The consciousness and dread of this was the true cause of the scrutiny being declined on the most false and injurious subterfuge.

"The court of Aldermen, gentlemen, notwithstanding the sanction of your declared wish and approbation by the majority of your suffrages, have not thought proper to ratify your choice. I give the gentleman, who is the object of their choice, much joy. His forward zeal for the publick service—but I will not be his panegyrist.

"I am happy, gentlemen, to be farther useful to you by humbly offering to you, at all future times, the tender of my services, in conjunction with any gentleman, whom you may chuse hereafter to raise to the dignity of your chief Magistrate. I shall thus enjoy the satisfaction of vesting in the livery of London the full and sole power of electing their own Mayor, a privilege enjoyed by all other corporations, and which in my opinion they ought to have had at the first formation of the constitution of this city. On every occasion, gentlemen, I shall be ready to obey your commands, and to convince you of my warm gratitude for your repeated favours."

ANNAPOLIS, JANUARY 8.

To the Rev. Mr. JONATHAN BOUCHER.

REVEREND SIR,

WE recognize your Letter, in the Maryland Gazette, of the 31st of December, 1772, and return our thanks for your not having stabbed our reputations under a fictitious signature; you have implicitly submitted your character to the strictures it may be subject to; by attacking ours, and we are obliged to you for giving us an opportunity of acknowledging your generosity in this instance. But we do not see that our thanks are due for any other part of your epistle; for, as no man's mind is so watchful on all occasions, but that he may be surprised into a step deviating in some degree from propriety, when the circumstances will permit a mild construction, the action ought to be imputed rather to the weakness of human nature than a corruption and depravity of heart.—Hence it might be reasonably expected, that if a MINISTER OF THE GOSPEL, who ought to be a living example of the benevolence and charity he preaches, should think it necessary, for the general good, to arraign the conduct of any man in publick, the charge would be urged with all the temper and moderation of *an accusing Angel*: and yet an offended Priest is a most revengeful and implacable enemy; the only sure guard against his fury, is it's impotency. Had your benevolent intentions towards *this once happy* and flourishing country fully taken place, prudence and personal safety might have dictated a silent and very respectful conduct towards your body, and even their temporal claims; but the scheme for establishing an American Bishop, *though fraught with publick utility, and conducted with the utmost openness and sincerity*, having *unhappily* failed, you can, as yet, cite us before the tribunal of the Publick only, where we chearfully attend, being well satisfied, that Truth may *there* look for support, and Innocence find protection.

In the introductory part of your Address you are pleased to say, "As this appears to *many others* as well as myself a very extraordinary measure in gentlemen of your principles, you'll be glad, no doubt, of the opportunity *I now give you* of *explaining and reconciling* your proceedings to the Publick." It would seem from hence, you were under an impression, that justice required, we should have an opportunity of explaining and reconciling our conduct to the publick, and that the publick judgment ought to be suspended, till we had that opportunity; if so, with what consistency can you precipitately pass your severe censures on us? Absent and unheard, you pronounce and adjudge us "*guilty of an high infringement of this great constitutional right, of all others, perhaps, the most inestimable, in thus usurping the power of taxing the people without the consent of their Representatives in Assembly convened.*" You repeat your severity and again pronounce and adjudge us "*the arbitrary instruments of an unconstitutional tax upon the people.*" But this was not enough! You again pronounce and adjudge us "the immediate agents of fixing on the necks of a free people, that odious badge of slavery, taxation without their consent, taxation without the LEAST PRETENCE OF LAW. Nor was this enough. Our very profession too must be damned: "*Lawyers may chicane or temporize as their present interest or other passions dictate.*"—UNCHARITABLE PRIEST! Tell us what passion dictated your resentment against us? Was it a laudable zeal for the publick welfare, or was it Revenge!—Revenge, for thwarting the pretensions of the Clergy to the forty per poll? And permit us, Sir, to ask, what system of humanity or religion can justify you, merely upon the supposition of an offence, to call upon us the vilest imputations, before we had made our defence, or been heard upon the charge?—Is such wanton cruelty the *fruit of a sound heart?* Is it consistent with your own ideas of justice? Is this the result of Christianity and the Gospel precepts? Does the sacred page teach you to forget humanity, and the first principles of natural justice?—far from it. It stands recorded in Holy Writ, that when Adam and Eve broke the great commandment of God, and exposed themselves to the pains of death, even the Supreme Being, tho' *omniscient* and *infallible*, did not proceed to judgment before he called up the culprits and heard their defence. Your conduct in calling on us to explain and reconcile our proceedings to the publick, and passing judgment before you heard our reasons, is equally wicked and absurd; it evinces *you* had no wish indeed that we might reconcile our proceedings to the publick.

You confidently assert as a fact, "The *publick Voice* arraigns you of duplicity, of acting in direct opposition to the principles you avow, of loose and fluctuating counsels," and *your good nature* prompts you to add, "the usual effects of artifice and insincerity." If any but yourself arraigned us of duplicity, it is yet unknown to us, nor do we believe the attention of the publick was drawn to this transaction till you sounded your trumpet.—Elated with the idea of your own importance, possibly you triumphantly conceived, that *Vox Sacerdotis* was *Vox Populi*. Perhaps too aided in this conception by the *sweet concordance* of the voice of the People with the voice of the Clergy with respect to the forty per poll.—The information you have had of our concurrence in the petition was very probably given on your previous enquiry, and your publishing it, exaggerated and heightened with false imputations, could proceed only from equal malice and ignorance.

That we continue to act as Vestrymen of St. Anne's parish we admit, and that we went so far as to concur, with others of our brethren, in a petition to the County Court, dated November 10, 1772, for an assessment of 5lb. of tobacco per poll, on the taxable inhabitants of the said parish,—we grant.

The parish church and chapel wanted *necessary repairs*: the parish fund did not afford a sufficient sum for the purpose: to obtain a compleat supply *the Vestrymen and Churchwardens* adjudged and imposed a tax of 5lb. of tobacco per poll upon the taxable inhabitants of the parish: they preferred a petition to the county court to have that tax assessed: which, to prevent misconstruction, means nothing more, than to have the tax so imposed by the Vestrymen and Churchwardens put upon the publick levy-list for collection by the Sheriff: for the county courts have no discretionary power to reject or modify such taxation.

The facts then admitted and the case fairly stated, the only question is, Whether this proceeding of the Vestrymen and Churchwardens was a legal proceeding, and warranted BY LAW, *abstractedly considered from the Act of 1701-2?*——If it is, then the charge "of duplicity, of acting in direct opposition to the "principles you avow, of loose and fluctuating coun-"sels, the usual effects of artifice and insincerity," falls to the ground, and the several judgments pronounced against us for an unconstitutional taxation are nothing more than the *ravings of an angry Priest*.

The proceeding of the Vestrymen and Churchwardens consists of divers facts, and you, reverend Sir, conceive each fact a distinct offence, and frame your several charges against us according to the nature of the several offences.—Our presuming to act as Vestrymen is one fact: our taxation is another fact: the petition to the court a third fact. Upon the first fact, conceiving the justification of it to rest solely upon the act of 1701-2, *which we hold a perfect nullity*, you ground the charge of duplicity: with the same idea, as to the other facts, you charge us with unconstitutional taxation.

The life of man is so short that perfection in every science cannot be expected from him; and human nature is so calculated, that different propensities are given to different men, particularly in the mode of subsistence and temporal acquisitions,—for the benevolent purpose, that the cord of mutual dependance might tie up mankind in a bond of mutual friendship and sympathy; when therefore a man attempts to figure in a sphere, which nature never qualified him for, as he acts unnaturally, so he acts contemptibly. In your professed element, Sir, possibly your genius and erudition may be respectable; but in questions of law, permit us to deny your abilities; your dependance must necessarily be placed upon others, and when you open upon a legal topic, we can only consider you as a mere Echo.

But to proceed to our defence; As to the facts of taxation, and the petition to the court, they are totally unconnected with the act of 1701-2, and our authority for this part of our conduct we ground upon the several Acts of Assembly of 1704 and 1729.

By the Act of 1704, cap. 34, sect. 4, it is expressly enacted, "That when and as often as the necessity of each respective parish shall require repairs or supplies, the Vestrymen and Churchwardens thereof shall apply themselves to the Justices of the county courts, at the laying of the county levy, who upon the necessity appearing to them shall and are hereby empowered to raise, by an equal assessment by the poll on the inhabitants of such respective parish, such sums of tobacco as by the said Justices shall be adjudged necessary to supply the occasions aforesaid, over and above the county levy, not exceeding the sum of ten pounds of tobacco per poll in one year; which sum so raised shall be collected and gathered by the Sheriff, and paid to the Vestrymen of such respective parish or parishes, at the rate of five per cent, for his salary."

By the Act of 1729, cap. 7, sect. 2, it is expressly enacted, "That it shall and may be lawful for and the several Justices of the several county courts within this province are hereby required and directed, on application to them made, by the Vestrymen and Churchwardens of any parish, yearly to assess the parishioners of such parish, any quantity of tobacco not exceeding ten per poll, on the taxable inhabitants thereof: be it for the enlargement or repairs of any church heretofore or hereafter to be enlarged, or for any other charge, that hereafter shall *be judged by the Vestrymen and Churchwardens to be necessary for the use of the said parish.*"

With respect then to the taxation, and with respect to the application to the court, the Law is clearly with us, independently of the Act of 1701-2.

But then, with a triumphant air, you start the question——By what authority do we act as Vestrymen?

This indeed is the only matter in controverfy between us, and the question now is reduced to a single point: for if we and our brethren were *legally* and *constitutionally* Vestrymen and Churchwardens of St. Anne's parish, then the above cited Acts of Assembly, which are subsisting Laws of the province, justify and warrant every part of our conduct and proceeding.

We throw totally out of the case the Act of 1701-2, commonly called the forty per poll Act: we hold that Act *most clearly* void, upon the principles assigned in an opinion heretofore published, which, Sir, we beg leave to remind you, stands *unanswered*; and we venture to say, that the *only hardship* the good people of this province can labour under, from the nullity of that Act, is a *total exemption from a payment of the 40 per poll!* for neither the parishes, nor churches, nor the power to induct ministers depend upon that Act.

We presume to assert, that St. Anne's parish is an *ancient* parish, erected and established as a parish *beyond the memory of man*, in which said parish a church and chapel are built and erected by ancient laws; and that the said parish church and chapel do not derive their existence from the Act of 1701-2.

When a parish is established, the parishioners, by *common law*, founded upon publick utility, become a *body politic*, and having the government of the parish in their hands, may, by common consent, pass a bye-law for the raising of a *tax* for *church repairs*, without the interposition of any superior judicature. There is nothing unconstitutional, or repugnant to reason, in this part of the common law: because the imposition of the tax is by *common consent* of the parishioners.—But, by *particular custom*, grounded upon the principle of general convenience, this authority of the whole body of the parishioners may be delegated to a *select number*, who are distinguished by the appellation of VESTRYMEN, *the business of the parish being transacted in the Vestry, a place adjoining to the Church, where the vestments of the Priest are generally deposited and kept.* When particular persons *by custom* are thus chosen and elected for *Vestrymen*, the government of the parish devolves upon them, and *they*, as the representatives of the people of the parish, may, in their *corporate capacity* of *Vestrymen*, impose a *tax* upon the parish for *church repairs*: and this too is constitutional; for in such case the tax is imposed by the *representatives* of the parishioners in *Assembly* convened. As the persons, then, thus nominated for Vestrymen, have the government of the parish, and may exercise a power of taxation, the nomination and election of them is of *common right* in all the parishioners, who are to be bound and affected by such taxation, unless, by *custom* or *statute*, the election is limitted and confined to part of them under a particular qualification; and so stands the Law confirmed by repeated determinations. Churchwardens too, (*persons who have the ward and custody of the church*) are considered in law as a *corporate body* to many purposes, though their powers did not extend to *taxation*, and the election of them, custom and statute out of the way, is also of *common right* in all the parishioners.

The common law operates till suspended or abrogated by statute: When St. Anne's parish, then, was erected and established as a parish, the government of it devolved upon the parishioners; they became a *body politic*, and might, by *common consent*, exercise the power of *taxation* for *church repairs*. But by *custom, time immemorial*, the government of this parish has been delegated to Vestrymen: Whether, in days beyond the memory of man, they proceeded to *taxation* is a point of no consequence in the present case: because, we do not ground our justification, *with respect to the tax* we imposed, upon our *political capacity* as *Vestrymen*, but upon the above cited Acts of Assembly of 1704 and 1729, which are subsisting Laws of the province. The Act of Assembly of 1704 broke in upon the common-law right of Vestrymen, and vested the power of *taxation* for *church repairs* in the county court—a jurisdiction far less constitutional than that of Vestrymen: because, the Justices of our courts, holding their commissions from the Lord Proprietary, and at *his will and pleasure*, can, upon no principle, be deemed the *representatives* of the parishioners, so as to involve *common consent* in the imposition of such taxes for *church repairs*. But the Legislature in 1729, properly conceiving, that this power in the county court was an infringement upon the constitutional rights of the people, virtually repealed this part of the Act of 1704, which gave the jurisdiction to the county courts to tax, by vesting the *sole* authority of *taxation* for *church repairs* in the *Vestrymen and Churchwardens*: departing *in an immaterial point* from the common law, by admitting the Churchwardens to a share in taxation with the Vestrymen: we say *in an immaterial point*: because, as Churchwardens are of *common right* eligible by the parishioners, they are representatives as *constitutionally* as Vestrymen.

As to the question then,

By what authority we act as Vestrymen?

We give you, Sir, this *precise* answer: By the authority of the parishioners, founded upon common law and common right, who chose, nominated and elected us Vestrymen of St. Anne's parish, according to the *ancient usage and custom of the parish beyond the memory of man.*

But, reverend Sir, as you not only figure in questions of a legal nature, but can caper too upon *constitutional* principles, we shall now meet you upon your capital ground, and take up our justification upon the very position, *that there can be no taxation without consent.*

We need not premise, that the only point, which requires to be established, is that we and our brethren are *constitutionally* chosen Vestrymen and Churchwardens: this once fixed, the above cited Acts of Assembly compleat the business for us.

By the Act of 1729 a power of taxation is given the *Vestrymen and Churchwardens* for *church repairs*. We then ask,

By whom, upon constitutional principles, were the Vestrymen and Churchwardens to be elected?

If there can be no *taxation without consent*, as ever to be revered and glorious Hampden held, as we, reverend Sir, maintain, and as we *most clearly* hold, then indubitably and as a natural consequence, the parishioners only, who are to be affected by the tax, must have the right of election; because, upon no other possible ground can the taxation of the Vestrymen and Churchwardens be a taxation *with the consent* of the parish. But we, our brethren, and Churchwardens, who imposed the tax in question, were nominated, chosen and elected Vestrymen and Churchwardens of St. Anne's parish, by the parishioners, without opposition and *nemine contradicente*. Ergo, we, our brethren, and Churchwardens, were constitutionally chosen Vestrymen and Churchwardens of St. Anne's parish—which was the point to be proved.

Permit us now to enquire whether the jud-