

Introduction

July 4, 1791

It was July 4, 1791, the fifteenth anniversary of American independence, and there was much work to be done. Around the country, proud citizens celebrated; they organized parades, listened to sermons, and even sparked a few riots.¹ But in Berkeley County, Virginia, just a few miles north of Winchester, two groups of sweaty, angry men – exhausted from a long day harvesting wheat in John Crane’s and Thomas Campbell’s adjoining fields – stared each other down across a fence. Their gazes threatened, their words taunted; they were ready to fight.²

John Crane, who stood his ground on his own side of the fence, was new to the neighborhood, but everyone knew who he was. The twenty-four-year-old Crane came from one of the county’s most important families. His father had, until recently, been Berkeley’s deputy sheriff; his wife, the former Catherine Whiting, was from one of Virginia’s oldest and most powerful families – and

¹ For independence celebrations across the nation, see “Philadelphia, July 6,” *Gazette of the United States* (New York City, NY), July 6, 1791; “New York,” July 9, 1791, *Weekly Museum* (New York City, NY), July 9, 1791; “Boston, Monday, July 11, 1791,” *Boston Gazette* (Boston, MA), July 11, 1791; “Baltimore, July 5,” *Federal Gazette* (Baltimore, MD), July 8, 1791; “Elizabethtown, July 6,” *New York Journal* (New York City, NY), July 9, 1791; “Worcester, July 7,” *Massachusetts Spy* (Boston and Worcester, MA), July 7, 1791; “Providence, July 6, 1791,” *United States Chronicle* (Providence, RI), July 7, 1791; “Portsmouth, July 7,” *New Hampshire Gazette* (Portsmouth, NH), July 7, 1791; “Boston, Monday, July 11, 1791,” *Boston Gazette* (Boston, MA), July 11, 1791; “Philadelphia, July 6,” *Boston Gazette* (Boston, MA), July 18, 1791; “Philadelphia, July 13,” *The Pennsylvania Gazette* (Philadelphia, PA), July 13, 1791. I am grateful to Amelia Nemitz for retrieving this information.

² See *Commonwealth v. John Crane, the Younger*, 3 Va. 10 (1791); “Deposition of Hugh McDonald, October 1, 1791,” *Calendar of Virginia State Papers and Other Manuscripts*, vol. 5: *From July 2, 1789 to August 10, 1792*, ed. William P. Palmer and Sherwin McRae (Richmond, VA: Virginia State Library, 1885), 371–372.

one of Berkeley's richest.³ But despite their privilege, on this July 4, John and Catherine had been working all day to bring in their first harvest on 200 acres of land – a decent amount of property, but small next to the thousands of acres some Shenandoah Valley landlords, such as Catherine's family, owned.⁴

And for this harvest, of course, the Cranes had help. First there were the enslaved people they owned – two adults and two teenagers, probably (like the land) a gift from family.⁵ Several white men had also pitched in for the day. Thirty-one-year-old John Dawkins, the Cranes' neighbor, had offered his strong back and long experience to help the young landowners harvest their crop. Dawkins had lived in the area for years, maybe all his life, but in 1791 his parents had just sold their land, and his family was on its way to Kentucky (in those days still Virginia's westernmost region).⁶ Dawkins knew the men in Campbell's field well; now, he stood with Crane at the fence, facing Campbell's angry reapers.⁷

³ For a detailed discussion of both John and Catherine Whiting Crane's families and backgrounds, see Chapter 1.

⁴ "John Crane Jun." appears on the Berkeley land tax records for the first time in 1790, owning 200 acres, but as a personal property owner in 1791. See Berkeley County Land Tax, East 1790, Berkeley County Historical Society, Martinsburg, WV (hereafter BCHS); Berkeley County Personal Property Tax Records, East 1791, BCHS. Entries from a family Bible that appears to have belonged to Catherine Whiting Crane, John's wife, list his birth date as December 30, 1766, although the printed source citing the Bible reports that the date is of dubious legibility. See Dakota Best Brown, *Data on Some Virginia Families* (Berryville, VA: Virginia Book Company, 1979), 251. For settlement patterns, see Warren Hofstra, *A Separate Place: The Formation of Clarke County, Virginia* (Madison, WI: Madison House Publishers, 1999), 27. James Crane had obtained land grants for property that, because of its location, seems to have been among what John Crane farmed. See grant to James Crane of "34 acres adjoining John Dawkins and George Hyots heirs," Northern Neck Grants U, 1789–1790, 455–456 (Reel 300), The Library of Virginia, Richmond, VA (hereafter Library of Virginia); grant to James Crane of "106 acres near and on the east side of Opeckon Creek," Northern Neck Grants U, 1789–1790, 453–455 (Reel 300), Library of Virginia. (The Crane family owned other Berkeley property not included in these grants.) Additionally, the Cranes had grants for land further west, including John Crane's 1785 grant for 400 acres in Monongalia County. Land Office Grants P, 1784–1785, 487 (Reel 56), Library of Virginia.

⁵ Berkeley County Personal Property Tax Records, East 1791, BCHS.

⁶ See land grant to James Crane, March 2, 1790, for 34 acres "adjoining John Dawkins and George Hyots heirs," Northern Neck Grants U, 1789–1790, 455–456; John Dawkins is listed in the Berkeley County tax records as owning 150 acres. See, e.g., Berkeley County Land Tax Records, East 1790, BCHS. The Dawkins family identifies the John Dawkins of the Crane case as John Dawkins Jr. See Lela Wolfe Prewitt, *The Dawkins and Stewart Families of Virginia and Kentucky* (n.p.: 1968), 5–6. Dawkins appears as a significant figure in the ultimate verdict in *Commonwealth v. Crane*, as a witness in court documents, and in other materials related to the case. See, e.g., *Crane*, 3 Va. at 10–13; "Deposition of Hugh McDonald, October 1, 1791," *Calendar of Virginia State Papers*, 5:371–372.

⁷ Dawkins's father had posted security for the will of Campbell's reaper Isaac Merchant's father, who died in 1772. See entry "June 16, 1772," Berkeley County Minute Book, BCHS, giving £500 security with David Lewis and Priscilla Merchant on the will of William Merchant.

The men across the fence, on the lands of Crane's neighbor Thomas Campbell, were itching for a fight.⁸ These young white men lived in the area and had been working for Campbell all day; they were only steps away from Crane, but in some ways worlds apart. One was Isaac Merchant whose old Quaker family had fallen on hard times, and no longer followed the faith; Isaac had worked hard to purchase some land and was now reestablishing himself as a Valley landowner even as he helped Campbell with his harvest.⁹ Others of Campbell's workers owned no land, including two young men named Abraham and Joseph Vanhorn, whose father lived nearby.¹⁰ Abraham drove a team for a living, and now lived in Winchester – only a few miles to the south.¹¹

It was summer, but on this Independence Day, as the men faced off at the fence, the normally hot July weather topped out in the low sixties.¹² The sweaty men felt the chill as night fell and the temperature dropped. Harvest time made for a long, grueling day, and their bodies ached from the work. They had also been drinking. And as they stared each other down at the fence between Crane's and Campbell's fields, they were agitated – not the normal frustrations of a long day, but something deeper, more urgent.

These two groups of men, threatening each other amidst the rolling hills of the Shenandoah Valley, in many ways embodied the history and demographics of the place where they stood. Berkeley County – stretching in 1791 from just north of Winchester to the confluence of the Shenandoah and Potomac rivers at Harpers Ferry – was both old and new, diverse and alike, settled and quickly changing. White settlers had been in the area since around 1730, when the first wave of Berkeley pioneers had come from the North – from Pennsylvania, New Jersey, and New York. These recent immigrants came from Dutch, German, Welsh, or Scottish backgrounds, and they settled on grants made to them by Virginia's colonial government.¹³ But Lord Thomas Fairfax had his own claims. Fairfax, a British peer and descendant of the Culpeper family, held the Culpepers' old proprietary charter from

⁸ "Deposition of Hugh McDonald, October 1, 1791," *Calendar of Virginia State Papers*, 5:371–372.

⁹ Isaac Merchant is discussed at length in Chapter 3.

¹⁰ See discussion of Vanhorn and his (probable) parentage in Chapter 1.

¹¹ *ClayPoole's Daily Advertiser* (Philadelphia, PA), July 19, 1791, 2. For the Winchester connection, see William Greenway Russell, *What I Know About Winchester*, ed. Garland R. Quarles and Lewis N. Barton (Staunton, VA: McClure Publishing Co., 1953), 47, n. 59.

¹² Letter from Thomas Mann Randolph Jr. to Thomas Jefferson, Monticello, July 7, 1791, in *The Papers of Thomas Jefferson*, vol. 20: 1 April–4 August 1791, ed. Julian P. Boyd (Princeton, NJ: Princeton University Press, 1982), 607.

¹³ See John Walter Wayland, *The German Element in the Shenandoah Valley* (Charlottesville, VA: Michie Co., Printers, 1907); A. H. and M. H. Gardiner, *Chronicles of Old Berkeley* (Durham, NC: Seeman Press, 1938); William Thomas Doherty, *Berkeley County, U.S.A.: A Bicentennial History of a Virginia and West Virginia County, 1772–1972* (Parsons, WV: McClain Publishers, 1972); Don Wood, *A Documented History of Martinsburg and Berkeley County* (Martinsburg, WV: Berkeley County Historical Society, 2004).

the Crown, which entitled them to large portions of Virginia; he too claimed parts of the Berkeley area. Competing with the colonial government for control of the area, in the early eighteenth century Fairfax's land agent, Virginian Robert "King" Carter, had granted huge swaths of land to himself, his heirs, and other Tidewater Virginians, concentrating large amounts of choice land in the hands of some of Virginia's most elite families.¹⁴ In the old days, these wealthy Virginians had usually managed their Berkeley and Frederick land as absentee landlords, but by the 1780s, their heirs began to move to the fertile Valley. There they thrived. As one eastern Virginian remarked with astonishment, "the men who have moved from Gloucester to Frederick make near five times as much there as they did down here."¹⁵ As they moved, they began to push land prices up and some older settlers farther west – to Kentucky especially, and soon to Ohio as well. Observing the exodus from Berkeley and Frederick to the west, one resident commented, "The emigration of inhabitants is ... astonishing."¹⁶

Berkeley was desirable country. Bounded on the south by Frederick and its bustling county seat of Winchester and on the north by the Potomac River, Berkeley offered beautiful, abundant land and easy transportation for people and goods. Maryland was visible just across the Potomac, and in the northernmost part of the county, near the resort town of Bath (otherwise known as Berkeley Springs). Pennsylvania also lay only a few miles away, to the north.¹⁷ The county was an economic mix, with mills dotting the landscape on abundant rivers that ran alongside farms and plantations. Wagons and wagon-drivers transported goods to market on the Great Wagon Road, which ran through Winchester and up to Philadelphia.¹⁸ By 1760, thousands of settlers per year traveled south on that road, some stopping in Winchester and others continuing on, to North Carolina or Kentucky, making Winchester one of the busiest towns in Virginia.¹⁹ This made the Valley bustling and extremely diverse by eighteenth-century standards. As Methodist circuit rider Frances Asbury complained about Winchester in the 1780s, the "inhabitants are much

¹⁴ There was a debate over how much of the area Fairfax's patent covered. See Stuart E. Brown *Virginia Baron: The Story of Thomas, 6th Lord Fairfax* (Baltimore, MD: Clearfield Company, 2003). For an excellent discussion of the dynamics of east versus west in the Valley, see Hofstra, *A Separate Place*.

¹⁵ The writer was John Page of Rosewell, as quoted *ibid.*, 11.

¹⁶ *Ibid.*, 26.

¹⁷ See, e.g., Wood, *Documented History of Martinsburg and Berkeley County*, 207–209, 234–237.

¹⁸ See Harry M. Ward, *Major General Adam Stephen and the Cause of American Liberty* (Charlottesville, VA: University of Virginia Press, 1989), 94, 103; A. D. Kenamond, *Prominent Men of Shepherdstown, 1762–1962* (Charles Town, WV: Jefferson County Historical Society, 1962), 11. See also Warren Hofstra and Karl Raitz, eds., *The Great Valley Road of Virginia* (Charlottesville, VA: University of Virginia Press, 2010).

¹⁹ Hofstra, *A Separate Place*, 32.

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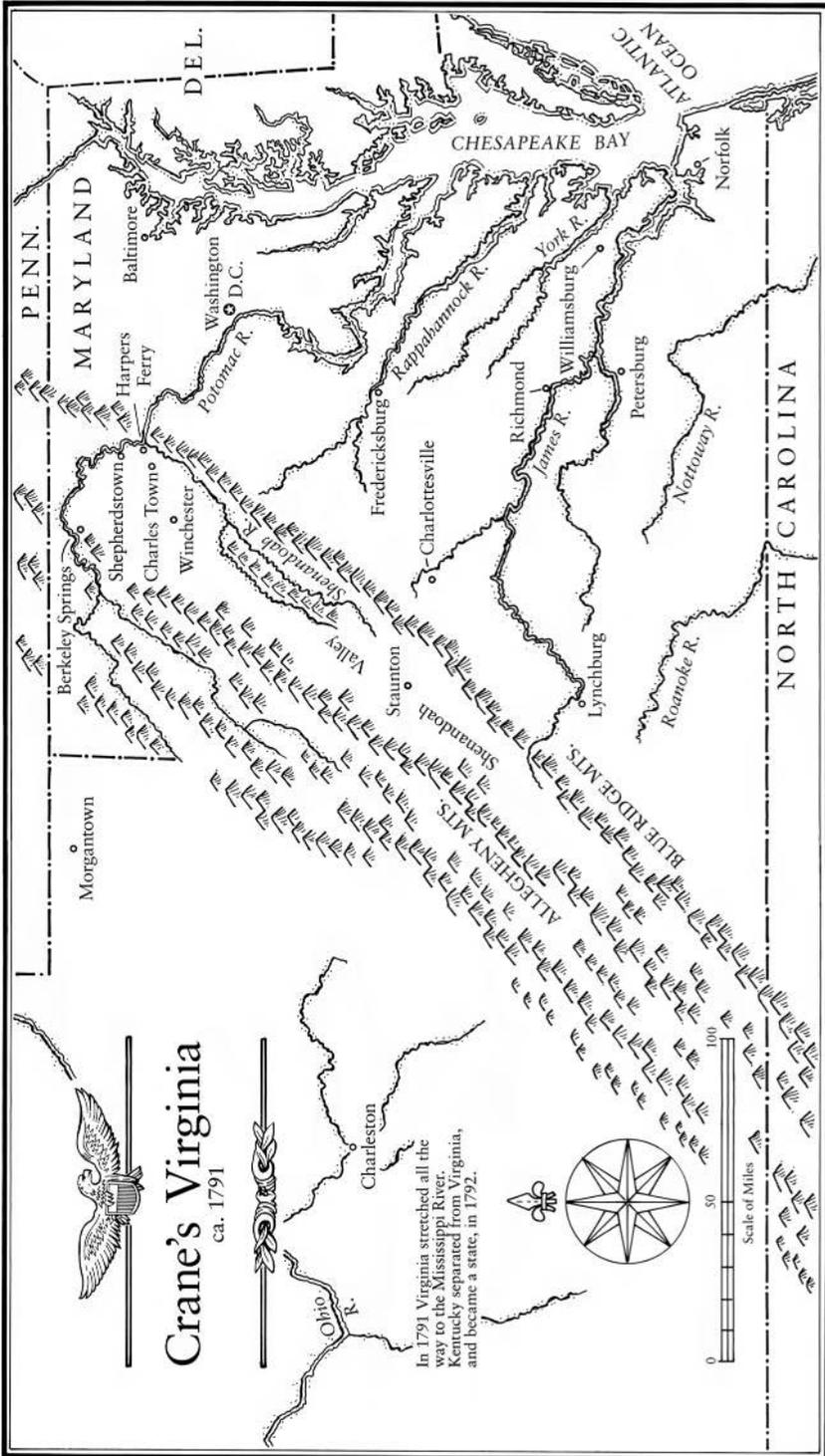


FIGURE 0.1 Map of Crane's Virginia, c. 1791

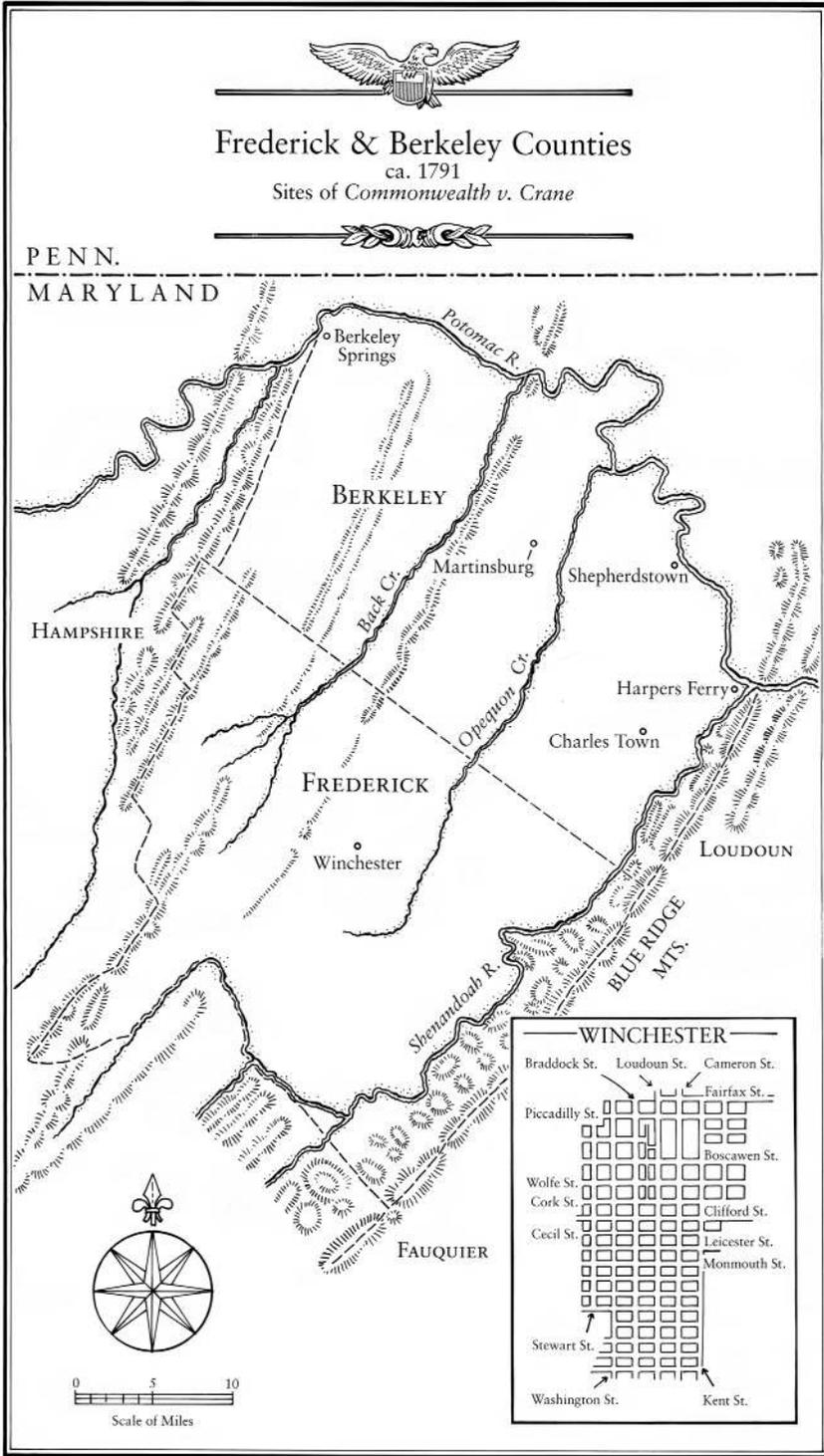


FIGURE 0.2 Map of Berkeley and Frederick Counties, c. 1791

Introduction

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divided, made up, as they are, of different nations, and speaking different languages,” agreeing “scarcely in any thing [sic] except it be to sin against God.”²⁰

On July 4, 1791, as the two groups of men reaped wheat in adjoining fields in the southern part of Berkeley County, they embodied this diversity and these changes, both their promise and their peril. They were settlers from eastern Virginia, Dutch farmers, Quakers, enslaved African Americans, slaveholders and those who eschewed the system. And as Americans around the country celebrated the Fourth of July, these men worked – sharing some grog in between.²¹

The grog may have made conflict more likely. By nightfall, the men fought, wrestling each other down to the ground near the fence between Crane’s and Campbell’s fields. As the melee cleared, Abraham Vanhorn lay mortally wounded – stabbed, crying, “my guts are out!”²² Some witnesses claimed John Crane had delivered the fatal blow. Crane insisted on his innocence. Had he done it? And if so, why?

For the next twelve months, Crane’s friends and neighbors would debate exactly that: what had happened at the line between Crane’s and Campbell’s fields? In time, the fight became the center of a sensational case – a case that, like the knife that gutted Vanhorn, sliced to the core of postrevolutionary Virginia.

When I first began reading through collections of early Virginia cases, I anticipated a different project. I had planned on a sweeping study of the development of Virginia’s criminal law between the Revolution and the 1830s – one that would examine, through shifting ideas about crime and its punishment, Virginia’s transition from colony to nation and from nation to self-consciously Southern state. As the first colony, the mother of so many founders and early presidents, and later the capital of the Confederacy, Virginia seemed an ideal vehicle for this study.

On the way, I stumbled across John Crane’s case. Its drama and complexity leapt out at me. For one thing, Crane’s jury had been unable to decide on a verdict, and had left a long, detailed special verdict instead – one included in the case report. That verdict gave a careful description of the fatal fight and left the legal decision (murder or manslaughter?) to the court. To twenty-first-century eyes, that seemed odd. After all, the jury had passed the buck to the judge in a murder case, allowing him to determine whether a defendant lived or died. At any time, this would be striking, but in the era of the American Revolution, when the right to a jury had been a key tenet of the revolutionary struggle, it stood out. Moreover, the jury’s verdict contradicted a basic truism of American legal

²⁰ Entry marked “June 21, 1783,” *The Journal of the Rev. Francis Asbury, Bishop of the Methodist Episcopal Church, from August 7, 1771, to December 7, 1815 ...*, vol. 1 (New York, NY: N. Bangs and T. Mason, 1821), 357.

²¹ “Deposition of Hugh McDonald, October 1, 1791,” *Calendar of Virginia State Papers*, 5:372.

²² “American Intelligence: Winchester, Virginia, July 9,” *Western Star* (Stockbridge, MA), August 2, 1791; *Crane*, 3 Va. at 13.

history: that in the late eighteenth and early nineteenth centuries, special verdicts were a device of *judges*, used to take cases away from juries.²³ Crane's, however, seemed to originate with the jurors themselves – to the judge's consternation.

I was also drawn in by the story, by the characters – not the founders or writers or politicians who can so easily populate tales of the past. Instead, these people had ordinary lives, of the type hard to detect in surviving historical records. Their stories had been made extraordinary, and thrust into the historical record, by a single day's violence. Who were John Crane, Abraham Vanhorn, and the others who argued in the fields that day? What had happened at the line between Crane's and Campbell's fields? What about in the court process that followed? These questions took me to the farmlands of what is now Jefferson County, West Virginia, where the site of the fatal fight is still a scene of rolling, grassy fields; to the streets of Winchester, Virginia, where Crane was tried; and to Charles Town, West Virginia, where I traced the deed to the Crane family's town home, pacing out its instructions on the town's historic streets and locating it in relation to the homes of others who participated in the case. My journey took me to archives in Charleston, Charles Town, and Martinsburg, West Virginia; Williamsburg, Richmond, and finally Charlottesville, Virginia; Washington, DC; also on brief incursions into Pennsylvania, Kentucky, and even into Bermuda history. It at times spanned decades, even centuries, as members of the families materialized in records, in tales, or sometimes in person during archival trips and secondary research.

While some participants in the case were common folk, the man who served as Crane's trial judge was St. George Tucker, one of the most important jurists and legal scholars in early America. A native of Bermuda who had studied law at the College of William and Mary and then married into Virginia's gentry, Tucker was in 1791 not only serving as a judge of Virginia's General Court but also teaching law at the College of William and Mary and annotating William Blackstone's famous *Commentaries on the Laws of England* for an American audience. In 1803 he would publish his work as the first American edition of Blackstone, and his treatise would become the most widely used American legal text until the 1830s.²⁴ At the time of *Commonwealth v. Crane*, Tucker had immersed himself in Virginia's effort to revise its laws. The fact that Tucker served as the judge on Crane's sensational case meant that John Crane's legal proceedings intersected with the very heart of Virginia's tense and passionate discussion about what it meant to have law in a republic – or, as Judge Tucker would have put it, a “Govt. of the People.”²⁵

²³ Morton Horowitz, *The Transformation of American Law, 1780–1860* (Cambridge, MA: Harvard University Press, 1977).

²⁴ See Davison M. Douglas, “Foreword: The Legacy of St. George Tucker,” *William and Mary Law Review* 47, no. 4 (2006): 1111–1121, 1114–1115; Charles F. Hobson, “St. George Tucker's Law Papers,” *William and Mary Law Review* 47, no. 4 (2006): 1245–1278, 1246–1247.

²⁵ “Republican” is a fraught term in the historiography, and has been a subject of much excellent scholarship and disagreement. For a thorough introduction to the literature on republicanism,

Criminal law provided a linchpin for that discussion. Early Americans, much like Americans today, loved to talk about crime. Stories of both shocking and mundane crimes, many of them gruesome, spread quickly up and down the East Coast and were printed and reprinted in newspapers throughout the country.²⁶ Crowds gathered eagerly to listen to condemned felons say their last words before hanging, pamphlets told the scandalous stories of their crimes, and anonymous composers produced ballads to mark execution day. Popular gossip about sensational crimes ranged from fascination with macabre details to “astute attention to ... procedural norms.”²⁷ In the words of historian Steven Wilf, in the late eighteenth century criminal law was the “most talked about legalism in ... America’s coffee houses and cobblestone streets.”²⁸

But criminal law was also about more than talk or entertainment. It was – as any good student of the Enlightenment knew – a key indicator of the nature of a society’s government. In the days before written constitutions, to think about constitutional questions was to think about the interchange between power and liberty, and criminal law provided the paradigmatic example of the state’s power over the citizen.²⁹ Could the state take a life? What did it mean for the law to treat a criminal as a citizen, instead of as a subject? The most important political theorists, such as Locke and Montesquieu, paid special attention to this problem. Free governments, everyone agreed, required new, different criminal laws from those of the Old World monarchies – including the English common law, with its many hangings, its judge-made law, and its frequent pardons.

see Daniel T. Rodgers, “Republicanism: The Career of a Concept,” *Journal of American History* 79, no. 1 (1992): 11–38. In a much simpler vein, Tucker explained it to his law students this way: in America, a republic was “synonymous” with democracy; it was to be “considered as a Govt. of the People; as a Pure Democracy ... Whenever the body of the people are divested of the supreme power it is no longer a pure republic.” St. George Tucker, “Ten Notebooks of Law Lectures,” Notebook 1, 1, Tucker-Coleman Papers, Swem Library, The College of William and Mary, Williamsburg, VA (hereafter Tucker-Coleman Papers). The term “republicanism” is used here because it is the term that Tucker and his contemporaries used, without intending to resurrect or rehash this complex discussion – except to note that Tucker early identified “republic” with democracy in his law lectures which, though undated, span the early 1790s to 1804, when he resigned the post. See Charles F. Hobson, ed., *St. George Tucker’s Law Reports and Selected Papers, 1782–1825* (Chapel Hill, NC: University of North Carolina Press, 2013), vol. 1, 9–13.

²⁶ In *Body in the Reservoir: Murder and Sensationalism in the South* (Chapel Hill, NC: University of North Carolina Press, 2008), Michael Ayers Trotti examines newspaper reports in depth, and concludes that most sensationalized coverage was in Northern papers until the turn of the nineteenth century.

²⁷ Steven Wilf, *Law’s Imagined Republic: Popular Politics and Criminal Justice in Revolutionary America* (New York, NY: Cambridge University Press, 2010), 1–4.

²⁸ Wilf, *Law’s Imagined Republic*, 1.

²⁹ As Bernard Bailyn explains, eighteenth-century constitutional thought focused on the interchange between power and liberty, presenting the two as in constant tension. Bernard Bailyn, *Ideological Origins of the American Revolution* (Cambridge, MA: Belknap, 1992 [first printing 1967]). See also Gordon Wood, *The Creation of the American Republic, 1776–1787* (Chapel Hill, NC: University of North Carolina Press, 1998), 18–28.

The American revolutionaries had absorbed this lesson. After all, monarchies and despotic governments differed from republics – and a republic was what the newly independent colonies aspired to be. In a republic there was, as Tucker instructed his grand juries, “no sovereign but the laws.”³⁰ Or, as Thomas Paine put it in *Common Sense*, “In America, THE LAW IS KING.”³¹ As Paine confidently asserted, “the nearer any government approaches to a Republic, the less business there is for a King.” He explained, “in absolute governments the King is law,” and the opposite should be true as well: “in free countries the law *ought* to be King; and there ought to be no other.”³²

Paine made explicit what many felt: that the basis of authority, and the nature of law, had fundamentally changed. In keeping with this, after independence the states began to revise their laws to reflect the new republican reality. Virginia was at the forefront of this effort. In 1776, leading revolutionaries embarked on ambitious “revisals,” as they called them, of colonial laws, meant to purge the remnants of monarchy and create a republican legal order. This was not merely a technicality, a passing necessity of a new government. Instead, as St. George Tucker later explained, Virginia’s effort to revise its laws was born of “political experiment,” and aimed to make those laws “conform to the newly adopted principles of republican government.”³³ It was, as Thomas Jefferson put it, the “whole object of the present controversy.”³⁴

Americans had the sense that the whole world’s eyes were upon them, and they were right. Some years later, after the states began to enact reforms, France would even dispatch a representative to examine criminal punishment in America.³⁵ It was a time, as Massachusetts’s John Adams remarked to his Virginian friend George Wythe, “when the greatest lawgivers of antiquity would have wished to have lived.”³⁶

Ideas were one thing, but putting those ideas into practice – and seeing how (and whether) they worked – was more complicated. In the years after the Revolution, theory began to change as ideas were hammered out, by trial

³⁰ St. George Tucker, Grand Jury Charge, filed with General Court Docket 1793, Tucker-Coleman Papers.

³¹ Thomas Paine, *Common Sense, Addressed to the Inhabitants of America ...*, 6th edn. (Providence, RI: John Carter, 1776), 26.

³² *Ibid.*, at 15, 26.

³³ St. George Tucker, *Blackstone’s Commentaries with Notes of Reference to the Constitution and Laws of the Federal Government of the United States; and of the Commonwealth of Virginia*, vol. 1 (Philadelphia, PA: William Young Birch and Abraham Small, 1803), editor’s preface, x.

³⁴ Quoted in David John Mays, *Edmund Pendleton* (Cambridge, MA: Harvard University Press, 1952), 1:138.

³⁵ Alexis de Tocqueville and Gustave de Beaumont, *On the Penitentiary System in the United States and its Application in France; with an Appendix on Penal Colonies and also Statistical Notes* (Philadelphia, PA: Carey, 1833).

³⁶ John Adams, “Thoughts on Government” [April 1776], *Founding Fathers: Digital Editions of the Papers of the Winthrops and Adamases*, ed. C. James Taylor (Boston: Massachusetts Historical Society, 2018).