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Love, Law, and Litigation in Colonial Georgia: The Trial and the Tribulation of John Wesley in Savannah

BY E. R. LANIER*

I. Introduction

Sitting on its low promontory, some eighteen miles inland from the point where the river from which it took its name meets the Atlantic Ocean, Savannah in the late summer of 1737 was little more than an isolated English outpost on the northern rim of a vast Caribbean-centered basin dominated by hostile Spanish forces. The Colony of Georgia—its title a flattery of George II, the English monarch who authorized its establishment in June of 1732—was from its beginnings something of an ambiguous anomaly. Spearheaded by a cadre of English elites and inspired by utopian ideals, the colony was launched by a British government far more concerned with containing Spanish expansion from the South and French ambitions in the West than it was with the rehabilitation of London's urban poor or the inculcation of sober Christian virtues in sturdy English yeomen. Rivaling the military underpinnings¹ of the young colony were the mercantilist ambitions of the government which sponsored it. Dependent upon the mother country for required supplies of staples and necessary consumer goods, Georgia was intended to be, with careful husbandry and investment of the daily sweat of its people, a producer of exotic goods for consumption at home and a source of wine, silks, and dates.

This was the vision; this was the dream.

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In the waning days of the summer of 1737, Savannah was little more than a mud hole on a river bank. Its streets and roads, still few in number, were little better than beaten paths marking the limits of forest and low underbrush, none of them paved. Nearly without exception, the “homes” it provided the settlers—and there were only seven hundred that season²—were simple one-story structures, constructed of roughly finished logs and often lacking even basic amenities such as flooring or window coverings. Public buildings were hardly distinguishable from private quarters except perhaps in size, and these buildings were marshaled into the service of a variety of roles, a single plank board structure doing service as church, school, and courthouse.

What Savannah did have was something which the mud and dirt, the heat and sultry air, and the mosquitos and cockroaches could not diminish: it had the dream and the vision of those who had come there. These settlers were an unlikely lot. Near-illiteracy was a common denominator, and the number of those in the colony who could read or write could be counted on the fingers of two hands. Few of them, other than the colony’s unofficial but undisputed head, James Oglethorpe, and with him a small handful of colonial officials—including the young Anglican cleric who stands at the center of this narrative—were blessed with anything resembling a formal education. It was this very humbleness which was the source of the colony’s greatest strength.

Drawn from the middling and lower classes of English society and especially from among the poorer sorts of England’s early eighteenth century urban centers, every settler who signed on with the young colony made the long and dangerous trip across the Atlantic with the determined ambition of self-improvement and betterment. Paradoxically, this same thirst for a better life, for advancement, and for movement up the rigid scale of English society proved to be the origin of some aspects of the darker side of the new colony, peopled as it was with men and women of modest origins bound and determined to push themselves ahead. These men and women, having left the safety and security—not to mention the limitations and restraints—of the mother country, were little inclined to suffer with petty (or not so petty) degradations and insults to their new-found (if still ephemeral) dignity

and honor. The hotbed of frontier Savannah—far removed from the ethereal atmosphere of London society and the pretensions of its drawing rooms—served to intensify and heighten the self-perceived sense of status of those who peopled it in the hot air and humidity that marked the Savannah of August 1737.

II. Ambiguities of Social Life in Colonial British North America

At the end of the seventeenth and beginning of the eighteenth centuries, colonial society throughout British North America, including Savannah and the urban centers and port cities of Boston, Philadelphia, New York, and Charleston, betrayed the presence of pervasive and deeply-rooted social ambiguities and disorientation. This served to cloud both vertical and horizontal social relationships in these urban communities at all their levels and in all facets of colonial life. The communal and communitarian ethos of the Old World had been broken by events both in Europe and in the North American provinces—fundamentally, by decades of war with their attendant economic and social upheaval, which drained the provinces not only of their financial resources, but also of their psychic assets which sustained them in the early years of their existence—but they remained to some extent places where notions of commitment to public service and the general public good lingered on, even when these same notions passed their prime at home in pre-industrial England.

The fundamental bases and assumptions of colonial society were diffused to no small degree by the key location of the port cities of North America within intricate webs of international trade, geographical locations which served to advance the economies of towns like Savannah and to place them at the center of social vortexes and economic exchange. The core economic function of colonial ports like Savannah tended to place a premium on individual initiative and enterprise. It especially elevated—particularly in comparison with the more static nature of the social scale back in England—the relative place, real and perceived, of the merchant in colonial society. While this development produced new opportunities for some, in much of colonial society, this change resulted in discontinuities, periodic and recurring dislocations, degrees of unemploy-

ment never before experienced, alterations in customary work patterns, and redistributions of wealth.

As social historian Gary B. Nash noted, the realities of colonial life were such that they demanded the acceptance of "a new system of values that legitimated private profit seeking, rationalized the abandonment of economic regulation, and projected a future economic world in which [the colonists'] energies, cut loose from age-old mercantilist controls instituted to promote the good of all, would produce a common good far better."³

At the same time and even as these economic, commercial, and societal changes proceeded apace, countervailing and contradictory social forces were afoot. Especially in evidence was a lingering nostalgia for Old World social ways and communitarian practices. As Nash notes, the smaller population of the colonial urban centers, such as Savannah, preserved the value of face-to-face relationships. The strong familial organization so common in Europe was retained in the colonies even after it had begun to fade at home, and wider social networks retained their vitality in colonial centers like Savannah through churches and family, evidence of a society in which "[t]he corporate whole, not the individual, [remained] the basic conceptual unit."⁴

Among other casts of thought inherited from the Old World was an unquestioning faith in the indispensability of social hierarchy. Virtually everyone of wealth or position in the port towns adhered to the axiom that rank and status must be carefully preserved and social roles clearly differentiated if society was to retain its equilibrium. As John Winthrop, the leader of the Puritan Massachusetts Bay Colony, put it, "[i]n all times some must be rich, some poore, some highe and eminent in power and dignitie; others meane an in subjeccion"⁵

This perpetuation of social hierarchy was apparent in many of the conventions of urban life at the end of the seventeenth century. Even so, the overwhelming commercial cast of colonial seaport society stressed individualism and the potential of individuals to exceed the limitations of their birth and origin.

Although almost every urban dweller knew instinctively his or her relation to those below and above, there was much crossing of social lines and, even as early as the 1690's, a long history of undeferential behavior among plebeian sorts. To us [in modern society], "deference" describes the unquestioning acceptance of the superior wisdom of an elite by the broad

mass of people. In the seventeenth century, to be sure, many urban people deferred because their economic security was bound up with a landlord, employer, or creditor. Yet the obliging comment and passive demeanor of a journeyman carpenter or merchant seaman could melt away in moments of passion or collective action and often did not extend at all to other powerful figures whose control was less direct. Many vertical links bound urban society together and inhibited the formation of horizontal solidarities. But time and circumstances altered social consciousness, wore away at deferential behavior, and gave rise to feelings of unity that were based on occupation, economic position, and class standing.⁶

III. The Microsociology of Early Colonial Savannah

The Colony of Georgia during the Trusteeship period⁷ was hardly a cultural or sociological island unto itself. Georgia, together with the other English colonial outposts on the North American continent, shared much stemming from their common British heritage, and these elements constituted a virtually universal social bond with colonists in New England and in the provinces found along the middle Atlantic seaboard. The law, language, religion, and general cultural elements of the people of Savannah and of those up the coast were essentially the ones which prevailed in metropolitan England at the time of the colonial establishment. While the infant province had much in common with its British colonial cousins further up the Atlantic seaboard, Georgia—which at this early period in its development consisted essentially of the town of Savannah, together with a few minor outposts to the north of the city on the banks of the Savannah River at Ebenezer and along the sparsely settled coast, principally at Darien and at the Township of Frederica on St. Simons Island—differed in important respects as well. Chief among these distinguishing factors were the population sources which contributed to the peopling of the young colony.

While there is no historical record that any debt prisoner was ever freed from an English debtor jail in order to come to Georgia, it remains true that the utopian idealism of Oglethorpe and his associates on the Board of Trustees of the Colony placed special emphasis on Georgia's role as a place of a "new beginning," a place where those who suffered under the unbending rigidity of highly stratified English society—one stratified in economic and in broader social terms—could begin anew. For

this reason, the bulk of the settlers who came to Georgia in its formative years were drawn from the bottom rungs of the English social ladder, not only in material terms, but also in terms of extended social position and status. This characterization of Georgia as a colony of the English poor remained a dominant source of social perspective and social status throughout the colonial period.

Another distinguishing feature of the settlement pattern characterizing Savannah—and hence, the sociological framework of colonial Georgia—was its unusual and virtually singular pattern in the distribution of its internal ethnic groups and enclaves. Where the population of the Town of Savannah was largely (but by no means entirely) homogenous in its numbers of English lower middle class and poor, the extended colony was a good deal more heterogenous. Virtually all of the inbound immigrant groups coming to Georgia in its first years elected—sometimes over the stiff opposition of the colonial elite, including James Oglethorpe himself—to separate and isolate themselves from the bulk of the English population already present at the center of the colony in Savannah.

The “Salzburgers” (who included German Protestant immigrants from Austrian territories and points all across the Catholic portions of southern Germany, Austria, and Switzerland, more united in their staunch and conservative Lutheranism and common German language than in their geographical origins) stressed their resolve to preserve their independence and separation from the English settlers of the colony by locating themselves twenty-five miles north of the city in Ebenezer. Similarly, when the Scottish Calvinists arrived in Georgia, they would have little to do with Savannah, locating themselves down the coast from the colonial capital in what was to become McIntosh County and the port city of Darien. The inbound Puritan immigrants, who left Massachusetts and came to Georgia after a short interlude in South Carolina, insisted on their location away from Savannah, but not too near the ethnically and religiously differing Scots in Darien. The Puritans concentrated their settlements at Midway and Sunbury, both now found in Bryan County south of the City of Savannah. Of all Georgia’s early ethnic groups, only the Jews (many of whom were Spanish-speaking and in the main Sephardic) and the Moravians (who

were German-speaking and of a pietistic, pacifist variety of Protestantism, having little in common with the formally Anglican settlers of the town itself or the Lutherans in Ebenezer) elected to remain in Savannah itself.

These factors coalesced to make the Savannah of 1737 a fundamentally homogenous society—overwhelmingly (but not wholly) white, lower middle to lower class in origin, ideologically Protestant, racially English, and English speaking—with far greater diversity *outside* the small town on the riverbank, where one would encounter Scot Presbyterians, German Lutherans, and what was unquestionably the largest single element of Georgia early colonial society, the Lower Creek Indians, who had inhabited this section of the North American continent for centuries.

Although the population of the young colony was overwhelmingly drawn from the lower strata of British society, early colonial Georgia—like the rest of the colonies of British North America—exhibited an internal social structure which presented variations typical not only of the colonial experience, but also of English life itself. “Although the trustees envisioned a colony of new beginnings, they never considered that the province would be without social distinctions.”⁸ Curiously, those who occupied the bottom-most rung of the social structure ladder in other southern English colonies of the period were essentially lacking in Georgia in 1737. For ideological and economic reasons, the Trustees of the Georgia colony made a firm, but increasingly controversial, decision to prohibit the institution of slavery in Georgia.⁹ Although legally banned from the colony, it stretches credulity to believe that no black slaves were present in Georgia, even in the early period when the practice was prohibited. Even if slaves were largely absent in Georgia, early Georgians were intimate with the institution and influenced by it because of their geographical proximity to South Carolina, where slavery was perhaps the dominant feature of social life in the late seventeenth and early eighteenth centuries.¹⁰

Only slightly above the few slaves who may have intermittently appeared in Savannah in these early years were indentured servants.

Trading four to seven years of their labor for passage across the Atlantic and sold at dockside to the highest bidder, [indentured servants] were circumscribed so thoroughly by the law that until their terms of service were up they lacked most rights regarded as basic to English citizens. They formed an important part of the labor force Indentured servitude in [port] cities [such as Savannah] was never so exploitative as in the early Chesapeake tobacco colonies, where most servants did not survive their term of bondage and only a few of those who did achieved freedom from want along with legal freedom. Yet it is evident from the considerable number of suicides and the great number of runaways that the life of the servant-immigrant, who was typically between thirteen and twenty years old, was frequently miserable.¹¹

In the social structure of the young colony, hired servants and apprentices would sit on the social ladder above the few slaves present in Savannah and the larger number of indentured servants.¹² The function of apprenticeship in the colonial societies of North America was essentially that which it performed back home in England: “[T]he principal purpose of apprenticing was the same as it had been for generations in England—to educate the youth in the ‘arts and mysteries’ of the various crafts, thus providing an adequate pool of skilled labor [for the colony].”¹³

Next in the social order were free, unskilled laborers who provided “the essential raw labor associated with construction and shipping, loading and unloading and manning the vessels that provided the lifelines between the seaports of North America and the world beyond.”¹⁴ Harold Davis records that these laborers were regarded as having status above the indentured servants, even though their function may have been identical, simply because of their status as free and not indentured.¹⁵ The social historian, Gary B. Nash, concludes that the body of free, unskilled laborers in colonial society was the

. . . most elusive social group in early American history because they moved from port to port with far greater frequency than other urban dwellers, shifted occupations, died young, and, as the poorest members of the free white community, least often left traces of their lives in the tax list or in land and probate records. Of comparable social status were common laborers who stayed on land. In the port towns, they were the diggers of basements and wells, the pavers of streets, the cutters and haulers of wood, and the carters of everything that needed moving.¹⁶

Nash notes that artisans were also present in the seaport colonies of North America¹⁷ and that these constituted a large and diverse group who filled the wide social gap between laborers and the upper classes above them:

Most of them were proudly self-employed, and they included everyone from silversmiths and hatters to shoemakers, tailors, and mast and sail makers. Within the artisanry a wide range of wealth and status existed. In part this diversity reflected the age-old hierarchy of apprentices, journeymen, and master craftsmen within each craft. With each step upward the artisan could normally expect economic security and material to increase¹⁸

Even within the various occupational followings of the artisans, there existed a social hierarchy of vocations that was apparent throughout the North American colonial establishments. "Everyone knew that artisans working with precious metals got ahead faster than those who worked at the cobbler's bench and that house carpenters were far more likely to become property owners than were tailors and stocking weavers."¹⁹

Firmly entrenched at the upper levels of society in early colonial Georgia were those same groups which dominated economic, social, and political life throughout the colonial establishments of English North America. Nash notes that two groups were distinguished by differing factors, high social status on the one hand and wealth on the other.

The first of these was composed of the professionals—governmental officials, doctors, clergymen, schoolteachers, and, eventually, lawyers. Often they were rewarded more by the community's respect than by material benefits Professional men tended to do better only when they used their social prestige to arrange a propitious marriage. The fact that these educated professional men were so modestly rewarded serves as a reminder that parallel hierarchies of wealth, power, and prestige did not precisely overlap.²⁰

Nash also registers the comparative status of the other segment of colonial elite, the merchants and shopkeepers who aspired to merchant status. Noting that these individuals dominated the economic aspects of colonial life but, nonetheless, were held in lower social esteem, he remarks that "[they] were the importers and exporters, wholesalers and retailers, builders

of ships, wharves, and warehouses, without whom there could have been no commercial centers. They quickly gained a disproportionate share of economic leverage and political power."²¹

Slaves and indentured servants, apprentices and free unskilled laborers, artisans, professional persons, and the merchant class were present in the Savannah of 1737, just as they were in each of the British colonial establishments of North America. Candor requires, however, the frank admission that Georgia society was largely grouped towards the lower end of this social structure while, at the same time, demonstrating fewer individuals in the upper reaches of colonial social stratification.

Between the slaves at the bottom of the social ladder and the esquires and honorables at the top lay the remainder of the population. Rankings were nowhere formalized. There was no procedure for determining where the classes stood in relation to one another, but status was related to the possession or absence of wealth and to the esteem in which the various means of earning a livelihood were held.²²

This comparatively large gap between the two extreme ends of colonial Georgia society—the professional and commercial elites at one end and the indentured servant class at the other—was a major factor in the spectacular clash of social interests which erupted in the civil suit and criminal indictments brought against John Wesley in 1737.

IV. Imposing Downward Law: John Wesley and Sophy Hopkey Williamson

A good case can be made that no other Georgian in history—none, at least, before Martin Luther King, Jr.—so impacted the world as did John Wesley.²³ Born on June 17, 1703 to an Anglican clerical family²⁴ and reared in the legendary vicarage of Epworth, Wesley was inured in the best traditions of post-restoration Anglicanism. Broad-minded and urbane, comprehensive yet classical in education, Wesley spent his early years in the ordered microcosm which was his priestly father's home. Sent to Lincoln College, Oxford, for his education, Wesley soon became an acknowledged religious leader among his peers and quickly established a pattern of frequent and regular meetings with like-minded students. These meetings consisted of both an academic

and religious agenda, presaging the Methodist gatherings that so characterized the latter part of his ministry in England.²⁵ A prodigy since his youth, Wesley advanced through his academic curriculum and was ordained a deacon in the Church of England in 1725. He advanced to the priesthood in 1728.

The succeeding years at Oxford, marked by continued scholastic studies in patristics and languages and by an increasingly dedicated commitment to the ordered and orderly religious practices which characterized this phase of his life, seem to presage the manner in which the rest of Wesley's life would be spent. To the great surprise of his associates in Oxford and his family—perhaps even of himself—in 1735, John Wesley accepted the invitation of the Trustees of the Georgia colony to an appointment as the Anglican clergyman in Savannah. Although the official papers assigning him to the church position in the new colony are silent on the point, Wesley explained his surprising change in career path by stressing his intent to preach to the Indians in the colony and his desire to enhance his skills and background in the mission field. Wesley's adulation of the Indians he hoped to convert in Georgia is a biting indictment of the English society—of which Georgia was but a small sector—he hoped to forsake:

My chief motive is the hope of saving my own soul. I hope to learn the true sense of the Gospel of Christ by preaching it to the heathen. They have no comments to construe away the text; no vain philosophy to corrupt it; no luxurious, sensual, covetous, ambitious expounders to soften its unpleasing truths. They have no party, no interest to serve, and are therefore fit to receive the Gospel in its simplicity. They are as little children—humble, willing to learn, and eager to do the will of God.²⁶

While it is difficult to suspect, much less allege, that Wesley is consciously deceptive in this respect, the historical record seems to reflect only sporadic activity on his part, while in Georgia, with groups other than the core community of English settlers found in the capital city of the province and in the southern extremity at the town of Frederica. Perhaps Wesley's declared intention of coming to Georgia to preach to the Indians is a reflection of his growing sense of alienation from his native community and the increasing development within his psyche of a certain sense of other-worldliness in his approach to Christian mission and

fulfillment.²⁷

Whatever else the younger Wesley may have been, the historical record establishes beyond any question that he was at this point in his life, like his father Samuel before him, a High Churchman.

The word *high* began to be used in this connexion shortly before the revolution of 1688. It meant, in its original intention, strict; a man who was "stiff for the Church of England"; rigid; careful and precise in observing the rules of the Church about prayer and fasting, even perhaps when those rules had begun to seem archaic; a man who stood for the privileges of the Church against the dissenters; a strong defender of the Establishment. The phrase *high churchman* had once a political tang to it, and was easily prefaced by the word *Tory*. This kind of high churchmanship was potent or impotent with the fortunes of the Tory party. In crude outline, it was weak under William and Mary, powerful under Queen Anne, impotent under the first two Georges, and rising to power again at the end of the century with the growing fear of radicalism and the dissent which radicalism was held, not without reason, to accompany There was a barrier of psychological association, too rarely recognized, for the Evangelical Anglicans of the eighteenth century to overcome. Many Evangelicals of 1800 were altogether loyal to the Church of England as they understood it, and for themselves felt completely at home in it. The high churchman had some half-conscious association in his mind which prevented him from recognizing them to be truly at home. To him they seemed to bring with them a touch of the alien intruder. The "Anglican tradition" had come to be conceived as a tradition which did not include Calvinism.²⁸

The John Wesley of his Savannah period was not the figure who walked in seven league boots across the stage of the world in the middle of the eighteenth century. Rather, Wesley was—and these are his own terms—the pre-conversion Wesley, the Wesley who had not yet undergone the "heart-warming" experience of Aldersgate, the Wesley who still looked to the law and not to the Spirit for his inspiration and guidance.²⁹ The comparative rigidity and formalism which marked Wesley in this period was to be a central feature of his personality and one which made no small contribution to the conflict in the young colony which was to lead to his fall and his precipitate flight back to England.³⁰

Wesley arrived in Savannah in early February 1736, and he delivered his first sermon as the new rector of Christ Church Parish in that city on the eighth day of that month.³¹ Wesley's

first formal appearance before the Savannah community was before a small group of no more than a dozen individuals, but among these were several who were to have a marked impact and influence on his subsequent brief stay in the frontier capital. Present on that morning were James Oglethorpe, the authoritarian leader of the colony and the only member of the Board of Trustees, its governing body, to be found in the colony; Thomas Causton, Bailiff, Store Keeper, and functionally the second in command in the infant province; Causton's wife; and her niece, Sophia Christinana Hopkey (or, "Sophy"), then eighteen years old.

John Wesley's strict and unbending personality; his inflexible insistence on exacting conformity to the letter of church regulations; his barely concealed contempt for the civil officialdom of the young Colony; and his open praise and affinity for the communities and groups lying outside of the core society of Savannah, the Creek Indians, the Lutheran Salzburgers, the Savannah Moravians, and even the embryonic Jewish community in the town³² led increasingly to a sense of alienation on the part of both the shepherd and his spiritual flock.

He was on all occasions a *censor morum*, and his criticisms were passed equally upon magistrate, citizen, and church member. Instead of drawing men by the cords of love, he alienated them by his denunciations and applied strictures. In the language of another, he "drenched them with the physic of an intolerant discipline." Overstepping the limits which should be observed at all times by a clergyman, he busied himself with the quarrels and complaints of the town, and in open court counseled the inhabitants to oppose the magistrates in the execution of justice Such unusual conduct angered the people, and gradually they discontinued their attendance upon divine worship. Wesley lost the power which he at first exerted over the consciences of the populace. He alienated the affections of his hearers, and in the end became convinced that he was accomplishing little in the service of his Master.³⁵

Surviving accounts of Sophy Hopkey are scarce,³⁴ and the few which do exist are rather sparse. Nonetheless, it can be gleaned that she was an attractive, if not overwhelmingly beautiful young woman, graced with the virtues of her age and class. Sophy lacked impressive credentials in formal education, but had been trained in the arts, which was typical and expected of a young woman of her age and position in early colonial

Georgia society. She was drawn to intellectual pursuits and, later, managed to arrange for Wesley to give her instructions in French, an affectation which may have represented something of a rebellion against the rough hewn circumstances of her life in Savannah in its early years. It would seem that Sophy had been engaged through family arrangements to a Thomas Mellichamp of South Carolina. If so, this match had not begun auspiciously, since at the time of Wesley's arrival in Savannah, Mellichamp was confined to a jail in Charleston for counterfeiting activities and for verbal threats he made in Charleston that he would kill Sophy and her new husband if she should marry another.

Wesley, then in his early thirties, felt an immediate attraction to young Sophy; the attraction was, as far as the historical record can determine, a mutual one.³⁵ Soon the two were in relatively frequent contact, Sophy becoming outwardly more religious and more faithful in attendance on religious services, and Wesley becoming somewhat more attentive to her religious needs and the requirements of her continued formal education. There is no evidence in the historical record that the two ever came to the full realization of the depth of their apparent attraction to one another, but entries in John Wesley's diary of the period establish (albeit obliquely) his powerful interest in Sophy Hopkey.

All of this must have been quite confusing to the young Anglican cleric. Although he came from England for the express purpose—at least in his own mind—of committing himself zealously to the pursuit of Indian conversions, he was becoming increasingly diverted by his relationship to Sophy Hopkey and, through her, to the English community in Savannah. The question of Wesley's future with Sophy was complicated by his continuing commitment to the issue of Indian missionary work. In his diary, Wesley records on at least one occasion that he told the young and infatuated woman it was not his intention to wed until he had made substantial progress in the Indian missions.³⁶ Wesley confided to his diary that the married state would elude him because of its negative impact on the reasons for his coming to America, the Indian missionary effort, and “because I was not strong enough to bear the complicated temptations of a married state.”³⁷

For young Sophy, Wesley must have represented something

of an enigma. She probably sensed his interest in her but could not decipher the complex and complicated signals of Wesley's continued attachment to the idea of Christian mission among the Indians. Sophy probably sensed that Wesley's commitment to Indian missionary work was to some degree a rejection of the English society of which she was an integral part. As one biographer notes, Wesley's ". . . attitude disturbed Sophy. She became angry and told him, 'people wonder what I can do for long at your house; I am resolved not to breakfast with you anymore. And I won't come to you anymore alone.'"³⁸ He met shortly after with her and noted she was sharp, fretful, and disputatious. In his blindness he did not realize she loved him.³⁹

With the impetuosity which sometimes marks youth, Sophy very quickly abandoned the emerging relationship with Wesley and sought new opportunities. With Thomas Mellichamp no longer a viable possibility, Sophy was soon associated in local gossip with William Williamson, an English clerk who was apparently the illegitimate son of a Mr. Taylor of Bridewell.⁴⁰ Williamson had a reputation for impetuosity himself and, as one historiographer noted, was not a "person . . . remarkable for handsomeness, neither for greatness, neither for wit, or knowledge, or sense and least of all for religion."⁴¹ Given the short but stormy relationship that Sophy Hopkey endured with John Wesley, Williamson's lack of interest in religion may well have been a positive virtue in her eyes. Sophy quickly came to terms with Williamson, and the news of their impending marriage spread throughout the English settlements in Georgia and coastal South Carolina. Wesley's reaction recorded in his diary was, given the ambivalence which characterized him at this period, almost predictable: "Miss Sophy to be married. Quite distressed. Confounded! Could not pray. Tried to pray, lost, sunk! No such day since I first saw the sun! Oh deal tenderly with thy servant! Let me not see such another!"⁴²

On the day after he learned of Sophy's engagement to Williamson, the distressed Wesley sought out the former object of his affection, only to find her in the company of her new betrothed. A somewhat stormy scene developed, which ended with Williamson insisting that Wesley leave and that he not speak further with Sophy until Williamson and the young woman

married. Sophy succumbed to the stress of the circumstances, was unable to eat or drink, and abandoned herself to fits of depression and weeping. Nevertheless, two days later, she married William Williamson in Purysburg, South Carolina.⁴³

There is a historical ambivalence in Wesley's reaction to the news of Sophy Hopkey's marriage. Evidence exists that he was extremely distraught and upset, behaving unreasonably and in a jealous rage. On the other hand, there are indications that Wesley's reaction was one of cold resignation, disguising a seething anger over his apparent rejection by the young Savannah maiden. Whichever is closest to the truth of Wesley's response to his rejection by Sophy, it is clear beyond any serious cavil that he was profoundly impacted by these rather rapid developments and somewhat at a loss to determine the proper course of his response to these new circumstances.

Sophy's response to her marriage to Williamson was immediate and total. All communication with Wesley was interrupted, and Sophy withdrew from all forms of contact with him, including not only her visits of a social nature, but also her participation in the religious exercises which had been the focal point of her prior relationship with the young cleric. The impasse had been reached; the rupture was complete. While the young bride adjusted to her new role and status, the rejected cleric, lonely and crushed, brooded inwardly while striving to maintain an external appearance of stability and normalcy.

Within a matter of weeks, Sophy began to reemerge in Savannah society, now the young bride of William Williamson. Given the small size of the Savannah community and the fact that John Wesley was the only accredited Anglican clergyman in the city, it was only a matter of time until their paths should cross and the torrent which was building within Wesley would be unleashed. On Sunday morning, August 3, 1737, in the company of her new husband, her aunt, and her uncle, Thomas Causton, but in the absence of Oglethorpe, the senior civil official of the Colony, Mrs. Sophy Williamson attended the service of Holy Communion at Christ Church Parish in Savannah, a liturgy over which John Wesley presided. There is no historical record of the contents of Wesley's sermon on that occasion, but the record is absolutely clear as to the events which transpired after the sermon and in the course of the distribution of the elements of

the Holy Communion to the assembled parishioners. When Sophy presented herself for the reception of the Sacrament, John Wesley, in the face of the entire assembled Savannah community, refused to permit her access to the bread and wine of Holy Communion.

Spreading like wildfire, the news of Wesley's act of public rebuff tore through the frontier town. "In those days, when the Lord's Supper was, in Cowper's phrase, a 'pick-lock of office' for men, and a sign of social respectability for women, to be debarred from the table of the Lord was a serious injury."⁴⁴ Savannah was in shock.

It should not have been.

Given the clear and unambiguous stratification of early Savannah society, at least in the definition of the relative places on the vertical scale held by John Wesley and Sophy Williamson, the events of Sunday morning, August 3, 1737, could not only have been predicted before they transpired, but could also be explained after the fact.

Stratification in society, Donald Black explained, is the vertical aspect of social life.⁴⁵ It consists of any uneven distribution of the material conditions of existence and has, in the ordinary case, reference to differing allocations of wealth, including such indicia of wealth as the possession of property or the amount of income.⁴⁶ Stratification has, however, a somewhat broader dimension and frame of reference as well. It can, as Black says, include the uneven distribution of other luxuries and surpluses in society, insofar as these may ultimately be exchanged for the conditions of existence. Similarly, the magnitude of differences in wealth, broadly defined, will set the parameters of possible vertical distance between any two given points of reference within a society.

Given the intense stratification of a society such as that of colonial Savannah—with its few official elites (unquestionably including John Wesley, however marginalized and unconventional his views and behavior may have rendered him) sitting atop a social ladder, extending through the middle ranks of merchants and artisans to the bottom rung occupied by indentured servants and perhaps a few contraband chattel slaves as well—considerations of vertical distance would offer a wide range of possibilities for the demonstration of the impact and the effects of social

stratification. In such a circumstance, Black theorizes, the incidence of law is greater than it would otherwise be because law varies directly with stratification. The more highly stratified a society is, the more law it has.⁴⁷ Closely related to this consideration is the impact of the quantity of stratification in any given setting. This is the vertical distance between the people within a given social *milieu*, measured by the average difference in wealth between each person or group and every other person or group and by the difference between the lowest and the highest among them, or the height of the distribution. "In these respects and others, stratification varies across space and time, across societies and the settings of a single society, among individuals and groups, within and between families, organizations, tribes, and nations."⁴⁸

The implications of social stratification, as between John Wesley and Sophy Williamson within the broader context of Savannah society in August 1737, are clear and compelling. However elevated the young woman may have been by kinship ties with Thomas Causton and, of less significance, her recent marriage to William Williamson, she remained far down the social ladder from the comparatively lofty position of the Anglican cleric. Independently considered, Wesley's high position in the colonial society itself augured strongly for resort to law in his conflict with the young woman because, as Black says, law varies directly with rank.⁴⁹ Whether measured in terms of Wesley's sheer relative wealth, as determined by his ownership of or access to physical possessions and income, his formal office within the colony, his age, his education, or his gender; all factors of social stratification worked to his advantage. Under these circumstances, in a highly stratified social setting such as Savannah in this period, where, under the Black construct, the quantity of law would be quite high; no one should have been taken aback by the imposition of an ecclesiastical penalty on the young Georgia matron. The nature of that penalty and the manner of its imposition, however, bear comment.

The Bishop of London exercised formal episcopal authority over the infant Colony of Georgia. However, factors of time, distance, and poor communications made the local Rector of Christ Church in Savannah the effective canon law authority over communicant Anglicans in the young province.⁵⁰ While it was

unquestioned that under the canon law, the Rector of the parish of Christ Church—the official position of Wesley in Savannah—had the power over ecclesiastical discipline of lay members of the church, it is equally unquestionable that Wesley was not the “Ordinary⁵¹ of Georgia,” as he was alleged to have asserted. That Wesley had the power to discipline Sophy Hopkey Williamson for her canon law infractions went unchallenged. Of particular interest here is the nature of the relatively light penalty which the young cleric inflicted on the new matron and the manner in which he saw fit to apply it. Again, however, Black’s theorems explain the apparent inconsistency between the demands of social stratification that Wesley punish, and punish by the application of law, and the fact that the penalty actually imposed was far less than the excommunication which was theoretically within his authority to administer.

Law has vertical direction whenever it moves between different ranks. In addition, it is a general maxim that downward law is greater than upward law.⁵² This iron rule of the sociology of the case does not mean, however, that the application of downward law will always take the most severe form possible. Other social variables may intervene to moderate, even if they do not wholly disrupt, this basic principle of social stratification. One such ameliorating factor may stem from morphological considerations in the social structure of the case.⁵³

Black defines morphology as the horizontal aspect of social life, that is,

the distribution of people in relation to one another, including their division of labor, networks of interaction, intimacy, and integration [Morphology] varies across social settings of every kind, whether societies, communities, neighborhoods, or organizations; public places or events; marriages or friendships. It varies across time as well, from century to century and day to day Some settings are intimate, others impersonal.⁵⁴

Morphology, in large measure a function of the degree and quantity of differentiation in a society, will have a number of implications for the sociology of a case.⁵⁵ Of special interest here is the fact that morphology predicts and explains the quantity and style of law, a function tied largely to issues of relational distance. As Black puts it, “[p]eople vary in the degree

to which they participate in one another's lives. This defines their intimacy, or relational distance. The closest relationships involve total interpenetration, the most distant none at all."⁵⁶ Here, too, prediction and explanation are made possible by relational distance which will determine the quantity of law. Hence, relational distance is an important aspect of the sociology of a given case. Black tells us that the relationship between law and relational distance is curvilinear, that is, law is virtually inactive among those who are relationally close, but it will increase as the distance between people increases then "decreasing as this reaches the point at which people live in entirely separate worlds."⁵⁷

Considerations of quantity and style of law were evident in John Wesley's relatively moderate rebuke of Sophy Williamson. Eschewing the harsh sanction of excommunication—essentially, the spiritual equivalent of capital punishment for the communicant—Wesley attempted, within the range of options then available to him, to impose the weaker and less penal punishment of denial of the Eucharist, and even this was administered in a compensatory or remedial fashion. Ethridge saw the significance of Wesley's own description of the scene at Christ Church on August 3, 1737:

John took the step over which he had been agonizing so long. In front of the assembled congregation, as Sophy knelt at the rail, he refused her the Lord's Supper. He wrote [later] that *he had wanted to warn her privately beforehand*, but having had no opportunity to do so, he was "reduced to the necessity of telling her in the church (indeed, *so softly that none heard it but herself*) and *in the mildest manner*" he was capable of, "I can't administer the Holy Communion to you *before I have spoken with you*."⁵⁸

Wesley's application of law to the shell-shocked young woman, while pronounced in its downward and penal character, was clearly tempered by considerations of intimacy, making it less harsh than it otherwise could have been, more personal, less final in tone, and virtually remedial in its style.

V. Enter Organization: Thomas Causton, Store Keeper and Bailiff

History, they say, is written by the victors. Thomas Causton—one of the first, most prominent, and most infamous of

Savannah's first settlers—is proof of the old adage. Few figures in Georgia history have been the subject of so much opprobrium as has this deposed deputy leader of the colony during the period of the Trusteeship. A calico maker⁵⁹ back in England, Causton ran afoul of British tax laws, and in late 1732, was anxious to start anew. In November of that year, Causton's name appears in the minutes of the meeting of the Georgia Trustees when they were engaged in detailed planning for the new colony, the charter of which had just been approved by George II.⁶⁰

Causton was among the first Georgians on the good ship *Anne*, which anchored at Savannah on February 12, 1733. It is certain, too, that Causton occupied a position of prominence—in some respects, even a certain qualified preeminence—in the early days of the settlement, functioning as a bailiff of the town court⁶¹ with two other individuals and as a storekeeper.⁶² This official appointment gave him a virtual monopoly over trade activities officially licensed by the colony.⁶³ Prospering from these official positions, Causton amassed in short order a relatively substantial estate in the colony, which included not only his property within the township of Savannah, but also a “plantation” to the southeast of the city which he elegantly dubbed “Oxstead.”⁶⁴ Oxstead quickly became (and remains today) known as Causton's Bluff, lying between Savannah and the islands to the east of the city. It was here that he resided with his family, a family which included his wife's niece, Sophy Hopkey.

Causton was not a man of great formal education, but the record he amassed in Savannah before the end of the 1730s indicates a sharp and calculating mind and a character which was determined to overcome the modest circumstances of his birth and status in—not to mention the somewhat clouded circumstances of his departure from—England. Enjoying immensely the exercise of the prerogatives of his official colonial status, prerogatives which would never have touched him had he remained in his native England, Causton soon attracted the envy and jealousy of others, and his own overbearing personality no doubt contributed to his growing unpopularity in the colonial settlement.

Though left in charge of the colony during the absence of the leader, Causton was fully advised beforehand as to the duties he was to perform and what authority he should exercise. Notwithstanding this, he acted in

such a way as to cause great displeasure to the people and to be the subject of the special rancor of those men who have become known [in Georgia history] by the title of "malcontents . . ." They arraigned him in this language: "Whilst we labored under those difficulties in supporting ourselves, our civil liberties received a more terrible shock; for instead of such a free government as we had reason to expect, and of being judged by the laws of our mother country, a dictator (under the title of bailiff and store-keeper) was appointed and left by Mr. Oglethorpe, at his departure, which was in April, 1734, whose will and pleasure were the only laws in Georgia. In regard to this magistrate, the others were entirely nominal, and in a manner but ciphers. Sometimes he would ask in public their opinion, in order to have the pleasure of showing his power by contradicting them. He would often threaten juries, and especially when their verdicts did not agree with his inclination or humor, and in order the more fully to establish his absolute authority, the store and disposal of the provisions, money, and public places of trust, were committed to him; by which alteration in his state in circumstances he became in a manner infatuated, being before that a person of no substance or character, having come over with Mr. Oglethorpe amongst the first forty, and left England upon account of something committed by him concerning his majesty's duties. However, he was fit enough for a great many purposes, being a person naturally proud, covetous, cunning and deceitful, and would bring his designs about by all possible ways and means."⁶⁵

In his defense, it must be said that the exercise of Causton's official duties as bailiff (or judge) of the court and as storekeeper (with its concomitant function of licensing trade transactions, trade agents, and generally controlling commercial flows in the city) were not calculated to win him any popularity contests. At the same time, his rather imperious method of discharging these duties did little to blunt the natural dislike which his positions would engender. Nonetheless, it appears that Oglethorpe—the patriarch of the colony—continued to keep Causton in some degree of regard, retaining him in office even though other colonial office holders were dismissed for one defect or the other. Many of Oglethorpe's duties, especially those of a military nature, required his repeated absences for long periods of time from Savannah. Given this circumstance, perhaps the sheer necessity of the situation required that the colonial leader retain all the assistance he could muster, regardless of its quality or deficiencies.

There were numerous complaints that Causton was partial at the store, that he did not give everybody equal treatment, that he was domineering,

and that he was generally hard to get along with. The trustees sent over the complaints which they received to be answered after their usual custom, but there is no indication that they or Oglethorpe were dissatisfied with Causton's actions. Because he came into contact with most of the people as storekeeper, Causton was in a vulnerable position to be complained about. He seemed able to take responsibility and to get things done, abilities not uniformly displayed upon Georgia's early colonists. He undoubtedly had a hot temper and probably favored some colonists over other. That he had ability seems obvious from what both his enemies and his friends said about him.⁶⁶

The grudging acknowledgment of Causton's ability and talent, even by those opposed to him, did not extend far enough to provide him an immunity from the growing discomfort of the Trustees regarding the man who had become, essentially, the second in command in the Colony of Georgia:

He was not a popular official, and he succeeded in getting the ill will and even active opposition of some of the best men in Savannah. The Trustees complained occasionally of his neglect in writing to them and in sending his accounts promptly; but they trusted him fully until the spring of 1738, when they found that he had gotten them into debt by several thousand pounds. They then suspected him of fraud and ordered his arrest, suspending him from his offices of storekeeper and first bailiff until his accounts were satisfactorily adjusted. The accounts never were completed; they were worked over by a committee for about eight years; and then Causton went to England to try to settle them in person with the Trustees. He was only partially successful and he was returning to Georgia in 1746 to complete the work when he died at sea. It was never proven he acted with fraudulent intent in his dealings with the Trust; but it was undoubtedly true that he reaped a great deal of personal profit out of them and that he almost ruined the Trust by his mismanagement.⁶⁷

The rise of Thomas Causton was at its apogee in 1737; his fall from grace was years off yet. When John Wesley clashed with him through the surrogate of his niece Sophy,⁶⁸ Thomas Causton was no one to be trifled with, a lesson the young cleric was to learn in most dramatic fashion.

Donald Black teaches that "[o]rganization is the corporate aspect of social life, the capacity for collective action," and that "[o]rganization is a quantitative variable."⁶⁹ As such, organization can predict and explain much in legal interaction. Black posits that the "quantity of law varies with the organization of its environment, its direction in relation to differences in organiza-

tion, and with the organization of law itself.”⁷⁰ While groups—any kind of groups, whether businesses, churches, clubs, or governments—will vary in the degree of their relative or comparative organization, it is always true that “any group is, by definition, more organized than an individual on his own.”⁷¹

These aspects of organization and their relation to the sociology of the case are critical when one considers the implications of Black’s basic corollary with respect to the relation of quantity of law and the variable of organization; the quantity of law will vary directly with organization. Organizations and their capacity for collective action are able to bring to bear collective pressures and influences (“law”) not available to individuals acting alone or to organizations less organized than that which invokes and imposes law.

Law varies directly with private as well as public organization, and with informal as well as formal organization Among themselves, organizations and groups are more litigious than individuals, and the more organized they are, the more litigious they are Every aspect of law varies directly with the organization of the parties. An organization bringing a lawsuit against another is more likely to win than an individual bringing a lawsuit against another individual.⁷²

Considerations of organization and its relation to law and the sociology of the case explain much with respect to events that took place after the fateful church service in Savannah on March 7, 1737.

The very next morning, John Wesley was arrested by the constable, Noble Jones,⁷³ and brought before Henry Parker, one of Thomas Causton’s judicial colleagues on the bench of the Town Court of Savannah, an arrest precipitated by a civil warrant procured from Court Recorder Thomas Christie that same day by William Williamson, husband to Sophy:

Georgia. Savannah. S.S.

To all Constables, Tythingmen, and others whom these may concern:

You and each of you are hereby required to take the body of John Wesley, Clerk: and bring him before one of the Bailiffs of the said Town to answer the complaint of William Williamson and Sophia his wife, for defaming the said Sophia, and refusing to administer to her the Sacrament of the Lord’s Supper in a publick Congregation without cause, by which the said William Williamson is damaged One Thousand Pounds Sterling. And for so doing this is your Warrant, certifying what you are

to do in the premises.

Given under my hand and seal the 8th day of Aug.: Anno. Dom: 1737
THO. Christie

In modern legal parlance, Wesley had been sued for slander. Here, too, however, Black's rules were in operation for, as Black says, law is greater in a direction toward less organization than toward more organization, and moreover, in a direction toward less organization law varies directly with organizational distance; while in a direction toward more organization, law varies inversely with organizational distance.

William Williamson (who was, after all, a relative newcomer to the Savannah scene and who was integrated into its society at this point in time only through recent marriage into the family of Bailiff Thomas Causton) decided to seek only *civil* relief for the defamation of his wife—an incredibly mild response to the situation under prevailing social mores. Williamson's decision reflects vividly his own lack of social integration, that is, the necessity that he take action against Wesley *as individual against individual*, his relative organizational weakness when the case was framed in that posture and, hence, his inability to invoke the benefits of Black's maxim that law is greater in a direction toward less organization than toward more organization.

No such impediment stood in the way of the Bailiff Thomas Causton, however. Undoubtedly not happy with the pusillanimous and effete effort of his niece's newcomer husband and intuitively appreciating the sociological effect of organization on law and in litigation, Causton quickly set the wheels in motion to invoke the *state* against John Wesley. An understanding of the sociological dimension of that effort, however, requires a basic understanding of the structure and function of the court which was the stage for these proceedings, the Town Court of Savannah.

VI. A Note on The Town Court of Savannah⁷⁴

In 1737 there existed but a single judicial tribunal for the Colony of Georgia, the Town Court of Savannah. This tribunal had its origins in the Charter provisions granted to the Trustees on June 9, 1732, which made provision for the creation of a judiciary for the period of the Trusteeship after which all judicial

authority would then revert to the crown. Even though the court structure of Georgia under the Charter terms was to be the creation of the Trustees acting jointly, it was clear that the bodies which they were to create were to function and act in the name of the monarch and that the justice which they were to dispense was to be royal in its character and not simply an adjunct of the corporate entity administering it. To this extent, the provisions in the Georgia Charter regarding the judiciary were not completely dissimilar to those of other charters relating to other colonies in North America.

Acting pursuant to the authority granted them in the Charter document, the Trustees moved to create a court for the colony at its meeting at Georgia House in London on November 2, 1732. They designated the single tribunal of the colony as the "Town Court," granting to it essentially all of the judicial authority which they had derived from the royal Charter provisions. This broad subject matter jurisdiction encompassed not only civil, but criminal matters as well, and it was left to deduction that both of these forms of justice would be administered not only in the same court, but also by the same procedure. Essentially, the Town Court amalgamated into a single entity the functions of a variety of existing English courts, both of a criminal and civil nature. In addition, there was no explicit right of appellate review, either in terms of the Charter granted by the King or in the provisions adopted by the Trustees in November of 1732.

The functional components of the Court consisted of the Bailiffs, of whom there were three, who were assisted in their work by petit juries which would be impaneled to hear complaints brought by citizens in civil matters and would, in a fashion similar to the functioning of English courts in criminal matters, hear criminal cases referred to it on true bills by a grand jury. The grand juries, as employed in the Town Court, were still the amorphous and somewhat diffuse bodies with a mix of governmental authority—executive, judicial, and legislative—which had been known in metropolitan England. Grand juries—and these sat in an indeterminate number—essentially promulgated community standards in broad form as a kind of legislature, while at the same time, specifying infractions of community standards by individuals in its guise as a preliminary criminal body. In all

of these functions, the grand jury of the Town Court was a *permeable body*, organized *ad hoc* by the Bailiffs in response to specific legal needs and wholly subject to manipulation by the Bailiffs to their predetermined ends. This basic feature of the grand jury of the Town Court, as an instrument of the will of the presiding Bailiff, was to play a central role in the next evolution of the Wesley saga.

Except for a brief and ill-fated attempt to raise up a second Town Court for Frederica on St. Simons Island in 1735, the Town Court of Savannah functioned as the premier court of the colony throughout the Trusteeship period and until the institution of a royal court system upon the surrender of the Georgia Charter back to the King in 1752. Except for certain minor offenses (and a few civil matters not exceeding the subject matter jurisdictional amount of forty shillings), the Savannah Town Court existed as *the Court of Georgia* for the first several decades of the Colony's existence.

It was a rough and tumble affair. With Judges (Bailiffs) who were wholly untrained in the law, excepting only what they had learned on the job, and who were, in some instances, barely literate, and with grand and petit juries comprised of the kind of backwoods frontiersmen whom the colony attracted from London's lower class elements, the procedures before the Court—if these could be dignified with the term—were free-for-all adventures in creative judicial role playing. It was before this Court that John Wesley was summoned in the late summer of 1737, first by William Williamson's civil suit for damages and then, more ominously, by a grand jury's return of a true bill on an indictment drawn up with a baker's dozen charges engineered by Bailiff Thomas Causton.

VII. Rex v. Wesley

By the end of the first week following the confrontation between Sophy Hopkey and John Wesley at church the previous Sunday, Thomas Causton had assiduously constructed a multi-level response to Wesley which included intensive general efforts to prejudice the people of the town against the clergyman and his cause, to collect affidavits from townsmen to the effect that they knew of no cause why the young woman should have been turned away from the Holy Communion, and at the same time,

to empanel a grand jury willing to return a true bill cataloging all the slights that Causton perceived himself to have suffered at Wesley's hands.⁷⁵ The Bailiff and his entire family hit the streets and lobbied the people of the capital, spreading far and wide their interpretation of events and emphasizing that Wesley's action was taken out of spite and in revenge for Sophy's wedding to William Williamson the previous spring.⁷⁶ There was much discussion of the matter in the local taverns, all at the Bailiff's expense; goods flew off the shelves of the Trustee's store which was, of course, under the direction of the Bailiff; and old accounts were forgotten there.

The grand jury, hand-picked by Causton, was empaneled on August 22, 1737 and consisted of some forty-four citizens,⁷⁷ many of whom had been in Causton's company off and on over the past two weeks. In Blackian terms, Causton's obvious and opaque approach to the grand jurors for active support in his cause, based largely upon his intimacy with them and, presumably, their greater relational distance from John Wesley, was undoubtedly improper under formal law⁷⁸ and was a demonstration of the powerful effect of third parties on the sociology of the case. Typically, third parties are of two general types, either supporters⁷⁹ or settlement agents.⁸⁰ While Black predicts that both settlement agents and supporters are subject to the general rules which govern the sociology of the case—that is, their behavior (particularly their degree of authoritativeness)⁸¹ will reflect the influence of status and of relational distance between the settlement agents and the parties and their supporters⁸²—Thomas Causton's public campaign against Wesley was designed to blur the distinctions between settlement agent and supporter and, in effect, to convert the former into the latter.

After sitting for a week and a half, the jury predictably returned ten true bills.⁸³ In obtaining true bills on these ten charges, Thomas Causton had—at least in a sociological frame of reference—imposed a substantial quantity of law on the cleric, wholly independent of whether Wesley was guilty or innocent of the allegations or whether, indeed, his acts constituted crimes against the state at all.⁸⁴ As Black teaches, the gravity of deviant behavior is ranked according to its organizational location and direction; “[a]mong the several possibilities, deviant behavior by an individual against an organization^[85] is the most serious.”⁸⁶

In securing community sanctions against the clergyman for irregularities in religious ritual and belief, Causton secured for Wesley the opprobrium due a deviant and, for those opposed to Wesley, the communal approbation which is an adjunct of conventional behavior, conventional practice, and conventional belief.

VIII. Ending It: Avoidance

Learning of his indictment by the Savannah grand jury on September 1, 1737, Wesley's first thought was to pick up the legal cudgel where it would do him the most good and to put his cause in the hands of the Trustees back in London. An appeal to that body of dispassionate, disinterested officials in the imperial capital would, in addition to affording him an opportunity to rehearse the merits of the dispute *de novo*, also provide him with a review of the matter before a panel of his social peers.⁸⁷ Perhaps recognizing that such a procedure was not within his direction or subject to his control, Wesley's more reflective decision was to resist further litigation before the Town Court on the basis that the Savannah tribunal, being a *civil* jurisdiction, was incapable of proceeding on charges against him which sounded in the canon law.⁸⁸ Appealing to London or attacking the indictment by raising the lack of subject matter jurisdiction in the court on the trial of the case were both tactics, while superficially quite different, that afforded the young priest one and the same advantage—he could avoid litigation in Savannah.

Donald Black underscores that “[t]oday as in centuries past, people with grievances may select any of several modes of conflict management: (1) self-help, (2) avoidance, (3) negotiation, (4) settlement by a third party, or (5) toleration.”⁸⁹ Avoidance, Black tells us, is a mode of conflict management by which interaction is essentially interrupted or curtailed:

It may be initiated by an aggrieved party, an offending party, or both at the same time. It may be total or partial, permanent or temporary, and involve physical separation or only a reduction of contact or communication. Examples are the “cold shoulder,” resignation from an organization, divorce, desertion, migration, and suicide. People in hunting and gathering societies frequently employ avoidance, as do disgruntled consumers, business executives, and suburbanites. Avoidance has been a

major alternative to law throughout human history. Some archaeologists believe that law itself emerged historically only when populous societies evolved in limited spaces where avoidance was difficult.⁹⁰

Wesley's alternative designs—either to place the matter before the London Trustees or secure a ruling that the Savannah Court could not hear the church charges against him—would have successfully invoked this sociological principle.

Now that a crescendo had been reached in the grand jury indictments of September 1, 1737, it does not appear that Wesley was alone in seeking to avert further open confrontation in the colonial capital. Soon after the return of the ten true bills on that date, John Wesley—perhaps sensing that his interest in seeing the matter go no further was shared by Causton, that his situation would not improve with the passage of time, or that his chances were growing brighter, given the support of a substantial number of members of the grand jury who had filed a minority report with the Trustees in London⁹¹—made the determination that an early and speedy trial was in his best interest, if indeed, he had to stand trial at all.

[He then] pleaded not guilty and demanded an immediate trial. Again and again did he press for a hearing, which was denied upon some frivolous pretext or other, such, for example, as that "Mr. Williamson was gone out of town." So malevolent was the spirit moving the parties preferring these charges against Mr. Wesley that with a view to damaging his clerical reputation far and near they caused the indictment found by a majority of the grand jury to be published in various newspapers in America.⁹²

Sensing that Causton and Williamson were delaying in bringing the matter to a conclusion, Wesley began to pepper the officials of Savannah with demands for a resolution to the charges.

On the 3d day of November he again appeared in court, and also on the 22d of that month. On the last occasion, Mr. Causton exhibited to him sundry affidavits filed in his case, all of which Wesley pronounced false and malicious. No trial was, on either date, accorded to him. Upon conferring a second time with his friends they were of the opinion that he might now set out immediately for England. The next evening he called upon Mr. Causton and acquainted him with his purpose to leave the colony at an early day. He also put up in the public square the following notice: "Whereas John Wesley designs shortly to set out for England, this is to desire those who have borrowed any books of him to return them,

as soon as they conveniently can, to John Wesley."⁹³

On December 2, 1737, John Wesley—after some formal but effete protest by the Savannah officials⁹⁴—began his long journey home to England, proceeding by way of Purysburg and Beaufort to Charleston in South Carolina, and from there by ship to the English port of Deal where he landed on Wednesday, February 1, 1738. It was, as Wesley's diary entry for that date noted, "the anniversary festival in Georgia for Mr. Oglethorpe's landing there."⁹⁵

History records that John Wesley and the Magistrates of the young Colony in Savannah were not the only ones who managed conflict best by managing it least. The Trustees back in England at London's Georgia House, despite approaches by Causton, by William Williamson and his petulant young bride, and by John Wesley himself, were never able to bring themselves to a definitive conclusion of the case and successfully avoided any decision in the dispute for years until, finally, the matter faded into oblivion.

September 1, 1737—the date of John Wesley's indictment in Savannah—was also the day which witnessed the last formal action in the matter.

ENDNOTES

1. The sense of military mission and urgency which was an integral part of life in the colony persisted for two decades and was not truly to dissipate in Georgia until 1763 when Florida passed from Spanish to British hands as a result of the Treaty of Paris of that year, ending the Seven Years War. See JAMES C. BONNER, *A HISTORY OF GEORGIA AGRICULTURE* 8 (1964).

2. This is the figure arrived at by a house-to-house census of the Town of Savannah and its immediate environs in the summer of 1737, a year after John Wesley had arrived in the infant colony. CHARLES COLQUIT JONES, JR., *THE HISTORY OF GEORGIA* 285 n.4 (1883).

3. GARY B. NASH, *THE URBAN CRUCIBLE: THE NORTHERN SEAPORTS AND THE ORIGINS OF THE AMERICAN REVOLUTION* 99 (1986).

4. *Id.* at 2.

5. *Id.* at 3.

6. *Id.* at 4. Nash also records that there were strangely paradoxical currents afoot in the emerging American mentality in the colonial seaports of the late seventeenth and early eighteenth centuries. Nash notes that the laboring classes of the American port cities

hewed to an older vision of society, which they believed had been more equitable and moral. They attested their belief in an older religion with a stricter code of conduct and resisted the creeping Arminianism of the educated class, which stressed free will more than predestination. Their cultural traditionalism was in many instances antirational, antiscientific, ethnocentric, and moralistic; it was also strenuously egalitarian.

Id. at 83.

7. The "Trusteeship" in Georgia history customarily refers to the period between 1733, the establishment of the Colony of Georgia under a royal Charter issued to its twenty-one Trustees, and the time in 1752 when the Trustees voluntarily surrendered the Charter back to the Crown some two years before it was scheduled to revert to royal control. Most historians of the colonial period in Georgia draw sharp distinctions between the time of the Trusteeship—a time when Georgia was essentially a social laboratory for a variety of eighteenth century sociological, economic, agricultural, and missionary experiments—and the time of the Royal Colony of Georgia, when the mercantile and military objectives and goals of the colony gained undisputed precedence in colonial life.

8. HAROLD E. DAVIS, *THE FLEDGLING PROVINCE: SOCIAL AND CULTURAL LIFE IN COLONIAL GEORGIA, 1733-1776*, 146 (1976).

Nevertheless, social mobility characterized royal as well as trustee Georgia, for power and status were open to those who could certify themselves through wealth or remarkable abilities. One could not otherwise explain the rise to prominence of Habersham, a former Savannah schoolmaster; of Ottolenghe, the catechist who had been imprisoned in a British jail; of William Ewen and William Russell, who came as servants; of Francis Harris, who had started as a clerk in the trustee store; of John Adam Treutlen, who first came to notice as a schoolmaster among the Salzburgers; or of Edward Barnard, a former baker's apprentice.

Id. at 147.

9. So great was the fear of the impact of slavery and the influence of black labor resources, even freemen of color were prohibited from entering the colony under a law of 1741. *Account Shewing the Progress of the Colony of Georgia in America from its First Establishment*, in DE RENNE COLLECTION 61, 62 (1741), cited in JAMES C. BONNER, *A HISTORY OF GEORGIA AGRICULTURE* 4 (1964).

10. Perhaps the finest review of sociological and cultural aspects of South Carolina slavery in the eighteenth and early nineteenth centuries is PHILIP D. MORGAN, *SLAVE COUNTERPOINT: BLACK CULTURE IN THE EIGHTEENTH-CENTURY CHESAPEAKE AND LOWCOUNTRY* (1998). Morgan's resources include many from Georgia in the period after the formal introduction of slaves into the colony, following the abolition of the Trusteeship and the advent of direct royal government in 1754.

11. NASH, *supra* note 3, at 7.

12. The comparatively large numbers of indentured servants in Savannah during this period was, in part, a function of the absence of slavery in the colony. DAVIS, *supra* note 8, at 148. "Many were indentured to the trust itself. These men and women farmed for the trustees, attended their cow pens, worked in their stores, operated mills, built bridges and roads, and did other work as directed by officials in the colony. The trust ceased employing servants for itself in 1743. Private individuals did not. They bought white servants, 2492 of whom were privately held between 1733 and 1752. Even so, there was a shortage of labor. Men called for more and more servants, a need seldom satisfied. Although white servants were better clothed and housed than slaves, they were not respected by masters, who expected them to malingering on the job, to steal, and to attempt to escape." *Id.* at 148-49.

13. NASH, *supra* note 3, at 7.

14. *Id.*

15. DAVIS, *supra* note 8, at 150. "The arrival of slaves all but eliminated the class of white man who had been simple laborers When slaves arrived, white laborers could scarcely compete, for employers could rent slaves by the day, week, or month even if they did not own them." *Id.*

16. NASH, *supra* note 3, at 7-8.

17. *Id.* at 8.

In the middle position of the social hierarchy, above the servant, the laborer, and the overseer, stood the artisan class, or the mechanics. Artisans were up many kinds—carpenters, shoemakers, tailors, blacksmiths, masons, tanners, brickmakers, and so forth—and individuals within the class varied greatly in the successes they achieved Artisans kept their place after a fashion

DAVIS, *supra* note 8, at 153.

18. NASH, *supra* note 3, at 8.

19. *Id.*

20. *Id.* at 9. In Georgia, lawyers were banned from the practice during the Trusteeship period and were permitted to appear formally before Georgia courts only after the surrender of the Charter back to the Crown in 1752.

21. *Id.*

22. DAVIS, *supra* note 8, at 148.

23. Wesley has been the subject of innumerable biographies. In preparing this short recitation of the major facets of Wesley's life before the Georgia mission, I utilized *The Journal of John Wesley, A.M.* (Nehemiah Curnock ed. 1960) (1909), and especially the introductory chapter, "John Wesley's Early Life in the Light of Unpublished Diaries." For another helpful resource containing particularly useful information regarding Wesley's unwavering commitment to the Church of England, see GARTH LEAN, *JOHN WESLEY, ANGLICAN* (1964).

24. John Wesley's father, Rev. Samuel Wesley, was a "High Church Tory, but a King William man," who once left his wife on learning of her Jacobite tendencies. LEAN, *supra* note 23, at 5. "If we have two kings, Sukey," he is reported to have cried, "we must have two beds." *Id.*

25. The routine followed by Wesley at Lincoln College was virtually monastic. The traditional Methodist characterization of this period—the time before Wesley's conversion in 1738 to a more personal and emotionally charged faith—is that it was a period of sterile ritualism, marked by intense study, fasting, and prayer. *JOURNAL OF JOHN WESLEY, supra* note 23, at 4-11.

26. W.H. FITCHETT, *WESLEY AND HIS CENTURY: A STUDY IN SPIRITUAL FORCES* 93-94 (1906) (quoting 7 *Wesley's Works* 35).

27. *Id.*

Methodism has sent out, since then, a thousand missionaries to heathen lands, but never one with so strange an equipment of motives as that under which its own founder sailed as a missionary to Georgia. But if any proof is needed of the failure of the religious creed on which Wesley had hitherto lived—a High Church theology, a plodding, heavy-footed ritualism—it may be found in the explanation on his own motives which Wesley gives. *Id.* at 95.

28. OWEN CHADWICK, *THE MIND OF THE OXFORD MOVEMENT* 14, 20 (1960), *passim* (emphasis in original). Curnock puts it this way:

Wesley ordered all his church life, his administration of the Sacraments, his daily devotions, public and private, his weekly fasts, his observance of Sundays and all other holy-days, according to what he believed to be the custom of the early Church . . . [T]here is no evidence that his churchmanship was "high" in any other sense. In his strict observance of rites and ceremonies, in his loyalty to rubrics and canon law, in his belief that the Book of Common Prayer met all the religious needs of individual and national life, John Wesley was a High Churchman of the early Church type. But to what extent he sympathized with the doctrinal interpretation placed by Anglican and Roman Catholics upon the rites he so scrupulously observed, is quite another question. The Georgia Journal and Diary suggest a devout, somewhat antiquated High-Church Protestant, whose point of view has little in common with the Oxford Tractarianism of a later time.

JOURNAL OF JOHN WESLEY, *supra* note 23, at 167.

29. FITCHETT, *supra* note 26, at 102. Fitchett, a Methodist devotee, is especially emphatic about the differences between the post-conversion Wesley and the Wesley who served as missionary to Georgia; describing the latter as an "ecclesiastic," a "sacerdotalist," and "the true High Churchman, who not only believes that spiritual and eternal issues hang on mechanical forms, but will sacrifice them for the sake of the forms!" *Id.* at 102-03.

30. Aside from the specifics of the peculiarities of Wesley's personality, his growing alienation from the larger community in Savannah, and his self-marginalization within the township, ambiguities surrounding the position of Anglican clergymen in the colonies of British North America arose by the middle of the eighteenth century. In the famous

Two-Penny Act controversy, which ignited in 1759 in Virginia when the House of Burgesses imposed a special tax on the salaries of Anglican priests in the colony, the Bishop of London attacked the colonial legislation as a symbol of the disrespect of the colonists for the Church of England. In response, Landon Carter and Richard Bland drew into question the status of Anglican clergy generally, insisting the clergy would enjoy respect to the degree that they earned it.

Whose fault is it, Bland demanded to know, if, as the Bishop charged, the clergy in Virginia were not accorded the respect due the ministers of an established church? The respect they receive is the respect they earn, for they “stand upon the same level with other man, and are not superior to them, as I know of, in station or learning.” Obviously an established church was a great importance in any state, and clergy should be held in high esteem; but there would be limits to that even if none of the clergy were a disgrace to their calling, as in fact so many in Virginia were; for “the preservation of the community is to be preferred even to them.”

BERNARD BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* 252 (Enlarged ed. 1992) (1967). While defending a Virginia parish from liability in a suit brought by a disgruntled clergyman, seeking the recovery of wages lost under the Two-Penny Act, Patrick Henry was more direct. Colonial Anglican clergy, he maintained, were “rapacious harpies who would, ‘were their powers equal to their will, snatch from the hearth of their honest parishioner his last hoecake, from the widow and her orphan children their last milch cow! The last bed, nay, the last blanket from the lying-in woman!’” *Id.*

31. JOURNAL OF JOHN WESLEY, *supra* note 23, at 151.

32. Wesley came to know and admire a group of Moravians while in transit from England in January and February of 1736. Since his arrival in Savannah, Wesley took a number of occasions to visit and consult with that community and its leadership. Soon after his arrival, Wesley’s diary records his first visit to Ebenezer and his growing respect for Pastor Bolzius, their religious head. His actual contact with Creek Indians was rare, but Wesley often openly spoke of them as the true reason that he had come to Savannah in the first place. His diaries and journals further reflect his frequent contact with the Jewish community in Savannah from whom he was learning Spanish. All of these relations with marginalized segments of the colonial society would have been well known throughout Georgia. Given the evident and growing tension which was reflected in Wesley’s ties with the English community, the warmth of his relations with the these “foreign” groups must have been received rather coolly. See generally JOURNAL OF JOHN WESLEY, *supra*

note 23, at 166-86, *passim*. See also JONES, *supra* note 2, at 275.

33. JONES, *supra* note 2, at 287-88.

34. These accounts also give the impression of being generally untrustworthy and vague. Jones says that Sophia Hopkey was “a young woman of uncommon personal and intellectual charms,” who “. . . had been his pupil. He gave her French lessons. Under his religious administration she became a professed convert and united herself with the church.” JONES, *supra* note 2, at 288-89. More vivid—but undoubtedly more fanciful—descriptions of the young woman are available in WILLIE SNOW ETHRIDGE, *STRANGE FIRES: THE TRUE STORY OF JOHN WESLEY’S LOVE AFFAIR IN GEORGIA* (1971), a work that stays close to historical sources, and in MARIE CONWAY OEMLER, *THE HOLY LOVER* (1927), which makes no such pretension. The narrative which follows is based largely on the first two of these three works.

35. A review of Wesley’s diary and journal entries is sufficient to substantiate the growing bond, although both parties—perhaps in obedience to eighteenth century social conventions—were strangely hesitant to acknowledge it. See JOURNAL OF JOHN WESLEY, *supra* note 23, at 283-356, *passim*.

36. *Id.* at 318.

37. Portions of this narrative are drawn from Dan Phillips, *A Famous Preacher’s Love Affair*, available at <http://www.edge.net/~dphillip/Savannah.html>.

38. This exchange of February 15, 1737 is recorded in JOURNAL OF JOHN WESLEY, *supra* note 23, at 319.

39. Dan Phillips, *A Famous Preacher’s Love Affair*, available at <http://www.edge.net/~dphillip/Savannah.html>.

40. ETHRIDGE, *supra* note 34, at 169.

41. FITCHETT, *supra* note 26, at 108.

42. JOURNAL OF JOHN WESLEY, *supra* note 23, at 335-37.

43. *Id.*

44. FITCHETT, *supra* note 26, at 109.

45. The references here to Donald Black and his general theory on sociology in and of law are drawn from DONALD BLACK, *THE BEHAVIOR OF LAW* (1976). Chapter 2 of that work, “Stratification,” is the source of the observations in this section of the present work. *Id.* at 11.

46. Black also notes that the mechanisms of distribution of wealth within a stratified society will differ “in some cases depending upon what people do, such as their work or other responsibilities, in other cases depending upon how and when they were born, their age, sex,

race, place of birth, or lineage." *See id.* at 11-12.

47. *Id.* at 13.

48. *Id.* at 12.

49. Black explains this by stating "all else constant, the lower ranks have less law than the higher ranks, and the higher or lower they are, the more or less they have." *Id.* at 17. If, as Black says, "people with less wealth have less law [, and] are less likely to call upon law in their dealings with one another, and, when they do, they are less successful," the obverse must also be true with respect to those *with* wealth: they are more likely to call upon law in their dealings with one another, and when they do, they are more successful. *Id.*

50. An early attempt by the Bishop of London to appoint priests to the church in Savannah provoked a conflict with the Trustees in London. The Trustees of the colony—and these included a number of dissenters—jealously claimed the right to make *all* civil appointments in Georgia, including those of an ecclesiastical nature. Alternatively, they resisted the authority of the Bishop of London, insisting that if any Bishop in the Church of England had authority in the colony, it would be the Archbishop of Canterbury. The heat surrounding this issue dissipated with time, and the question of the formal relation of the Georgia parishes (before the Revolution, these parishes included churches at both Frederica on St. Simons Island and Augusta) to church authority at home in England was never officially resolved. In fact, no Anglican episcopacy was ever established in the British North American colonies until after the Revolution. *See generally*, HENRY T. MALONE, *THE EPISCOPAL CHURCH IN GEORGIA: 1733-1957*, 19-20 (1957).

51. The Ordinary is the ruling hierarch or local bishop of a diocese.

52. BLACK, *BEHAVIOR OF LAW*, *supra* note 45, at 21.

53. Black reviews morphology as a factor in the sociology of the case. *Id.* at 37.

54. *Id.*

55. A primary corollary in this respect is Black's rule that the relationship between law and differentiation is curvilinear: law will increase with differentiation among members of a society to a point of interdependence, but at the same time, it will decline with symbiosis. This means there will be less law where a society is largely undifferentiated by the functions of its individual members and also where each member of a society is completely dependent upon the next. Between these outer poles where the appearance of law is minimized or even nonexistent, the amount of law will vary according to the degree of

differentiation present. *Id.* at 39.

56. *Id.* at 40-41.

57. *Id.* at 41.

58. ETHRIDGE, *supra* note 34, at 215 (emphasis added).

59. DAVIS, *supra* note 8, at 60.

60. JAMES ROSS MCCAIN, *GEORGIA AS A PROPRIETARY PROVINCE: THE EXECUTION OF A TRUST* 163 (1917).

61. See *JOURNAL OF THE EARL OF EGMONT: ABSTRACT OF THE TRUSTEES [SIC] PROCEEDINGS FOR ESTABLISHING THE COLONY OF GEORGIA* 8 (Robert G. McPherson ed. 1962); cf. JONES, *supra* note 2, at 151; MCCAIN, *supra* note 60, at 163.

62. JONES, *supra* note 2, at 151.

63. Jones is blunt: in the absence of Oglethorpe, the leadership of the Colony devolved upon Causton. *Id.* at 190.

64. In some readings, this is rendered "Ocksted" and, in some, the not nearly so elegant "Hogstead."

65. WILLIAM HARDEN, *A HISTORY OF SAVANNAH AND SOUTH GEORGIA* 65-66 (1913).

66. SARAH B. GOBER & KENNETH COLEMAN, *GEORGIA JOURNEYS* 72 (1961).

67. MCCAIN, *supra* note 60, at 164.

68. Whether Thomas Causton perceived that Wesley's actions were an imposition of law on him personally is not open to historical conjecture: Causton left behind an explicit record to that effect. Wesley records Causton as having stated in the course of an angry confrontation on August 11, 1737, less than a week after the events at church on August 7, that "I am the person that am [sic] injured. The affront is offered to me, and I will espouse the cause of my Niece. I am ill-used, and I will have satisfaction if it is to be had in the world." See *JOURNAL OF JOHN WESLEY*, *supra* note 23, at 379 (entry of Thursday, August 11, 1737).

69. BLACK, *BEHAVIOR OF LAW*, *supra* note 45, at 85. The function and role of organization in the sociology of the case is treated in Chapter 5, "Organization." *Id.*

70. *Id.* at 86.

71. *Id.*

72. *Id.* at 91-92, *passim*.

73. For another century, Georgia used the old common law writ of *Capias ad respondendum* as a means of initiating civil law suits. Under this procedure, a civil defendant would be arrested by an officer of the court—usually the sheriff or a deputy—but would typically be released on a property or recognizance bond. This procedure of bail posting transmuted over time into a written acknowledgment by the defendant of the service of a writ of summons or of process. By the latter decades of the nineteenth century, this “kinder and gentler” system ultimately became the prevailing practice. This was all to come later, however. On March 8, 1737, John Wesley was *physically arrested*. Wesley’s respectability, his integration into the society of the town, and his intimacy with fellow elite Henry Parker explain why Parker permitted the cleric to go free with no bond posted. Parker permitted Wesley’s release over the strong objections of William Williamson and his kin by marriage, Thomas Causton. “Sir,” Parker is reported to have stated to Williamson, “Mr. Wesley’s word is sufficient.” See JONES, *supra* note 2, at 290.

74. *Id.* at 289. The description which follows of the Town Court of Savannah and, incidentally, of the structure of Georgia courts during the period of the Trusteeship (1733-1752) in the province, is an amalgam of information contained in a variety of historiography. See *generally* CREATING GEORGIA: MINUTES OF THE BRAY ASSOCIATES, 1730-1732, & SUPPLEMENTARY DOCUMENTS (R. M. Baine, ed., 1995); WALTER McELREATH, A TREATISE ON THE CONSTITUTION OF GEORGIA (1912); ERWIN C. SURRENCY, THE CREATION OF A JUDICIAL SYSTEM: THE HISTORY OF GEORGIA COURTS, 1733 TO PRESENT (1999); see also JAMES ROSS MCCAIN, GEORGIA AS A PROPRIETARY PROVINCE: THE EXECUTION OF A TRUST (1917).

75. The account of Thomas Causton’s intense activity between August 7 and August 22, 1737, the date on which the grand jury was convened in this matter, is summarized from the *Journal* entries for those dates, inclusive. JOURNAL OF JOHN WESLEY, *supra* note 23, at 377-85, *passim*.

76. This frenetic activity, which took place between the date of the events at the church and the first session of the Savannah grand jury, can be seen as a variant of gossiping, as well. *Gossiping*, according to Black, is “[u]ndoubtedly the most common third-party behavior.” He defines it as “[a] kind of trial *in absentia*, less intrusive and authoritative than other forms of settlement, [which] plays an important role in many groups.” DONALD BLACK, SOCIOLOGICAL JUSTICE 76 (1989).

77. The usual grand jury consisted of about twenty persons; Causton added an extra twenty-four on this occasion, thinking that this large host would be taken to represent the consensus of the community. JOURNAL OF JOHN WESLEY, *supra* note 23, at 382. There were among these jurors, as Wesley notes, “. . . a Frenchman, who did not understand English, a Papist, one a professed infidel, three Baptists, sixteen or seventeen other Dissenters; and several who had personal quarrels against me, and had openly vowed revenge.” *Id.* at 383.

78. Causton’s activity went well beyond “judge shopping” and “forum shopping.” BLACK, SOCIOLOGICAL JUSTICE, *supra* note 76, at 30. Causton was engaged in judge and forum *creation*.

79. These would include, for instance, the attorneys representing the parties and the witnesses whom they could marshal in their support. *See generally id.* at 15 (*Third Parties*).

80. Settlement agents in the Blackian analysis are usually the judge (or judges) assigned to the case and the jurors who participate to decide issues within their legal competence. *Id.*

81. Black posits directly that “[a]uthoritativeness is a direct function of the third party’s relative status. The greater the social elevation above the adversaries and their supporters, the more authoritatively the third party is likely to behave.” *Id.*

82. *Id.* at 15 (*Third Parties*).

83. In summary, the true bills basically addressed practices which the grand jury deemed to be deviant and not in accordance with traditional Anglican ritual: Wesley had not, in taking his new parish, declared his adherence to the Church of England as required by canon law; he divided the Morning Service on Sundays in ways unfamiliar to the parishioners; he refused to baptize a child except by full immersion; he refused Holy Communion to certain parishioners in addition to Mrs. Williamson; he refused a church burial to Nathaniel Polhill; he termed himself the “Ordinary of Savannah”; he refused to permit an individual to serve as a godfather in a baptism because he was not a communicant of the Church of England; and he refused one Jacob Matthews for the same reason and baptized an Indian trader’s child with only two sponsors. In addition, the true bill recited Wesley’s offense of repelling Mrs. Sophy Hopkey Williamson from the Holy Communion, and the only charge not grounded in religious practice or ritual, that Wesley violated the law in speaking and writing to her “‘against the consent of her husband.” JONES, *supra* note 2, at 292.

84. However, Wesley was not without his supporters in the close and compact colony, even on the grand jury that indicted him; especially since over the years, Causton engendered substantial

opposition to his practices and policies as bailiff and storekeeper. These supporters fired a missive off to the Trustees back at Georgia House in London:

To the Honorable the Trustees for Georgia.

Whereas two Presentments have been made, the one of August 23rd, the other of August 31st, by the Grand Jury for the Town and County of Savannah in Georgia, against John Wesley, Clerk:

We, whose names are underwritten, being Members of the said Grand Jury, do humbly beg leave to signify our dislike of the said Presentments, being by many and divers circumstances thro'ly persuaded in ourselves that the whole charge against Mr. Wesley is an artifice of Mr. Causton's, design'd rather to blacken the character of Mr. Wesley than to free the Colony from Religious Tyranny as he was pleas'd in his charge to us to term it.

But as these circumstances will be too tedious to trouble your Honors with, we shall only beg leave to give the Reasons of our Dissent from the particular Bills.

With regard to the First Bill we do not apprehend that Mr. Wesley acted against any laws by writing or speaking to Mrs. Williamson, since it does not appear to us that the said Mr. Wesley has either spoke in private or wrote to the said Mrs. Williamson since March 12 [the day of her marriage] except one letter of July the 5th, which he wrote at the request of her aunt, as a Pastor, to exhort and reprove her.

The Second we do not apprehend to be a true Bill because we humbly conceive Mr. Wesley did not assume to himself any authority contrary to Law: for we understand every person intending to communicate should "signify his name to the Curate at least some time the day before," which Mrs. Williamson did not do: altho' Mr. Wesley had often, in full congregation, declared he did insist on a compliance with that Rubrick, and had before repell'd divers persons for non-compliance therewith

The Third we do not think a True Bill because several of us have been his hearers when he has declared his adherence to the Church of England in a stronger manner than by a formal Declaration; by explaining and defending the Apostles', the Nicene, and the Athanasian Creeds, the Thirty Nine Articles, the whole Book of Common Prayer, and the Homilies of the said Church: and because we think a formal Declaration is not required but from those who have receiv'd Institution and Induction.

The Fact alleged in the Fourth Bill we cannot apprehend to be contrary to any law in being.

The Fifth we do not think a true Bill, because we conceive Mr.

Wesley is justified by the Rubrick, viz: "If they (the Parents) certify that the child is weak, it shall suffice to pour water upon it:" intimating (as we humbly suppose) it shall not suffice if they do not certify.

The Sixth cannot be a true Bill because the said William Gough, being one of our members, was surprized to hear himself named without his knowledge or privity, and did publicly declare "It was no grievance to him, because the said John Wesley had given him reasons with which he was satisfied."

The Seventh we do not apprehend to be a true Bill, for Nathaniel Polhill was an Anabaptist, and desir'd in his life-time that he might not be interr'd with the Office of the Church of England. And further, we have good reason to believe that Mr. Wesley was at Frederica, or on his return thence, when Polhill was buried.

As to the Eighth Bill we are in doubt, as not well knowing the meaning of the word Ordinary.

But, for the Ninth and Tenth we think Mr. Wesley is sufficiently justified by the Canons of the Church which forbid any person to be admitted Godfather or Godmother to any child before the said person has received the Holy Communion; whereas William Aglionby and Jacob Matthews had never certified Mr. Wesley that they had received it.

Id. at 292-94.

85. To state that "deviant behavior by an individual against an organization is the most serious" is to imply that organizations are not, *qua* organizations, capable of deviant behavior. BLACK, BEHAVIOR OF LAW, *supra* note 45, at 97. Theory seems to support the validity of this corollary. "Every theory of deviant behavior assumes that deviant behavior is the behavior of individuals. Every theory explains deviant behavior with the conditions that motivate an individual to deviate. In one theory the explanation is deprivation; in another it is marginality; in another, participation in a subculture. Since none considers that an organization or other group might engage in deviant behavior, none explains deviant behavior with the conditions of organizational life." *Id.* at 99 (references omitted). Empirical research is necessary in this area, but it would appear intuitively that organizations can be inherently deviant (as, for instance, the NSDAP in Germany in the 1930s and 1940s) or may, alternatively, engage intermittently in deviant behavior as did, arguably, the grand jury in Savannah in late August of 1737.

86. *Id.* at 97.

87. Wesley's thinking, of course, was a bit muddled since English legal procedure, then as now, hardly contemplated an appeal from a grand jury indictment as such. Nonetheless, the cleric gave consideration as to whether to "go myself to England, chiefly to prevent or to remove the misrepresentations which Mr. Williamson and his wife (who were to go in the next ship) might spread abroad." JOURNAL OF JOHN WESLEY, *supra* note 23, at 392. He then made the decision, as he says, to "[lay] aside the thoughts of going to England, thinking it more suitable to my calling still to commit my cause to God, and not to be in haste to justify myself; only to be always ready to give to any that should ask me a reason of the hope that is in me." *Id.* at 393.

Donald Black has noted the phenomenon that appears "when colonial administrators recruit indigenous people as their policemen," a consequence of which is that "colonial law [comes to reflect] the structure of indigenous life, with the native authorities lenient towards their intimates" BLACK, BEHAVIOR OF LAW, *supra* note 45, at 44. The converse would also hold true; those relationally distant would not be treated with such leniency. The Trustees would have been in a position to assess the impact of this morphological bias of the hand-picked grand jury in the colony. At the same time, Wesley undoubtedly sensed that in an appellate context before the Trustees, the sociology of his case would have altered significantly from that which he obtained in Savannah. In a London proceeding, Wesley would have placed his fate in the hands of a body of men with whom he shared a general equality in terms of wealth, rank, and status. These naturally would have afforded the cleric a decided advantage for, as Black notes, "if the legal officials handling [cases] differ in their social characteristics, the legal outcomes will vary to a greater extent In other words: *Legal variation is a direct function of social diversity.*" BLACK, SOCIOLOGICAL JUSTICE, *supra* note 76, at 59 (emphasis in original). An appeal would have had the effect of providing Wesley with a review before those who shared with him a vertical place within the scale of stratification of English (not colonial) society, and these individuals would have been quick to recognize and correct the deviant instance of *upward law* which had been imposed on their peer in his North American misadventure.

88. As early as the day of his arrest, Wesley insisted that the Savannah tribunal could not try him: "[the charges] being purely ecclesiastical, I could not acknowledge their power to interrogate me." JOURNAL OF JOHN WESLEY, *supra* note 23, at 377.

89. BLACK, SOCIOLOGICAL JUSTICE, *supra* note 76, at 74.

90. *Id.* at 75-76.

91. See *supra* note 77.

92. JONES, *supra* note 2, at 292. Even as Wesley did so, thoughts of fleeing to England were not far from his mind:

Perceiving that he can obtain neither justice nor even a hearing from the town Court in Savannah, persuaded that there was no possibility of instructing the Indians, being under no engagement to remain a day longer in Savannah than he found it convenient, and believing that his ministry would prove more acceptable in England and in Georgia, he consulted his friends as to the propriety of returning home. They agreed that it was best for him to do so, but not at that time.

Id. at 294.

93. *Id.*

94. The events of the morning hours of December 2, 1737 are detailed in JONES, *supra* note 2, at 400. Wesley announced his intention to leave, protesting that he had waited through a half dozen sessions of the Town Court for his trial. The magistrates said Wesley should remain in the town or at least post a bond for his later appearance. Wesley refused, sensing that the magistrates were prepared to do little more than make verbal objections to his imminent departure, and stated: “[S]ir, you use me very ill, and so you do the trustees. I will give neither any bond nor any bail at all. You know your business and I know mine.” With this invocation of the social elites in London with whom Wesley shared all the indicia of status and rank, the cleric turned and left. The magistrates—who shared nothing with the Trustees at home respecting status or prestige—did nothing to stop him.

95. JOURNAL OF JOHN WESLEY, *supra* note 23, at 400.