*2d Cit.* Is it a crime then to be seen in the company of certain great officers of government?—surely *their* principles must be pestilential indeed, whose *very breath* breeds contagion. But you can name, "*the* "*very appointments, they have laid their fingers upon,* "*you are well apprized of their eager impatience to get* "*into office*;" if you are well assured of all this, if you can name the appointments, why in Gods name, do it; speak out, at once undeceive me; shew me that I have misstaken my men, that I have been imposed on; for never will I deem that man a fast and firm friend to his country, or fit to represent it, who under their circumstances applies for, or accepts an office from government; the application for, or the acceptance of a place by the persons alluded to, would in my opinion, as much disqualify them for so important a trust, as the duplicity of character, which you lay to their charge.

*2d Cit.* Do not mistake my meaning, or wilfully misrepresent it; I do not pretend to insinuate, that a person accepting a place thereby becomes unfit for a representative, but that no dependance can be placed in one, who declaims with virulence against *officers*,—and yet would readily take an *office*.

*1st Cit.* So I understood you, have I put a different construction on your meaning?

*2d Cit.* Not expressly; but you seem to think the acceptance of a place, as exceptionable, as duplicity of conduct; I am not quite of that opinion.

*1st Cit.* There we differ then; I esteem a double dealer, and an officer equally unfit to be chosen a member of Assembly, for this opinion I have the sanction of an Act of Parliament, which vacates the seat of a member in the house of Commons on his obtaining a post from Government, presuming, that men under the bias of self-interest, and under personal obligations to Government, cannot act with a freedom and independancy becoming a representative of the people. The Act, it is true, leaves the electors at liberty to return the same member to parliament, in which particular (be it spoken with due deference) it is more worthy our censure, than imitation; I have a wide field before me, but I perceive your patience begins to be exhausted, and your temper to be ruffled. I have told some disagreeable truths with a frankness, which may be thought by a person *of your steadiness and importance* somewhat disrespectful; I leave you to ponder in silence, and at leisure on what I have said ——Farewell.

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*To* SAMUEL CHASE, *and* WILLIAM PACA, Esqrs.

GENTLEMEN,

YOUR complaints of my *severity*, are certainly affecting—it is to be lamented only, that, as urged against me, they are totally groundless. It is obvious, on the slightest attention, that my queries were intended only as *charges* against your conduct, *respecting the Act for the establishment of religion*, as they had been collected from conversations with numbers of people. I tell you so in express terms. What authority then have you for saying, that, *absent* and *unheard*, I have *adjudged* and *pronounced you guilty*, &c? Is there no difference between *charging* and *condemning*? What can you mean by being pronounced guilty, *absent* and *unheard*? Were you not upon the Spot, where the charge was exhibited? How then *absent*? Has not your defence been as publick, as the charge exhibited against you? How then *unheard*? But, though in general, you charge me with having precipitately *passed judgment* upon you, yet, in another place, I observe, you have, yourselves, hit upon the true distinction. "When a minister of the gospel, say you, "*arraigns* the conduct of any man in publick, the "*charge* should be exhibited with all the temper and "moderation of an *accusing angel*." I have seen no precedents of *charges* urged by *accusing angels*; and, therefore, am not master of the forms in that case made and provided: but, I have seen the forms of charges urged by *earthly judicatures*, and their stile does not seem remarkable for the *temper and moderation*, you affect to be so fond of. The poor culprit is *charged* with "not having the fear of God before his eyes, but "that, being moved and seduced by the instigation of "the Devil, he has, &c. &c." This is the *angelic* language of that Law, whose humanity, you have found out, will spare a man's "naked corps, and "protect it from *the thorns of a jail*."

Mark, however, your own *temper and moderation*, and how cautious you are of *pronouncing and adjudging* others *guilty, before you have heard their defence*. Witness your *charitable* charge against the Clergy: witness your charge against me, for having *damned your profession*. I forgive this last stroke; it was a finesse to draw in, if possible, other gentlemen of the Law, as parties in this dispute, and excite their odium against me. But, I disavow the charge, and declare, that I had no others in my eye, than *the Lawyers*, to whom my letter is addressed. I acknowledge, with pleasure, that the profession is liberal and honourable, though like all others, it has the misfortune to be disgraced now and then, by men, who *may chicane and temporize*.

With how good a grace, you, who are bent on unhinging the establishment of the purest church upon earth, can recommend to others the *Gospel precepts* and *Christianity* or as you elsewhere express yourselves, not less accurately, *Religion and Christianity* (both of them pleonastic and pretty!) let the world judge; to the world too I refer it, how well such reformers as you, are entitled to the tender treatment of an order of men, whose rights you are endeavouring to trample under foot, whose ministry you would render ineffectual and useless, by alienating the affections of the good people of this province from both their persons and their functions. Is it not shameless cant, in such men, to talk of *Gospel precepts, and Christianity*!

No less candid and *charitable* are your charges against me, concerning episcopacy; a subject which, it must be owned, has as much connection with the controversy between you and me, as it has with the election of a Lord Mayor of London, or the war between the Turks and Russians. But, it was sufficient, that, owing to the misrepresentations of such ill-disposed and ill-informed writers as you are, the measure was supposed to be unpopular: and as I am known, and am contented to be known, to be a warm advocate for it, you imagined, you had but, *charitably*, to call it *a scheme of perdition*, effectually to turn the tide of the publick favour against me. However, as I am not more willing to *ask*, than I am to *answer* questions, I here pledge myself to the publick, and to you, in due time, to give you a *full*, and, I hope, a satisfactory answer to all your queries, respecting this crime of petitioning for a Bishop—as enormous, one would suppose, from your account of it, as though I had been concerned in a plot to bring in the Pope and the Pretender. And I desire to be understood to postpone it now, merely to avoid the confusion arising from the blending together two subjects so totally dissimilar.—Let me yet observe, that should your opinion on the subject of *Common Law* happen to be right, I am not the only one that sees, it will do more towards the introduction of an episcopate—do more for the Clergy, in other respects also, than all the united efforts of all the American priesthood have yet been able to accomplish.

Passing over, *for the present*, matters of inferior moment; I hasten to the consideration of the single question which is of importance in this controversy; *By what authority do you act as Vestrymen?* Your reply, as I understood it, is, in short, that you derive your authority not from any *written Law* of the province, but *from antient usage and custom of the parish, beyond the memory of man*. This being nothing but a mere assertion, I take the liberty to deny it, and to call for your proof. For, when a party avails himself of a custom, it is, I believe, laid down as a rule, that the proof of the custom is incumbent on him. Here then I might rest the cause, and, if you will, *with a triumphant air*, start the question anew, *By what authority do you act as Vestrymen?* But, for the satisfaction of the few readers, who may have been misled by the confidence with which you urge this plea, I will mention some other difficulties, that seem to me to stand in your way. *I am clearly of opinion*, that there were neither parishes nor vestries in Maryland, before the Act of 1692: an Act establishing them could not reasonably have been expected sooner, as, before that period, the powers of Government were exercised by a professed Papist. The following extract from the Council-Book, where you will see, the Act of 1692 directs it shall be *kept on record*, shews as well the utmost *antiquity* of the parish of St. Anne's, as the remote *origin* of its Vestries.

"Council-Book, 1694 to 1698, folio 46.

"An account of the several parishes within this "province, as they were laid out, &c.

"Anne-Arundel County is divided into four pa-"rishes, viz. Herring-Creek, South-River, *Middle-*"*Neck*, and Broad Neck.

"*Middle-Neck* parish is situated between South-Ri-"ver, and Severn River.

"Vestrymen chosen are ——— and ———"———and ——— and ——— and ———.

"Taxables 374."

The above description sufficiently proves the parish of Middle-Neck to have been that now called St. Annes, were it not also evinced by the Vestry-Book. Here then we can *go back and lay our hands on the statute* that first gave rise to the custom: no other origin appears; and, I believe, the maxim in Law is, "*quod* "*non apparet, non est*." Where the origin of a custom can be traced, it destroys it: you cannot claim under an usage, where you can prove the authority from which it is derived: were it otherwise, there would be no other Laws, than those dependent on custom. For instance, where an authority is given by grant, statute &c. there will be an exercise of such authority; and, after length of time, the *usage* only, on these principles will avail; and so the usage under statutes, and not the statutes themselves, will prescribe the rule of conduct. This, surely, is *a perfect novelty in the Law*. On principles very different, are customs supported. The constant usage is presumptive evidence of a preceding right conferred; and though the instrument of creation cannot be produced, yet 'tis inferred, there could have been no such usage without a legal and proper commencement—Presumption stands, till the contrary is proved: therefore, if the commencement of a custom can be proved to be illegal, the presumption from usage is destroyed by contrary proof. This, I take it, is the reasoning adopted in Mr. Paca's opinion, vide the argument about statutes. The Act of 1701-2 is considered as the ground of the Clergy's claim, and, though denied the force of a Law, is urged as an evidence of the creation of this claim: and the Act being supposed to be void, 'tis therefore said, the claim is also void. Let the same reasoning be applied to the case before us. The same act shews the commencement of present Vestries; and, if void, *pari ratione*, Vestries have no authority to act. The origin of the supposed custom being proved to be illegal, as it must, if the Act, from whence it is derived, is illegal, it must be liable to the same objections that you have urged against the Clergy's claim. Denying the validity of the Law, you yet admit it as a piece of evidence to prove the original claim; so here, if considered only in the same light, it must be productive of like effects, as your argument from custom. I mean, if present Vestrymen, whose origin may be traced back to the very same source, as the Clergy's claim, even to a *Lex scripta*, an express Act of Assembly, have a right to act, from *custom*, as you affirm; this same doctrine of custom will apply, with equal force, to the claim of the Clergy. Or, does your custom regard only parishes and Vestrymen, exclusively of the other constituent parts of a religious *establishment*? If it does, it is, to you, a very convenient and obliging custom. For me, I confess, I can have no idea of a *church, parish*, and *Vestrymen*, without a regular *established* ministry, nor an *established* ministry, without support, or revenue. The mother-country, I am sure, affords no such precedent in her constitution; nor do I find any thing in the practice of this province to countenance a doctrine so pregnant with absurd consequences. You say, *the Lawyers* were friends to the *established* church: It may be so; Brutus *professed* to be Cæsar's friend—and stabbed him. But, what *established* church is it, that boasts the honour of your friendship? The church in Maryland, if *established* at all, was *established* by the Act of 1702-2, which Act, you say, was originally null and void. Tell us then, when and how the church, you are friends to, was *established*.

The efforts you have made to extricate yourselves out of one difficulty, have but plunged you deeper in another. You now see yourselves under the dilemma, either to acknowledge, that the Clergy of Maryland are entitled to the forty per poll, by *custom, time out of mind*, and so make a sacrifice of all your darling politics at a stroke; or, to submit to the imputations suggested in my first queries to you. Surely, it would have been better for you to have owned *a trip in your politics*; and, for once, have been guilty of the weakness of having acted the part of candid and honest men.

You ground your authority, as to the right of taxation, on the Acts of 1704 and 1729. Both these Acts have a plain reference to the Act of 1701-2—the former, expressly. They speak of *Vestries* and *Parishes*; the legislature knew of no Vestries or Parishes, but under the Act of 1701-2. Hence, I infer, that the right of taxation given to Vestrymen by these Acts, was given to Vestrymen under the Act of 1701-2; the framers of them could have no others in contemplation. If this was not the case, By what authority did the Vestries in 1704 act? Will you say of them too, that it was by the authority of the parishioners &c, *according to antient usage* and custom, *beyond the memory of man*? an *antient* usage, of *two* years!

Extract from the Vestry Book of St. Anne's.

"April the 1st, 1771——(ominous, at the threshold!)

"At a meeting, &c.

"Whereupon the Rev. Mr. Jonathan Boucher qua-"lified Mr. William Paca, Mr. Woodward, sen. and "Mr. John Bullen, as Vestrymen of this parish, by "their taking the several oaths *required by Law*, re-"peating and signing the test, and oath of office, *re-*"*quired by Act of Assembly*."

There is an entry to the same purpose, respecting Mr. Chase, on the 11th of June, 1770: and, indeed, the same form has been used, on the election of new Vestrymen, ever since there have been vestries. It cannot, however, I trust, be deemed impertinent in me, just to ask, what *Act of Assembly* it was, that *required* your taking these oaths, before you could be *deemed and taken* as Vestrymen? And, as one of you qualified me, in the like manner, when I had the honour to become your principal, I would ask also, by what authority I was made a Vestryman, and acted as such in concert with you, as it is certain that neither your present principal Vestryman, nor I, were *nominated, chosen and elected by the Parishioners*? And, finally, I would ask, by what authority you have always paid your Register? Was it not under the authority of the Act of 1730, an Act expressly *supplementary* to the unfortunate one of 1701-2?

It is granted that, with respect to the authority given to Justices by the Act of 1729, *they exercised a judgment upon the matter*. They *judged*, however, that you were Vestrymen: and I leave it to them to say, whether they did not think you so, by *Act of Assembly*. Plain men, untainted by politics, do not readily enter into these new-fangled refinements: and I am persuaded, they will not think themselves injured, by my declaring it to be my belief, that they never, till now, heard or dreamed of Vestrymen by *Common Law*. It is certain, the magistrates of Talbot did not: for, believing, as every body else does (*the Lawyers* excepted) the authority of vestries to be derived from the Act of 1701-2; and, doubting of its validity, *they exercised so much judgment on the matter*, as to refuse to assess the tobacco petitioned for, by the vestries of two parishes in that county. And, I am told, that, the next provincial court, a mandamus will be applied for, to compel the said magistrates to a performance of their office.

There are other points of view, in which I might expose the weakness of your defence: but, I forbear. Of my attainments in Law, even you, Gentlemen, do not think more lowly than I do; I hope it is no reproach to me, that I am not a Lawyer. I do not, however, think, that I have much reason to be dissatisfied with the part I have taken in the question of Law which I have presumed to controvert with you: and it is singular enough to see you triumphantly proclaiming the sentinels of my stock of legal knowledge, on no better authority, than my having proposed queries to you, which you have not answered. However, the extreme contempt you expressed for my judgment, the confidence with which you publish your own, I own, made me diffident: I knew not, into what labyrinths of legal quibbles you might lead me, losing sight of common sense, my only guide. I therefore resolved to know certainly how the Law stood in this case, and, for this purpose, took the opinion of a gentleman in the Law, whose abilities you will hardly deny. This opinion I will publish, as soon as there can be room for it in the paper. Sneers and quibbles are all I dare to hope from you in reply; but, for your own sakes, I trust, you will not so read the opinion of a professed Lawyer.

I ask pardon for what I said concerning the *Veto* on the Proclamation; nor shall I quarrel with you for calling a mistake in point of fact, *a bull*. You seem to have arrogated as arbitrary a dominion over *words*, as you have over *Laws*. I was seduced into the opinion, by a common clamour raised against a particular gentleman in a neighbouring county, for having given such a vote. Never considering, that all the arts of *political lying* are most laudably exerted to mislead the people, *for their own good*, when the important busine-