eighteenth-century homicides can be ventured with varying levels of certainty. That some debtors committed murder is no revelation, particularly given how common unpaid accounts were among late-eighteenth-century Virginians. Axton White Cotton’s story may bear out such an attenuated connection. Twice a deserter from continental forces during the Revolutionary war, White Cotton moved to Kentucky where he was convicted of murder and hanged. White Cotton’s lawlessness was so renowned that

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73 V27:N2:115.
74 V26:N4:304.
the agent declined to leave implicit one of their token double entendres on debt: "He was extremely worthless in everything and was quite insolvent when he was hanged." Making it clear that both White Cotton's accounts and his character were of no value was a point of real emphasis relative to the other claims.

The trials of Spotsylvania County's Vincent Vass—or rather, the nine women unlucky enough to wed him—suggest a more direct correlation with unpaid debts. "He has experienced a greater variety of fortune than any other man in Virginia," Hening writes of Vass. Given the countless stories he and his colleagues heard and passed on through their reports, the claim is striking, but perhaps apt. Since the period in which he accrued a £23.15.8 debt to Robert Jardine, we learn, Vass "survived nine wives." Money, and implicitly, indebtedness, helped seal these unions, in Hening's view. "No sooner was he ever married than he spent his wife's estate and became insolvent." There is no mention of how the first eight marriages concluded, but the last ended when Vass murdered his wife. He was convicted and sentenced to a term in the penitentiary, where he had recently died.

Few Virginians before or since can match Vass's prolific heart. His finances, however, would have been recognizable to many of his contemporaries. Hening concluded his report by effectively throwing up his hands: "He has been solvent and insolvent so often that I find it impossible to fix any particular dates to his various circumstances."

75 V19:N4:268.
76 V31:N1:52.
77 Maddeningly, Vass's tale also represents the concise approach taken by Hening: it runs but seven sentences.
Murder also offers an example of how silence could speak volumes in Hening’s reports. The violent end met by John Brock, of Spotsylvania County, begins the report on his debts in striking fashion: “He was murdered by his father’s Negroes in 1792.” This is the full measure of detail we receive on Brock’s death: an otherwise unexceptional report follows. Brock was solvent at the peace; his affairs were “involved”; by the time he died, his finances were in disarray. Brock’s father, Col. Joseph Brock, had loaned his son money and “taken security in his property,” but these efforts to aid his son’s finances were unavailing.

The treatment Hening gives Brock’s murder contrasts both with the ample detail on his finances and the robust narratives he spins from the lives of other debtors. Perhaps white Virginians’ fear of any hint of violence among their enslaved laborers encouraged Hening’s discretion on Brock’s murder. Unlike so many other claims, his story finds little traction beyond the pedestrian details of his accounts. His penury might be ripe for analysis, but his role in enslaving women and men was beyond Hening’s ken.

Some reports leave us speculating on connections between debts and events; the shorter the report, the greater our temptation to chink its gaps. Philip Love’s suicide is one such instance. He took his own life “seven or eight years ago,” when he was “supposed to be insolvent.” Does the agent’s report that Love was “wealthy in 1783” suggest a connection between his declining circumstances and his death—or
simply replicate the standard mention of a debtor's solvency at the peace? We may not be the first to speculate along these lines.\(^7\)\(^8\)

Recalling that other reports are clearer only redoubles our interest. John Isball's suicide was ascribed to his having become "deranged in his mind"—not much concern about debts there.\(^7\)\(^9\) William Houston, on the other hand, "it was generally reputed," did succumb to thoughts of his past "dissipation and idleness."\(^8\)\(^0\) Here unmet obligations seemed to have played a significant role.

The occasional debtor, "so very singular in the mode of his death," defies our analysis. William Horrell had accrued one of the larger balances the claims contemplate, some £182. Like many other debtors, Horrell moved during the war, closer to the North Carolina border, in his case. He "spent nearly the whole of his estate by drunkenness and its consequences and died in a fit of intoxication," Hening writes. Thus far only the extent of Horrell's labors may be notable.

It was "the circumstance" of Horrell's death that "has made a lasting impression on his acquaintances." He was one of many Virginians to meet his end in or on a river during the first twenty-five years after independence. "Being about cross the river while drunk," Hening writes in a synopsis that brooks no summary, "he placed a vessel of whiskey under his head, and in that situation suffered his canoe to float down the river, in which posture he was found dead."\(^8\)\(^1\)

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\(^7\)\(^8\) Christopher Clark's report also begs questions about Love's move from Petersburg to Botetourt County, and his partner William Christian's finances, which were in good stead at his death. V22:N2:111–112.

\(^7\)\(^9\) V31:N4:263.

\(^8\)\(^0\) V28:N1:50.

\(^8\)\(^1\) V6:N4:147.
How exactly did Horrell die? Was it by his own hand? What kind of whiskey vessel has appeal as a pillow—in any state of inebriation? Our questions far outnumber conclusions. If nothing else, Horrell’s demise reminds us of the toxic combination of debt and drink. And, of course, William Hening’s detailed reporting. We might also acknowledge that the more notable the fashion of one’s death, the more likely friends, family, and neighbors would be able to recall the details when one of the Hening brothers or a colleague came to town. The stories of untoward deaths they recorded underscored that Virginia could indeed be a hard country and a lonely place.

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A decade before the special agents traversed Virginia, Benjamin Rush outlined a “Moral and Physical Thermometer” that might have foretold some of their findings. The thermometer measured beverages according to their happy or ill effects: water, wine, strong beer, and the like led to temperance, while grog, flip, and rum courted intemperance and the “vices, diseases, and punishments” that followed. The first punishment that greeted those who took a toddy, or the dreaded “morning dram,” was debt. If the dread diseases Rush cited didn’t catch readers’ breath, Rush included to a catalogue of property-based horrors, too.

Among the inhabitants of cities they produce debts, disgrace, and bankruptcy. Among farmers, they produce idleness, with its usual consequences, such as houses without windows, barns without roofs, gardens without enclosures, fields without fences, hogs without yokes,

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sheep without wool, meagre cattle, feeble horses, and half clad, dirty children, without principles, morals, or manners. This picture is not exaggerated.

Only slightly, the special agents might have responded. They would have also made a connection between drink and debt that Rush left implicit: his pamphlet concluded with the warning that “[a] people corrupted with strong drink cannot long be a free people.”83 Debt was more frightening than drink for Virginians.

Horrell’s end was no doubt unique—not so for his fondness for alcohol. The Hening brothers found that for many Virginians debt and drink were of a piece. Thomas Twitty, whose friend recalled that he “had no visible property,” reached a low point in both “when he was refused half pint of spirit.”84 At least Twitty escaped the insults

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83 “An Inquiry,” 4, 10.
84 V16:N1:36.

Figure 8: Benjamin Rush’s “Moral and Physical Thermometer,” which appeared in “An Inquiry into the Effects of Spirituous Liquors on the Human Body (Boston: Thomas Andrews, 1790). Debt heads the list of Punishments in the lower right hand column.
directed at other tippling debtors: William Newton Jr. was “a very worthless man, much addicted to drunkenness and gaming.” The term of choice for those mired in debt or alcohol or both was “indolent.” Even those inheriting from debtors had their habits scrutinized. Robert Yates’s son was “a very indolent man, fond of drink.”

Yowel Boston, an overseer for Col. John Baylor in the mid-1770s, also seemed to live the confluence of debt and drink. John Glassell should little expect a return on Boston’s debts, Hening explained, relating the similar frustrations of neighbors with claims that had long gone wanting. “Though he was an industrious man,” he wrote of Boston, “he generally anticipated the proceeds of his share of crops and had spent in dissipation (drinking and gaming) the amount thereof before they were made.” Not all Virginians’ advances came in increments of pints or gallons, but Virginia’s eighteenth century economy compelled almost all Virginians to similarly “anticipate” the boon of a crop to come.

Some “in the habit of hard drinking” met tragic ends. Mark Tharp was “killed in Mecklenburg in a drunken quarrel.” Joseph Graves “got drowned when drunk in attempting to swim Kappoahannock [sic] River.” Graves’s demise, of course, harkens back to the “fit of intoxication” that took William Horrell’s life. Debt and drink were a toxic enough combination; the truly unlucky among Virginia debtors faced rivers compromised by both.

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85 Newton’s reputation was not helped by the fact that he joined the Revolutionary forces only to desert to the British navy, “since which no satisfactory account has been heard from him.” V14:N3:132.
86 V14:4:133
87 V27:N2:110.
88 V15:N1:57
89 V6:N4:147
The family was the backdrop for almost all of the debt-driven narratives Hening and his colleagues among the special agents reported. Like any good storyteller, he was keenly aware of how the pressures of debt affected families. These compelling details often took him further from the merchant's account books—from his charge, in other words—than any other circumstances under review.

Hening had seen debts tear at families from his childhood, and he was asked to reconstruct several of these stories as a special agent pursuing British debts. One such was the sad tale of Nathan Turner, a tenant who “lived on the lands of my father, in Culpeper, about half a mile from the mile from the mansion house, from the earliest period of my recollection till his death.” Hening’s father “never exacted any rent” from Turner, so meager were his circumstances. His son John shared Turner’s insolvency but not his upright character, it seems. “During the war his son . . . came in from Carolina and stole the only horse he possessed.” Hening would have been but a child when the news of that theft was about, and no more than thirteen when Turner died and his widow went on the “suppor[t] of the parish.”

A pair of reports on the Houston brothers of Fredericksburg also point up debt’s fundamental role in family dynamics. William Houston the elder left his sons an ample estate “[b]y course of rigid frugality and great industry.” This approach suited neither Hening, nor apparently, his sons William and Hugh: “having deprived his sons of every rational enjoyment during his life, immediately after his

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90 V27:N3:203.
death they indulged themselves in almost every species of extravagance." These led in turn to "greatly embarrassed affairs" for both Hugh and William, and a particular tragic end for the latter.91

Hugh Houston died in 1774, but debt was not done harassing his young family. "His widow married Major Forsythe, who removed to Georgia about the conclusion of the war," like so many other Virginians. There Forsythe was "killed . . . in attempting to execute process as marshal of that district." Hening's report is silent on the specific cause of Forsythe's errand, but a suit for debt is a smart money bet.92

William Houston the Younger, as Hening calls him, "soon spent by dissipation and idleness" his share of the family's estate. In short order he apparently succumbed to the combination of debt and drink. "In one of his scenes of intoxication, for which he was very remarkable, he enlisted as a soldier in the American army," Hening writes. But it was not the British who took his life: "It was generally asserted and believed that reflections on his past conduct caused him to commit suicide." His death sent his widow to live with her sister and brother-in-law, where "she drew all her subsistence from their liberality."93

Note that Hening cannot be sure—nor can we, naturally—that debt was William's undoing. The circumstantial case is built on his "very sudden" death and the dilatory ways for which he was renowned. But the inference Hening makes

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91 V28:N1:51
92 V28:N1:51
93 V28:N1:50 The Virginia Genealogist did not print the balances for either Houston's debt; William's was owed to George McCall & Company, Hugh's to McCall and to Robert Jardine. No doubt Hening's keen sense for the Houston's story was informed by his coming of age and establishing his early law practice in the area.
highlights the power of debt for Virginians even more persuasively than a suicide note. His confidence that insolvency cost William the Younger's life was colored by his immersion in the stories of thousands of Virginians who escaped with their lives but little else. The Houstons' story confirms debt's influence on Virginians in another, perhaps perverse way. William the Elder's story reminds us that danger inhered even in avoiding it.

Another distinctive feature of William Hening's reports is their attention to Virginia debtors' relationships. His "informants" often shared their neighbors' intimate doings; under his hand the talk of the county went much further. Neither party to the Gaines-Hawkins nuptials would have likely appreciated Hening's report. William Hawkins, whose £250 debt to three stores maintained by two different firms inspired the report, remarried in 1786. His new bride was "Miss Dolly Gaines, who unfortunately had violated her chastity and who married Hawkins in opposition to the wishes of all her friends." Who knows but that one of these friends was Hening's source for the story. The union did little to avert Hawkins' financial difficulties. "By her he got some money," Hening writes in one of his more memorable phrases, "but it was no sooner in his hands than it was in the Sheriff's." 94

Their coupling underscores a theme Hening established in his earlier review of Hawkins' financial predicament prior to marrying "Miss Gaines." Here he wrote that some were aware that Hawkins's slaves were "incumbered [sic] for the security of debts"—and some were not. How much a potential partner or creditor knew would have no doubt changed Hawkins' prospects considerably. His is one of many reports

94 V33:N1:24
that reminds how loose credit had become before the war—and how much a dogged approach like Hening’s could have helped then. “As soon as the courts were opened he was, in the language of my informant, torn all to pieces by executions which swept the whole of his property.” 95

At least one family eased Hening’s interpretive burden by sharing precisely how they were divided by debts. John Glassell was a Fredericksburg merchant who returned to Scotland during the Revolution, leaving his affairs in the hands of his brother Andrew and William Glassell, another relative. These agents parted company on how to collect the debts outstanding to the John Glassell firm during Hening’s research. The discrepancy resulted in one of Hening’s intermittent footnotes to the claims he reported.

N.B. Altho Mr. Glassell [Andrew Glassell] is brother to the claimant and as such must necessarily feel some degree of interest in his affairs, yet he highly disapproves the conduct of Wm. Glassell in respect to these claims. Andrew Glassell is a man of excellent character and is in possession of a very valuable tract of land and having moreover intermarried with a citizen of this Commonwealth, he is sensibly affected by the prospect of injustice which will be done to the U.S. by a general admission of the claims of British creditors.” 96

Injustice took many forms during Virginia’s first generation of independence. One might have expected Andrew Glassell to be focused first on the impropriety of Virginians’ walking away from their obligations to his brother’s firm. For reasons that are beyond Hening’s investigation, he was more troubled by the burden British
mercantile claims posed to his new country. Even more than his property or his choice of a Virginia bride, Glassell's position on debt made his allegiances plain.97

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William Waller Hening was first among equals in the ranks of Special Agents of the United States. It is worth revisiting how his peerless qualifications translated into the process he followed and the claims he produced. If his colleagues were paralegals, he was a special master—an eminent attorney to which a court defers matters that too heavily tax its expertise or time. The record offers no hint that Hening received an official charge any different from that of his fellows. But his career offers a few hints why they assembled limited information on debts and he collected indebted Virginians' stories.

To appreciate Hening’s distinctive approach, we might recall that he was, by 1800, steeped in Virginia’s code and several of its leading local courts. And it also helps to remember that he and his fellow special agents were stepping in where courts had failed—through either a failure of will on the part of Virginia legislators or jurors, or of a lack of initiative by one or both parties. Finally, we should acknowledge that it takes a special kind of person to make a career compiling laws; the term “painless” comes easily to mind. The result of all these was that Hening owned the reports no less than he would come to define the Commonwealth’s laws, which are universally known today as “Hening’s Statutes at Large.”

The volume of claims Hening and his colleagues researched caution against our imagining a one-size-fits-all approach. But convenience and strategy both would

have recommended preliminary conversations before approaching a debtor or his or her executors directly. These discussions, lost to history except for the reports conveyed to the Article Six Commission, are fascinating to contemplate.

The stories William Hening collected were the product of countless interviews he conducted with debtors and their neighbors, friends, and relations. He seems to have carefully sought out debtors' native habitats and also checked in with notable citizens in a given jurisdiction. If Hening began with a given town or county's prominent citizens, the impulse would be understandable. How much more efficient—to say nothing of less awkward—to speak to a centrally located, broadly knowledgeable third party about a debt as opposed to one whose own accounts are being scrutinized?

These interviews help explain why the reports on debts to British merchants may offer a distilled version of history. Anyone asked to reflect on a quarter century of their own or someone else's life will undoubtedly recall changes in horizons: birth, death, moves, jobs or fortunes lost, jobs or fortunes gained. The result is similar in the case of debtors who have died before the agents' research begins. Here we are apt to learn of "the circumstance [that] made a lasting impression on [a debtor's] acquaintances," as Hening wrote in one particularly vexing instance.98

Like any good investigator, Hening discriminated among his informants: Some were trustworthy, in his view, some less so. The long lives of the debts he was pursuing influenced these judgments: For a citizen's perspective to be helpful, it would have to encompass a generation worth of wrangling over unpaid accounts.

98 V6:N4:147. Appropriately, perhaps, this quote appears in the second claim John Frederick Dorman reprinted in the Virginia Genealogist.
The Reports on British Mercantile Claims themselves remind us, of course, that Virginians in middling and lower economic conditions were more transient. Hening makes the connection explicit in ways his colleagues do not: “Most of the inhabitants of Fredericksburg,” he writes, “are such as have settled there since the peace or are persons who are connected with or agents for some of the claimants from whom it would be neither decent nor proper to ask information.”

Troubled by the subjectivity of merchants, Hening felt little reluctance about soliciting Virginians’ perspectives.

Though it seems Hening sought to speak with all types of Virginians, his professional and personal contacts were undoubtedly doing better than most of their fellows in the last quarter of the eighteenth century. Consider the general endorsement Hening offers for the information of John Napier, who it seems shared detail on many claims in his jurisdiction: “The information of Capt. John Napier is entitled to the highest degree of credit. He has resided nearly at the same place for upwards of forty years during which time he has frequently acted as sheriff . . . .” Hening’s metaphor is apt. There is no telling how merchants would characterize Napier’s creditworthiness. His information, valued in part by his solid roots in Virginia, makes the grade.

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99 V29:N3:225
100 Women were even welcome informants, if their information was good. “In all the foregoing claims where Mr. Pannill’s name is introduced as my informant,” Hening wrote in a coda to one set of claims, “I am equally indebted to his lady, Mrs. Ann Pannill, for the information she communicated. She possessed the most retentive memory of any person with whom I have yet conversed on the subject of the British debts.” V28:N1:51.
102 Having served as sheriff of both Albemarle and Fluvanna counties, Napier would have been very well known to Hening. V28:N4:275; V29:N3:223.
Though courthouse contacts and research could explain a great deal, many of the reports filed by Hening and his colleagues turned on conversations with the Virginians responsible for the debt in play. These interviews, conducted throughout the Commonwealth around the turn of the nineteenth century, are worth our best efforts to reconstruct.

Imagine a discussion that at once embraces perhaps a third or a half of an individual's life—but what was then the full breadth of the nation's history. A talk that probes the most personal financial details imaginable—when you could pay what, and why. A colloquy that tended to reach not only the young nation's newly partisan politics, but also the international contretemps of yesteryear. A question whose answer involved war, dislocated families, alcoholism, madness, fraud, death or perhaps just a promise not kept.

Debtors no doubt had a broad range of responses to questions being raised about debts getting to thirty years old—in many cases, especially for modest debts, the first they had heard of the obligation in years. Did the debts seem—perhaps reasonably—relics from another life, another political sphere? Or, like Ralph Smith, did debtors go about in fear that unmet balances past would derail their lives in the present? Smith

has been as poor as a man could be to live from some time before the peace until the present day. In passing through the neighborhood Hening endeavored to speak to him relative to this claim but he would give him no admittance. It was his constant practice to keep his doors shut under an apprehension of an arrest from some public officer.
We need look no further than the comparatively small balance that inspired this awkward exchange, a £2.7.9 account with Robert Jardine, to understand Hening’s commitment to his task.103

Hening’s colleagues among the Special Agents of the United States penned reports that varied widely in their quality. Though none matched his superlative detail, neither was Hening altogether alone in careful reporting. For example, Thomas Nelson’s submission on John Hatley Norton offers a concise history of Norton, his father, brother, and the eponymous concern in which they each had a hand.104 However, Nelson handled a negligible fraction of the claims from Virginia, and not many of his and Hening’s fellows matched his seriousness of purpose. Still, a few of the special agents to investigate Virginians’ prewar debts little improved on the bare-bones details offered in the mercantile claims themselves. Their submissions reprinted the name of the debtor, the creditor firm, the amount, and perhaps the location of the store. The agent’s contribution to these reports was typically as concise as “insolvent” or “compromised” or “not known.”105 They sometimes conveyed the testimony of debtors’ contacts without confirming or endorsing it. John Alverson, according to Edmund J. Lee, was “poor, and supposed to be dead.”106 Even that guess was an improvement on reports that simply limned the claims: “John Whiting. £23.1.9 ¼ due by bond” sufficed for one debtor assigned to

103 The size of Smith’s debt also suggests Smith may have given the authorities additional reasons to request an audience. V6:N4:155
106 V9:N3:116

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Thomas Nelson.\textsuperscript{107} Many could have been, and perhaps were, compiled without leaving home.

The vast disparity in the reports' detail is something of a puzzle. Why did several agents, led by the Hening brothers, submit detailed narratives of their debtors' lives while others failed to see beyond the four corners of an account book? Though Hening was uniquely suited to the task, a lack of preparation among his colleagues is unpersuasive. As we have seen, several were suitably experienced in Virginia's way of debt.\textsuperscript{108} George Craghead was the deputy Commonwealth's attorney in Nottoway County; Charles Fleming Bates had a thriving law practice that specialized in collections; John Dabney served his neighbors as an all-important justice of the peace. It would seem that when it came to connections with the legal system and their fellow Virginians, the Virginians appointed as Special Agents of the United States had the goods.

If there was a way to investigate these claims, perhaps agents lacked the will. Until very recently, Virginia had been their country; more than a commission as a special agent of the United States would be required to cancel their skepticism about these debts. After all, they had been successfully avoided for more than a generation—how real was the commitment to making creditors whole at this late date? A majority of Virginians took an equally dim view of the treaty that outlined the process to recover the debts. The considerable Democratic-Republican bent among the special agents, and the Commonwealth broadly understood, must have

\textsuperscript{107} V10:N2:70
\textsuperscript{108} Hening's interest in and gift for legal research may, of course, also be the chief distinguishing factor.
influenced the energy many agents devoted to their task. Debts for which Virginians had no love lost may have produced reports only a genealogist could love.

It seems odd, at first blush, that debts should “transubstantiate” into stories, just as Virginia hoped her serial emissions of paper currency would become gold. Two different perspectives suggest the transition may be more organic. First, as David Graeber has written, debt is not just a way “to ask fundamental questions about what human beings and human society are or could be like”—it may be the way. Eighteenth-century Virginians would have easily warmed to Graeber’s broader argument that debt has, since time immemorial, been inextricably bound with politics, power, and notions most fundamental to our self-understanding, such as honor. There may also be a particularly Virginian quality to the role of debts as stories. That is to say, for the reasons outlined in Chapter One, debt was a particularly keen part of eighteenth-century Virginia: The way of debt as way of life. From that perspective, there may be no clearer way to understand early national Virginia than through the stories of her citizens’ pre-Revolutionary debts.

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Conclusion

"Not 'Judgment' but Greater Understanding"

"But although we may explore in vain the volumes of history and biography for details of this sort, yet I will venture to refer with confidence to a more authentic and accessible, though less dignified source of information, the personal experience of my readers."\(^1\)

William Wirt, "The Rainbow," 1804

Recent years have offered potent reminders of how individual debts to large commercial and financial firms can unravel fortunes, even lives. Foreclosures, market failures, and bailouts collapse the modern distance between the personal and the international, and the financial and the political. We have been reminded of things Virginians who lived during the generations before and after the Revolution knew well. Debt was at the center of their daily lives, of course, but it also suffused their national and international politics. No better evidence for both exists—or truly, can be imagined—than the Reports on British Mercantile Claims.

This dissertation seeks to examine these stories by attempting to stand in the shoes of the special agents and debtors who discussed obligations still outstanding around 1800. They knew well, of course, the complicated backstory of prewar debts explored in Chapters One and Two. It was inextricably a part of their own story, and of their Commonwealth's. In accruing debt, in legislating on debt, and in applying debts' lessons to the new government, Virginia was "the preponderating state of the

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\(^1\) William Wirt, et al., The Rainbow, First Series (Richmond: Ritchie & Worsley, 1804), 3. Emphasis in the original.
There, a way of debt was a way of life, and our clearest route to understanding the new nation’s political and diplomatic responses after 1776.

One of the most interesting of those diplomatic turns is also among the least known. The arbitration commission established by the sixth article of the Jay Treaty, followed closely in its day, has fallen from our history. Its failure was perhaps unsurprising given the troubled history of prewar debts and the unique political environment that was Philadelphia in the final years of the eighteenth century. Chapter Three describes an arbitration that distills many of the financial and political struggles of the quarter-century before and after its work. The Commission has, as we’ve seen, a story of political struggle and close argument all its own. But its chief, and again, overlooked, contribution was to charge a cohort of special agents to take the measure of those indebted to British merchants when the Revolution began.

The special agents who embraced this role in Virginia—part Works Progress Administration interviewers, part political activists—reported on 7,500 Virginia debts and conducted perhaps half that many interviews with debtors or their families. These discussions were far from the special agents’ last difficult turns with debt. Not uncommonly, their own finances unwound in the two decades after 1800. Like Sackville King, Christopher Clark was “very able to pay” when they spoke in 1801: less than thirty years later he died penniless. Attorney, scholar, practitioner, and peerless special agent William Waller Hening may have been in even worse shape. He mortgaged his future legal fees, many of which would have been earned, of course, prosecuting or defending suits for private debts. Like all Hening’s other late-in-life efforts to stay a step ahead of creditors, this one failed. He understood

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2 Cyrus Griffin to Thomas Fitzsimons, 3 March 1788, DHRC 8:453.
debt from all perspectives, even the most painful, and this relationship helps us understand the reports he and his colleagues prepared for the Article Six Commission.

Its failure left thousands of reports without an audience. Indeed, all involved may have found the process that commissioned these conversations wanting. Virginians opposed to the new national government paying their debts were disappointed, ultimately, by the Convention of 1802 and its £600,000 settlement. Virginians opposed to anyone paying pre-Revolutionary debts were likewise disappointed. British merchants took little satisfaction from the pittance they received relative to their claims. In short, the resolution of pre-Revolutionary debts was anticlimactic for all. But the stories Virginians told special agents around the turn of the century also played a role in two developments to come. Special agents, after all, knocked on debtors’ doors at a moment of real promise and peril—at home and abroad.

First, by 1800 the world had waited for some time to see what the new nation would make of its citizens’ old, private debts. Britons could take from the Convention of 1802 a gesture of good faith, if little recompense for their balance sheets. In that sense, the Reports on British Mercantile Claims played an attenuated role in smoothing ruffled relations with the late mother country. A character in William Munford’s 1798 poem “A Political Contest” spoke for many Virginia Democrats when he said “From Britain let us keep away. / Allied with her we soon should be / Again an humble colony / Or else, corrupted with her arts / May yield to slavery our hearts.” Munford and his fellows’ hearts might not abide it, but their wallets, and the new nation’s commercial future, depended in part on a strong

relationship with Great Britain. Each discussion of pre-Revolutionary debts around 1800 was a small step in that effort.

In the meantime, the nation waited to see what would become of the new president’s new party. Jefferson’s Republicans were in full ascent while his deputies—leavened with but a few Federalists—scoured Virginia’s countryside for stories of yesteryear’s debts. It requires no imaginative feat to suggest that these conversations—inseparable from the role of the new nation, its federal courts, or wickedness that emerged under Washington and Adams—helped Republicans make hay. In this sense, the Reports on British Mercantile Claims may have helped Jeffersonians connect tangible grievances past with abstract principles present. A different cut at similar connections has long bedeviled historians of Revolutionary and early national Virginia.

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What role, if any, did pervasive debt among colonists play in fomenting Revolution? None other than Edmund Randolph was among the first historians to engage the question, and he resented the implication. The son of the only Virginian to be knighted before the war, governor of the Commonwealth after Independence, and attorney general and then secretary of state in the Washington administration, Randolph rehearsed the suggestion in his History of Virginia. Nothing but bad faith led Britons to argue that Virginia ran from its debts when it embraced revolution. In fact, like Virginia planters fed up with Britons’ dunning before the war, Randolph countered that his side had been the injured party. “Her feelings,” he wrote, referencing Virginia, “were wounded by an insinuation that a revolution was coveted only by those whose desperate fortunes might be disencumbered by an abolition of
debts.” It wasn’t so, he continued. “[T]his was contradicted by a loyalty without being immovable and by the certainty of a general pecuniary ability which could not be by a delay of collection for the risk of an untried order of things.” Virginians were playing a longer game than the suggestion allowed, in Randolph’s view. Yet as we have seen here, the Reports on British Mercantile Claims depicted Virginians’ “general pecuniary ability” in a less than flattering light. That tiny group of men with “desperate fortunes,” whom Randolph dismissed as irrelevant, filled almost every page.⁴

Charles Beard became the leading modern historian to engage revolution-as-repudiation just over a century later. “[D]ebts due to British merchants and other private citizens constituted one of the powerful causes leading to the Revolution,” he wrote in 1915, reigniting a debate that has since proved more durable than the debts that inspired it.⁵ Historians writing during the early and mid-twentieth century—Isaac Samuel Harrell and Lawrence H. Gipson, to name two—adopted Beard’s argument.⁶ Emory G. Evans undermined it significantly in two masterly articles published during the 1960s, writing that “there does not seem to have been any important connection between the debts and the Revolutionary movement in

⁴ Randolph mined a few of the same sources that would be revisited by William Waller Hening. In fact, Randolph passed some of Jefferson’s manuscripts to Hening without the recipient realizing their true provenance. “It is now in my possession,” Hening wrote Jefferson on 15 April 1815, “& I have no doubt, that it is your property . . .” Though cribbed in 1888 and excerpted in 1935, Randolph’s manuscript was not published in its entirety until 1970. History of Virginia, ed. Arthur H. Shaffer (Charlottesville: University Press of Virginia for the Virginia Historical Society, 1970), 195, xliii; Papers of Thomas Jefferson, Retirement Series 8:424–425.


Virginia before 1774.” The notion that Virginians welcomed the economic opportunities presented by independence became, in Evans's later work, an acknowledgment that it was one among many incentives to break with Great Britain.

More recently historians including T.H. Breen and Woody Holton have helped us see Revolutionary Virginians as they understood themselves—as debtors. Breen's fine book on *Tobacco Culture* argued persuasively that obligations to Britons were seldom beyond the thoughts of Virginia planters. Debt was to them not a contract or an accounting but a way of thought, even of feeling. When cascading debts dislodged elite Virginians' sense of control in the early 1770s, bringing on "a major cultural crisis," Revolutionary ideals and rhetoric filled the void. Debt did not cause the drive for independence among this set, but it softened the ground.

Woody Holton has also broadened and deepened our understanding of debt in Revolutionary and early national Virginia. Two ambitious books that span the generations embraced in the Reports on British Mercantile Claims affirm that all kinds of Virginians were driven by debt—and in unexpected ways. For example, Chesapeake growers' efforts to withhold tobacco from the market during the early 1770s represented, in his telling, an effort to pay outstanding bills. The Continental Association's non-exportation resonated politically, to be certain, but many who signed on hoped it would raise dreadfully low tobacco prices. This, in turn, would

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8 Bouton, too, is interested in how ordinary Americans perceived the roots of what would become Beard's argument. Our scholarship, he writes, "has downplayed or ignored the connections between elite political ideals and a culture of social climbing, speculation, and self-interest, which belied the gentry’s claim of disinterested leadership."
9 *Tobacco Culture*, 29.
empower planters and others to pay down their growing obligations. The argument challenges decades of historiography but supports the underlying premise, as Holton writes, that “economic interests and conflicts helped spark the American Revolution.”

Holton also draws connections between middling Virginians’ accounts and the Commonwealth’s policy that no previous historian had traced. He argues, for example, that Beard’s notion that bondholders’ interest drove postwar debtor legislation wasn’t incorrect so much as imprecise. The tax revenues required to service these bonds in turn made citizens howl, which created the political will to relieve debts and, as we have seen, inspired a key thrust of the Constitution. Terry Bouton, writing of western Pennsylvania—long connected to Virginia by migration and kinship—also traces how “antidemocratic sentiments played out in the economic and political lives of ordinary Americans.” We might be tempted to ask what the thousands of indebted Virginians who speak through the Reports on British Mercantile Claims contribute to this conversation. My reading of the Reports suggests that answers are many; historians who follow me there will advance others. Three, however, are beyond any doubt.

The first is that Virginia debtors were eminently capable of rationalizing a delay or deferral in payment that had little to do with the dissolution of ties with Great Britain. Independence added another arrow to this quiver, certainly. But

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12 Much of Bouton’s analysis centers on western Pennsylvania, an area long connected to Virginia’s Shenandoah Valley by migration and lasting kinship connections. Taming Democracy, 9.
Virginia’s pre-Revolutionary debtors proved long before 1775 that their bills were beyond their means, beneath their dignity, or both. Some also fulfill James Madison’s thought in *Federalist* 51 that men are not in fact angels. As was often the case for Madison in the mid-1780s, he probably had debtors in mind when making the point. Even the debtors who expressed chagrin at outstanding balances in the British Mercantile Claims did so—with one exception—without reaching for their purses.

The second point the Reports underscore is that the “great Tidewater planters,” to use Breen’s phrase, had no monopoly on debts or their accompanying worries. All kinds of Virginians populate the Reports—including middling folk and the “petty planters” who “bent their backs and hardened their hands in the fields.” The balances they accrued more often below £10 than above. Virginians of such modest means are of no moment to historians of yesteryear, but play a sizable role in the more recent inquiries. The ubiquity of debt in Virginia leads directly to the most important contribution made by Virginians’ conversations about their prewar debts.

The Reports on British Mercantile Claims also compel a final, more fundamental insight. To put specific questions to these impressive documents—even a too-simple question like that posed by Beard—is to cheat the Reports on British

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13 “If men were angels,” he wrote in *Federalist* 51, “no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable to government to control the governed: and in the next place, oblige it to control itself.” Madison’s proscription echoed his concern, expressed forcefully in the spring of 1787, that state laws forgiving debts could hamstring any new nation. Limitations on such steps were the kind of “auxiliary precautions” that “experience has taught mankind the necessity of.” Alexander Hamilton, James Madison, John Jay, *The Federalist Papers*, ed. Lawrence Goldman (New York: Oxford University Press, 2008), 257.

Mercantile Claims of their power as a narrative frame. Rather than decide some question this way or that, the Reports help explain why we are drawn to the question in the first instance. Virginians’ turn-of-the-century talk of debt, like the pervasive concern and debate during the generations that came before, framed the conversation that percolates still. The relationship between debt and Revolution was implicit in each exchange between a debtor and a special agent. At bottom, they asked, “Should our new national government repay the old regime for debts that ceased when we broke from their rule?” Any response, by definition, commingles notions of debt and Revolution. Our exchanges are more nuanced, better annotated, broader. But in our way we continue to respond to the special agents’ queries.

Think of the two provisions of the Jay Treaty that exempted pre-Revolutionary Virginians for liability from their accounts: insolvency at the peace, and dilatory collection on the part of merchants. No surprise that Virginians spoke often of both outcomes. Neither, of course, reflected well on their former creditors. Almost any insolvent Virginians could point to British merchants’ policies as a reason for their difficulty; failure to pursue payment only underscored merchants’ feckless business practices. Most Virginians, like Randolph, disclaimed a role for debts in their Revolution. But their role in its story is beyond any doubt. This is the Report on British Mercantile Claim’s principal lesson.
I'm going to have a copy of this play (Tapping the manuscript) put in the cornerstone so the people a thousand years from now'll know a few simple facts about us . . . this is the way we were—in our growing up and in our marrying, and in our living, and in our dying.

Stage Manager, "Our Town"15

Not long into my reading of the Reports on British Mercantile Claims, I was struck by a later analogue for a community's collective history told through searingly personal stories. I had begun to picture William Waller Hening and his colleagues as the stage manager in Thornton Wilder's "Our Town." Written in the late 1930s, "Our Town" begins on a day almost exactly 100 years after the Reports on British Mercantile Claims were filed, 7 May 1901. In telling the story of close-knit Grover's Corner—"In our town we like to know the facts about everybody"—the play captures some of the spirit of the Henings's and others' reports.16 Both help convey the stories of their neighbors and friends, some living, others recently dead, some in comfortable circumstances, others afflicted in countless ways. A few comparisons cement the staying power of personal narratives as frames for broader issues.

First, the play opens by revisiting the townsfolk's experience of many years past, not unlike the agents' interviews with debtors who are still living around 1800. It closes with a scene in the town's cemetery, where we find residents having laid down the burdens of this world "awaiting not 'judgment' but greater

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16 Our Town, 4.
understanding." Indebted Virginians, even the "poor and dead," also got as much understanding as judgment from the agents who penned their histories.

Second, Grover's Corner's stories are mediated through an omniscient, sympathetic narrator—the "Stage Manager." Our agents are much like this Stage Manager in framing peoples' stories with historical detail and editorial comments. William Waller Hening, in particular, stage managed our understanding of the lives under discussion. He is both in and of the world he guides us through, just as Hening writes not as an agent but our agent.

Third, and especially in the case of the agents who most hold my interest, there is a literary, even "fictional" quality to the reports that bears understanding. What playwright Thornton Wilder had to dream up, a score of Virginians had experienced, and recorded, more than a century earlier. The simple claims advanced by merchants became, under their hand, stories in which there was indeed "much involved." The creative work of Natalie Zemon Davis traces a similar phenomenon in a very different context. Much like the sixteenth-century pardon applications that drive Davis's 1989 book *Fiction in the Archives*, Hening and his fellow special agents frame the stories they convey in important ways. They are narrators, tour guides, interpreters, and advocates. But the memories they sought have their own tendency toward fiction; they "nouris[h] recollections that may be out of focus or

17 *Our Town*, iv.
19 Mr. Webb, whose own impressive understanding of Grover's Corner informs his editing of the local paper, might also put us in mind of the special agents' perspective. "Seem like they," he says of his neighbors, early in the play, "spend most of their time talking about who's rich and who's poor." *Our Town*, 19.
telescopic," in Pierre Nora's phrase. By the time the special agents' queries reached them around the turn of the nineteenth century, Virginians were apt to view debts as themselves characters in a longer story.

A final resonance between these accounts of late-eighteenth-century Virginia and early-twentieth-century Grover's Corner is the universal quality Thornton envisions for his play. As the title makes plain, "Our Town" aspires to represent a broad swath of experience. "This is the way we were in our growing up, and in our marrying, and in our living, and in our dying," the Stage Manager affirms. The Reports on British Mercantile Claims similarly invite us into the experience—and often the most intimate details—of Virginia debtors. In so doing they remind us that wrangling with private, pre-Revolutionary debt in Virginia was both an intensely personal and political endeavor. Its complex background, and long afterlife, are both the stuff of stories. In explaining their debts to Special Agents of the United States around 1800, Virginians began a conversation that continues today. Then as now, they told themselves a story about themselves, about their "Independent Dominion" and about the dominion of debt.

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