

Introduction to the Ratification of the Constitution in Maryland

Founding the Proprietary Colony

The founding and establishment of the proprietary government of Maryland was the product of competing factors—political, commercial, social, and religious. It was intertwined with the history of one family, the Calverts, who were well established among the Yorkshire gentry and whose Catholic sympathies were widely known. George Calvert had been a favorite of the Stuart king, James I. In 1625, following a noteworthy career in politics, including periods as clerk of the Privy Council, member of Parliament, special emissary abroad of the king, and a principal secretary of state, Calvert openly declared his Catholicism. This declaration closed any future possibility of public office for him. Shortly thereafter, James elevated Calvert to the Irish peerage as the baron of Baltimore. Calvert's absence from public office afforded him an opportunity to pursue his interests in overseas colonization. Calvert appealed to Charles I, son of James, for a land grant.¹

Calvert's appeal was honored, but he did not live to see a charter issued. In 1632, Charles granted a proprietary charter to Cecil Calvert, George's son and the second baron of Baltimore, making him Maryland's first proprietor. Maryland's charter was the first long-lasting one of its kind to be issued among the thirteen mainland British American colonies. Proprietorships represented a real share in the king's authority. They extended unusual power. Maryland's charter, which constituted Calvert and his heirs as "the true and absolute Lords and Proprietaries of the Region," might have been "the best example of a sweeping grant of power to a proprietor." Proprietors could award land grants, confer titles, and establish courts, which included the prerogative of hearing appeals. They could also make laws and levy taxes, subject to the consent of the freemen. True lords temporal within their own domains, the Calverts had been endowed with authority to carry out the functions of government as they saw fit. The colony was their fief.²

By default Maryland served as a haven for Catholics in British North America, but the Calverts intended it primarily as a proprietary venture. The Calverts had an interest in attracting to the colony as many productive people as possible. Success depended on it. "Lord Baltimore was neither a political philosopher nor a prophet," writes William Warren Sweet. "He was rather a practical and hardheaded investor in a great land venture, in which his whole fortune was at stake." According to Sweet, Maryland was founded on the principle of toleration "in spite of his [Baltimore's] religion rather than because of it." Cecil Calvert's idea of toleration, much like his father's, would be enshrined in the colony's Act of Toleration (1649), which protected Christians' religious practice. By honoring all Christian professions—instead of preferring one—the proprietor hoped to inspire faithfulness to the civil government by everyone.³

¹ Aubrey C. Land, *Colonial Maryland: A History* (Millwood, N.Y., 1981), 4–6; and William Warren Sweet, *The Story of Religion in America* (New York, 1950), 77–78.

² Thorpe, III, 1679; and Merrill Jensen, ed., *English Historical Documents: American Colonial Documents to 1776* (New York, 1955), 63–64.

³ Sweet, *Religion in America*, 77; and Neil H. Cogan, ed., *The Complete Bill of Rights: The Drafts, Debates, Sources, and Origins* (New York, 1997), 17.

In the final decades of the seventeenth century, the Church of England grew in stature in Maryland. Some Anglican clergy began making appeals to the archbishop of Canterbury to strengthen the Protestant religion in Maryland. Canterbury passed their concerns to the bishop of London, who oversaw ecclesiastical conditions in the American colonies. Maryland had boasted a significant Protestant population from early on, and the continued growth of that community made their pleas progressively difficult to ignore. By 1692, in the aftermath of England's Glorious Revolution (1688–89), which led to the ouster of James II, a Catholic, and the coronation of Protestant monarchs William and Mary, Maryland had become a royal colony. Though the proprietorship would be restored in 1715, that act was only accomplished on the conversion of Benedict Leonard Calvert, the fourth baron of Baltimore, to the Anglican Church. Maryland Catholics faced significant disabilities during the eighteenth century, including a restriction on holding office. Ironically, to use Sweet's words, Maryland, which had been established "for the sake of religious freedom by the toil and treasure of Roman Catholics," would be made open to all Christians "save Roman Catholics."⁴

Maryland's eventual internal tensions mirrored the clash that took hold in England between the Crown and Parliament in the seventeenth century. That period was marked by a series of civil wars between supporters and opponents of monarchical prerogative and included the execution of Charles I, the destruction of the monarchy and the House of Lords, the restoration of the House of Lords and the monarchy under Charles II, and the Glorious Revolution, which finally affirmed Parliament's supremacy and led to the expulsion of James II. While England's conflict was about the proper limits of monarchy, Maryland's revolution was about the limits of proprietary governance. The proprietor had considerable latitude in crafting a government and shaping its policies, but Maryland's colonial charter had provided for "the Advice, Assent, and Approbation" of the colony's freemen, who proprietors agreed to call together "for the framing of Laws, when, and as often as Need shall require."⁵

The generations following Maryland's founding were marked by real efforts to discern a balance between freemen, who constituted the lower house of Maryland's General Assembly, and the proprietor and his counselors, who, after 1650, formed the Assembly's upper house. In 1774, Maryland freemen rallied for more extensive legislative powers in the colony, establishing what would be the first of nine extralegal conventions that wrested control of the legislative process from the established power structure. The Ninth Convention adjourned in November 1776. The proprietary government arguably ended in Maryland when the first of those extralegal assemblies convened in June 1774. But the symbolic end of the regime occurred in June 1776, shortly after the Eighth Convention assembled, when Governor Robert Eden, the last of the colony's governors, left Maryland's shores. By undermining and ultimately throwing off the proprietary government, Marylanders had achieved a revolution in their provincial government as the American colonies moved toward independence.⁶

⁴ Sweet, *Religion in America*, 41–43; and Land, *Colonial Maryland*, 118.

⁵ Thorpe, III, 1679.

⁶ Gregory Stiverson, "Necessity, the Mother of Union: Maryland and the Constitution, 1785–1789," in Patrick T. Conley and John P. Kaminski, eds., *The Constitution and the States: The Role of the Original Thirteen in the Framing and Adoption of the Federal Constitution* (Madison, Wis., 1988), 132–33. Land contends that the departure of Robert Eden, the governor of Maryland, in June 1776 "symbolically ended proprietary government in Maryland," though he concedes that any real authority with the proprietor had ended almost two years earlier when the first extralegal convention met in June 1774. See Land, *Colonial Maryland*, 313–14.

In the mid-1770s Maryland's internal politics, especially the dispute between colonists and the proprietor, had commanded much of the colony's attention. However, Marylanders' concerns were also imperial and had been since 1765 and the furor over the Stamp Act. Marylanders were well aware that the changes in British imperial policy put an end to the period of "salutary neglect," as Parliament encroached on the affairs of colonial assemblies.

Maryland in the Pre-war Years: Resistance to British and Proprietary Rule

Maryland politics during the 1760s and the first half of the 1770s was dominated by two principal political factions—the court party and the country party. Political insiders—people who regularly received lucrative appointments and other forms of political patronage from the proprietary regime—represented the court party. The regime was not without means to reward the faithful. Depending on the year, between £12,000 and £14,000 in posts and remittances was available to entice supporters and to lavish on Marylanders who had proved their loyalty to the regime and the governor. Members of the court party in the General Assembly had a vested interest in voting for policies that favored the maintenance of proprietary prerogative. Below the higher-ranking officials, who received key government posts and significant monetary reward, a host of lesser officials also received appointments. A system of kickbacks bolstered the appointment scheme in proprietary Maryland, with lesser officials "thanking" their patrons for posts of note. Opposed to the court party, the country party represented political outsiders or outliers. Some political outsiders no doubt hoped to become insiders, but the difficulty of transitioning from country to court could be great. As critics, some people established themselves as permanent outsiders to the system that seemed to violate the best interests of rank-and-file Marylanders.⁷

Economic conditions in Maryland were favorable during much of the French and Indian War (1754–63). Imports grew, crop production was good, and prices were strong. But the economic winds changed direction in the early 1760s. Tobacco prices dropped sharply, even below the cost of shipping, and the end of that war brought with it still greater hardships, especially in Europe. Dutch bankers recognized the precarious situation of the war's belligerents, Britain and France, neither of which would be able to pay off their wartime debts, and the end to wartime trade, which had bolstered German currency, caused a financial collapse on the European continent. Maryland merchants were particularly affected by such conditions and the unfavorable balance of trade that resulted from them. The fear of bankruptcy led some English merchants to call in their colonial debts, which drained Maryland of specie. The importation of European goods relied upon the exportation of American stores, like grain and lumber. But restrictions on colonial exports, especially lumber and iron, prevented Maryland merchants from righting the trade imbalance. Ronald Hoffman casts the story of prewar Maryland in cycles of boom and bust, and these cycles, Hoffman contends, served as a bellwether for the colony's politics at any given time. "Maryland's planters and merchants knew both soaring profits and agonizing losses in the years immediately before the Revolution," Hoffman writes. Much of the political ferment in the American colonies that eventually led to the Revolution concerned a particular piece of parliamentary legislation: the Stamp Act.⁸

⁷ Ronald Hoffman, *A Spirit of Dissension: Economics, Politics, and the Revolution in Maryland* (Baltimore, 1973), 3, 44–47.

⁸ *Ibid.*, 3, 28–30.

Parliament passed the Stamp Act on 22 March 1765. “Anger and frustration developed over the Stamp Act of 1765, which coincided with depression,” writes Hoffman, “while indifference characterized the reaction to the Townshend program initiated in 1767 during prosperous years,” so it was not the act alone that aggravated the inhabitants of Maryland. But the Stamp Act was certainly a catalyst for escalating tensions. The act placed a tax on newspapers, pamphlets, licenses, academic degrees, wills, warrants, bills of sale, deeds, and a host of other documents and printed materials. Burdensome for some colonists, less burdensome for others, the tax brought to the fore a critical principle at the heart of the transatlantic debate: the colonies’ right to tax themselves. The Stamp Act Congress, which represented the climax of “formal opposition” to the act, met in New York City between 7 and 24 October to debate an appropriate colonial response to parliamentary abuses. Nine colonies, including Maryland, sent delegates at the invitation of the Massachusetts legislature. The declarations that emerged from the Stamp Act Congress reaffirmed the prerogatives of colonial legislatures. The “late Act of Parliament,” in the words of the declarations, exhibited a tendency “to subvert the rights and liberties of the colonists,” and the necessity of the stamp tax being paid in specie, because of “the peculiar circumstances of these colonies”—the economic slump, that is—would make the payment of the tax “absolutely impracticable.”⁹

Economics and politics were intimately connected in Maryland. The same was true in other colonies. In response to dire economic conditions at home and abroad and the perception that colonial economies had been unfairly disadvantaged by British imperial policy, particularly the Stamp Act, merchants in the leading port towns—New York, Philadelphia, and Boston—discussed and then implemented boycotts of British goods. Merchants agreed that trade conditions had to be rejuvenated and oppressive British acts repealed before non-importation could cease. Maryland’s merchants adopted a similar albeit informal posture toward Britain’s policies and the importation of British goods. William Lux, a notable Baltimore merchant who suffered substantially during the economic downturn, was pivotal in consolidating support among the merchant class. But Marylanders across classes and professions, not merchants alone, sought a realistic and principled—but powerful—response to the situation.¹⁰

Another Marylander, Daniel Dulany, Jr., born in Annapolis, classically educated at Eton and Cambridge, and trained in law at Middle Temple, London, represented the turmoil that colonists felt about the heightening conflict. A leading lawyer, one of few colonists called to the bar in England, Dulany ardently opposed the Stamp Act, publishing his well-regarded pamphlet *Considerations on the Propriety of Imposing Taxes in the British Colonies* in October 1765, the same month as the meeting of the Stamp Act Congress. Dulany’s arguments were generally accepted as the most authoritative in favor of a colonial right to internal taxation. While Dulany supported well-argued legal advocacy against British interference with the colonies’ proper prerogatives, he was no advocate of the Sons of Liberty and their attempts to stir up popular resentment against the British.¹¹

⁹ *Ibid.*, 3. See also Jensen, *English Historical Documents*, 655–56, 672–73.

¹⁰ Hoffman, *Spirit of Dissension*, 36–40. For the nonimportation agreement by New York’s merchants, see Jensen, *English Historical Documents*, 671–72.

¹¹ Daniel Dulany, Jr., *Considerations on the Propriety of Imposing Taxes in the British Colonies . . .*, 2d ed. ([Annapolis], 1765) (Evans 9956); Hoffman, *Spirit of Dissension*, 50–54; and Aubrey C. Land, *The Dulanys of Maryland: A Biographical Study of Daniel Dulany, the Elder (1685–1753), and Daniel Dulany, the Younger (1722–1797)* (Baltimore, 1955), Chapter 17, especially pp. 263–65.

The Sons of Liberty, whose membership was primarily comprised of merchants and tradesmen, began to coalesce in a number of locales, particularly New York City and Boston, in advance of the 1 November 1765 implementation of the Stamp Act. Maryland's Sons of Liberty had its roots in what Hoffman identifies as "a local Baltimore 'mechanical company,'" which was founded in 1763. "From 1763 to 1766," Hoffman writes, "the company was responsible for policing, fire protection, drilling and mustering in Baltimore." Already members of the company, Lux and Robert Adair, a sheriff, justice, and commissioner of Baltimore Town, were vital to the group's transition in organization and disposition. "Maryland's last colonial governor, Robert Eden, labeled the group the most 'pronounced rebellious and mischievous organization in the province of Maryland.'" The radicalism of Baltimore's Sons of Liberty was almost immediately apparent, and their excessive energies would eventually be successfully harnessed by men of means and political interest and ability, like Samuel Chase.¹²

Samuel Chase, an Annapolis lawyer and, later, a leading Antifederalist in Maryland's debate over the Constitution, became a principal organizer of the country party, and he helped to orchestrate the activities of Maryland's Sons of Liberty. Chase settled for the power of the people, which was sometimes manifested by symbolic acts of defiance and, at other times, by actual political violence. Resistance by the colonial population and Maryland merchants' adoption of non-importation policies left little social space for political neutrality in British-American relations, even before independence from Britain was a possible or desirable option. Stamp agents were harassed by Sons of Liberty, burned in effigy, and had their lives threatened. Even when they fled to other colonies, Sons of Liberty networks prevented their finding any quarter. Colonists who wavered or waned in their advocacy of colonial prerogatives—namely, the right to internal administration—became suspect. Dulany, the moderate, and Chase, his more radical counterpart, would form a mutually beneficial partnership in 1764–65, one that got Chase a coveted seat in the House of Delegates. But the two men would eventually part ways over tactical approaches—Dulany favoring reasonable printed protest against Parliament's policies and Chase tending to support the mob, and occasionally to provoke it. Dulany's course left him few options in the decade leading to independence.¹³

By 1773, a debate had erupted in Maryland, again involving Dulany, that highlighted colonists' continuing concerns about government's limits. Subsequently known as the fee controversy, the issue at hand was whether the General Assembly had the right to interfere with Governor Eden's proclamation setting public officials' level of compensation. The controversy erupted when Governor Eden issued a proclamation in 1770 that established the fees. The proclamation resulted from the Assembly's lack of consensus; the earlier statute enacted in 1763—which set officers' fees—had lapsed and the Senate and House of Delegates were unable to agree on a new tobacco inspection bill and fee scale to replace it. The House of Delegates wanted lower fees than provided for in the original 1763 law, an option denied to them when Governor Eden issued his proclamation. They saw this as a usurpation of their rightful role, as well as a challenge in the long-standing battle over the limits of proprietary power.¹⁴

¹² Hoffman, *Spirit of Dissension*, 38–40.

¹³ *Ibid.*, 48–52.

¹⁴ Peter S. Onuf, ed., *Maryland and the Empire, 1773: The Antillon-First Citizen Letters* (Baltimore, 1974), 13–16; and Land, *Dulanys of Maryland*, 289–91.

Dulany, who as secretary of the colony was a clear political insider, emerged as a champion of the governor's authority to set such fees. In the absence of legislative action, Dulany regarded the governor's action as necessary to good government. To defend the governor's action, Dulany composed a debate between two fictitious citizens, which was published in the Annapolis *Maryland Gazette*. The first citizen was little more than a straw man introduced by Dulany to show the superior reasoning of the second, who spoke to Dulany's concerns for order in government. Dulany used the second citizen to argue against more extreme elements in the country party. Dulany presumed these men's motives were selfish. They were the same men who resisted paying the public debt and had neglected their obligations to pass necessary tobacco inspection legislation. Such men, despite their protestations to the contrary, were not friends to Maryland's constitution. By the dialogue's conclusion, the first citizen had been won over to the second's arguments and foreswore listening to dubious politicians in the future.¹⁵ Dulany's staged dialogue did not go without a response. Another Marylander, Charles Carroll of Carrollton, took up the debate in earnest under the pseudonym "First Citizen." In his first response, Carroll used Dulany's earlier *Considerations* pamphlet (1765) as grist for the mill. There was no love lost between the Dulanys and the Carrolls. Despite the pseudonyms, the two men's identities were no secret to readers of the *Gazette*.¹⁶

The debate would last from 7 January 1773, when Dulany drafted his original piece, through 1 July, when Carroll penned his fourth letter as "First Citizen." Each man contributed four pieces to the *Gazette*. Carroll pursued the debate as a matter of natural rights, while Dulany approached the exchange legally and constitutionally. Like Dulany, though almost a generation younger, Carroll studied law and benefitted from wealth and privilege. Both men had been educated abroad. Carroll came from one of the richest families in the American colonies and would, as a Maryland delegate to Congress, sign the Declaration of Independence. He was also a Catholic, meaning that he was disenfranchised in the colony. Not only could Carroll not vote or hold political office, but the colony also deprived him of the right to practice his religion in public. The matter may seem irrelevant to the politics of fees, but the debate that ensued between "First Citizen" and "Antilon," the pseudonym assumed by Dulany, resurrected the colony's history with religion. Dulany, who had championed the colonies' right to internal taxation during the Stamp Act controversy, seemed to be doing an about-face by arguing, in Carroll's estimation, that magistrates were above the law. Carroll compared Governor Eden's proclamation of 1770 to Charles I's extortion of ship-money, a tax that had been levied to strengthen naval defenses from alleged pirates. Dulany was on the defense, and he repeatedly contended that a fundamental difference existed between fees and taxes. Within the course of the debate the exchanges became personal, with Dulany arguing that Carroll's Catholicism made his political views inherently suspect and even untrustworthy. Carroll wasted no time calling into question Dulany's veracity. Could such a man who "Attempts to rouse popular prejudices" be trusted, Carroll wanted to know. Carroll gave as good as he got, attributing considerable mischief to Dulany as a minister of government and arguing that Dulany had corrupted others by his artifices.¹⁷

¹⁵ Onuf, *Maryland and the Empire*, 15–16; and Land, *Dulanys of Maryland*, 301–2.

¹⁶ Onuf, *Maryland and the Empire*, 14–16; and Land, *Dulanys of Maryland*, 302. For background to the feud that existed between the Carrolls and the Dulanys, see Land, *Colonial Maryland*, 291–93.

¹⁷ Onuf, *Maryland and the Empire*, 15–16, 43–51, 54–55, 66, 118, 121–22, 125–26, 147, 151, 152, 186–87, 188, 189, 225–27. For Dulany's denial of the parity of taxes, or ship-money, and fees, see "Antilon's" second and third responses (pp. 61–76, 100–123). See also Land, *Dulanys of Maryland*, 302–3.

Aside from highlighting the two men's legal prowess, the Dulany-Carroll debates attracted significant popular attention in the pages of the Annapolis *Maryland Gazette*. The exchange enthralled Marylanders. By the debate's conclusion, and even before, a large majority of colonists were probably sympathetic with Carroll's critique of bloated government and self-serving ministers. Carroll seized the high ground by convincing readers that the issue was neither narrow nor legal. The matter of fees was one that affected their lives, and its importance could not be overstated if people intended to preserve their liberty against the unjust—and, in some minds, unlawful—encroachment of powerful political insiders. Those who sympathized with Carroll's "First Citizen" won a decisive victory in the elections for members of the House of Delegates that took place while the debate was raging. The new legislature that met in June 1773, however, was characterized by moderation, with the House merely adopting a resolution condemning the fee proclamation at the end of the session. The fee issue remained unresolved, and the tension between the country and proprietary parties continued.¹⁸

In 1774, the year following Dulany and Carroll's notable debate, "an event of immense political importance" occurred in Annapolis harbor: the burning of the merchant vessel *Peggy Stewart*. "No other single act in Maryland," Hoffman argues, "played a greater role in shaping the attitudes individuals adopted toward the political conflicts both within the empire and at home." After the imposition of the Tea Act in 1773, colonists in several towns—Philadelphia, New York, and Boston, in particular—banded together to oppose imports, and to do so violently if necessary. Anthony Stewart, partner in a Maryland shipping company that was in difficult financial straits, recognized the danger in harboring his brig in Annapolis on 15 October. Some contemporaries and historians even question whether Stewart had anticipated the violence, willing to risk the loss of his ship, which had a hold full of tea and other products from London, as a means of strengthening personal relations with British officials. Regardless of Stewart's intentions, he would be faced with a tremendous decision by the following week: burn the ship and its contents or face violent repercussions.¹⁹

On 19 October, a crowd gathered to debate a proper course for dealing with Stewart. The gathering had been publicized in handbills. The debates were acrimonious. Some Marylanders wanted Stewart's ship *and* its contents set ablaze. Others in the colony believed that burning the tea alone would be warning enough against potential violators of non-importation agreements. The debate mattered little. Before the gathering decided on the latter course, Stewart had been taken onboard the ship by Rezin Hammond, a Maryland planter who was active in prewar radical politics, and Charles Ridgely, a Baltimore merchant who had been active in colony politics since the 1760s. Hammond and Ridgely gave Stewart little choice. He could immediately set the ship and its contents alight or risk his family's safety. Even men like Samuel Chase, who had become associated with radical politics, supposedly advocated a moderate course, attempting to stop a group of Annapolitans who, on the way to the dock, had designed to burn the ship. For this attempt Chase drew the ire of radical leaders. Some accused him of cowardice for having lit a fire under the people only to smother it when he perceived it necessary. Charles Carroll, Barrister, also suggested a moderate response to Stewart's trespass. If those who had rallied against Stewart were to commit arson, surely setting the tea alone alight would demonstrate their anger. Carroll

¹⁸ Onuf, *Maryland and the Empire*, 14–15; and Land, *Dulanys of Maryland*, 302–4.

¹⁹ Hoffman, *Spirit of Dissension*, 133–35; Jensen, *English Historical Documents*, 773–79; and Edward C. Papenfuss, *In Pursuit of Profit: The Annapolis Merchants in the Era of the American Revolution, 1763–1805* (Baltimore, 1975), 49–50.

persuaded his audience. But the ship still burned. Stewart had taken Hammond and Ridgely's threat seriously.²⁰

The burning of the *Peggy Stewart* revealed a significant rift in popular party politics in the years immediately preceding the Revolution. Some Marylanders were clearly more comfortable with violence than others. Early rabble-rousers, like Chase, were chastened by the event and moderated accordingly. Merchants were justly fearful of recriminations by mob leaders if their demands went unmet. A fate like Stewart's might befall them, too. While the rift distanced some moderates from their radical counterparts, the same rift also drew more moderates to the popular fold, the country party. The proprietor's men were not a unified block. Rifts existed there, too, and families like the Carrolls, having considerable wealth and prestige, were in a choice position to exploit them to the benefit of the country party. Men like Daniel of St. Thomas Jenifer, who had been close to Governor Eden, fell out with his former political ally. In the days and months immediately following the burning of the *Peggy Stewart*, delegates from the First Continental Congress arrived back in Maryland and urged that the colony ratify the Continental Association of late October 1774, a colonial response to British tax and trade policy, like the Boston Port Bill. The Association, a binding agreement among all of the colonies, was intended to reverse Parliament's course against the colonies by implementing a system of boycotts and economic disincentives that would persuade the British ministry to take a different tack. A committee of correspondence would also be elected for the colony and included some leading men of country party politics. The men on that committee, some of whom would be instrumental in Maryland's constitutional convention (1776), included Charles Carroll of Carrollton, Charles Carroll, Barrister, Samuel Chase, Thomas Johnson, Matthew Tilghman, William Paca, and John Hall. A council of safety under Jenifer's leadership would also help set the stage for Maryland's wider engagement in the revolutionary movement.²¹

Maryland Drafts a New Constitution

Having unsettled Maryland's proprietary regime, Marylanders were not spoiling for war, and certainly not on an imperial scale. As the revolutionary movement took hold throughout the colonies, Marylanders resisted being drawn into the ever-widening conflict. Maryland opposed independence as late as May 1776, when it stipulated that congressional delegates needed the approval of the Maryland Convention—the state's legislative body at the time—to cast a vote in favor of separation from Britain. But on 28 June 1776, Maryland's Eighth Convention "recalled" the instructions that it had given to its deputies to the Second Continental Congress on 11 January 1776—and that it had renewed in May of that year. On the evening of 28 June Chase wrote a letter to John Adams. In the letter Chase indicated that he was "this Moment from the House to procure an Express to follow the Post with an Unanimous Vote of our Convention for *Independence* etc. etc. See the glorious Effects of County Instructions. Our people have fire if not smothered." In place of earlier instructions, Maryland's new instructions allowed its deputies—William Paca, John Rogers, and Thomas Stone, who were present—"to concur with the other united colonies, or a majority of them, in declaring the united colonies free and independent states." Maryland also provided for its deputies to agree with the other colonies in compacting or confederating together, in securing foreign support, and "in adopting such other measures as shall be adjudged necessary for securing the liberties of America." As long as Maryland's own internal

²⁰ Hoffman, *Spirit of Dissension*, 135–36.

²¹ *Ibid.*, 136–38.

governing and police powers were not jeopardized, the new instructions declared, the colony consented to be bound by the majority's decision to declare independence.²²

Following up on his earlier letter, Chase wrote to Adams on 5 July 1776 expressing hope that "the decisive blow is struck"—that independence had been accomplished. The situation might have turned out differently. Chase's signature on the Olive Branch Petition of 8 July 1775, along with those of fellow Marylanders Thomas Johnson, Matthew Tilghman, William Paca, and Thomas Stone, who were then serving in Congress, and forty-four delegates from other colonies, testified to the initial aim to repair the breach that had developed between Britain and the American colonies. As neither side was willing to concede the validity of the other's claim, such a petition was a vain attempt at reconciliation. Less than a year after the petition, Chase's letter of 5 July claimed that "Oppression, Inhumanity and Perfidy have compelled Us to it [i.e., independence]." "Blessed be Men who effect the Work, I envy you! How shall I transmit to posterity that I gave my assent?" A peaceful coexistence with Britain was hoped for, according to Chase, but that country had lost "every Virtue" and been "corrupted with every Vice." Britain could no longer be trusted to exercise power over the colonies.²³

On 6 July 1776, four days after the Continental Congress voted to approve Richard Henry Lee's resolution for independence and two days after Congress finished revising a draft of the Declaration of Independence, Maryland's Eighth Provincial Convention, which met between 21 June and 6 July, adopted a declaration of independence of its own: "The king of Great-Britain has violated his compact with this people," the text stated, "and that they owe no allegiance to him." The document shared certain similarities with Thomas Jefferson's more mellifluous creation, like a register of the king's abuses of colonists' rights, but the text did not approach Jefferson's high-flying prose. The document appealed to the justice and necessity of its action. "No ambitious views, no desire of independence, induced the people of Maryland to form an union with the other colonies." Maryland's "original and only motive," the document read, was "To procure an exemption from parliamentary taxation, and to continue to the legislatures of these colonies the sole and exclusive right of regulating their internal polity." The colony's "duty and first wish" was "To maintain inviolate our liberties, and to transmit them unimpaired to posterity." Maryland's final consideration was its historic connection to Great Britain, which was dear to its inhabitants but not principal in their minds.²⁴

On 8 July 1776, Chase wrote a third letter to Adams in which he supposed that Maryland had proclaimed its own independence in advance of the colonies' united statement: "We have

²² *Proceedings of the Convention of the Province of Maryland . . . at the City of Annapolis, on Thursday the Seventh of December 1775* (Annapolis, 1776) (Evans 14832), 36–37; *Proceedings of the Convention of the Province of Maryland, Held at the City of Annapolis, on Friday the twenty-first of June 1776* (Annapolis, 1776) (Evans 14834), 10; JCC, V, 504; Philip A. Cowl, *Maryland During and After the Revolution: A Political and Economic Study* (Baltimore, 1943), 29; and Land, *Colonial Maryland*, 314. While Paca, Rogers, and Stone appear to have been present for the vote on independence on 2 July, the Maryland delegates who actually signed the engrossed copy of the Declaration of Independence on 2 August were Charles Carroll of Carrollton, Samuel Chase, Paca, and Stone. See also Robert J. Taylor and Gregg L. Lint, eds., *Papers of John Adams* (Cambridge, Mass., 1977–), IV, 351.

²³ Taylor, *Papers of John Adams*, IV, 361–62. See also the introduction to Edward C. Papenfuse and Gregory A. Stiverson, eds., *The Decisive Blow Is Struck: A Facsimile Edition of The Proceedings of the Constitutional Convention of 1776 and the First Maryland Constitution* (Annapolis, 1977).

²⁴ Papenfuse, *Decisive Blow*, Introduction. For the quoted selections, see Appendix I (RCS:Md., 770).

declared the Throne vacant, and by the Omnipotence of our Power, in the Stile of the Papal Chair, We have absolved the people from their Allegiance—this too before You have done it. I hope the Congress will not be offended with our advancing before we received their Orders.” His fears were unfounded. Adams’ letter of 9 July informed Chase that Congress had in fact declared independence on 4 July. Broad sides of the document, printed by Philadelphian John Dunlap between 4 and 5 July, began to circulate almost immediately. By 8 July, when the Declaration of Independence was read to the people of Philadelphia from the yard of the Pennsylvania State House (now Independence Hall), Congress had committed Americans to a decisive and, in the estimation of some, a seemingly impossible course.²⁵

On 3 July 1776 Maryland’s Eighth Convention called for delegates to be elected to a constitutional convention, which would be the last of the nine extralegal conventions, to draft a new state constitution. This practice was pursued with varying degrees of speed by the other colonies. Convention elections were to take place on 1 August. Suffrage requirements were identical to those under the proprietary regime, which reflected the continued conservatism of the state’s entrenched elite interests. Males above twenty-one years with freeholds of no less than fifty acres and estates valued at £40 sterling or more were allowed to vote for representatives in the counties and Baltimore. Annapolis had slightly differing requirements from these. One had to be a freeman of at least twenty-one years who owned a lot in the city, who had property valued at £20 sterling or more, or who had been an apprentice in the city for at least five years and a householder. Each Maryland county would elect four delegates. The exception was Frederick, which was allotted four from each of its three districts. Annapolis and Baltimore were allowed two delegates each. Elections for the Ninth Convention were irregular in some locales. Democratic segments of the citizenry objected to the use of longstanding property qualifications and voted without the sanction of judges who supervised the elections. In some cases, restless crowds deposed duly appointed judges and selected different ones in their stead. Members of the Convention were generally unmoved by appeals for widening the electorate, and they rejected attempts of non-qualified voters to force the issue. The early days of the revolutionary movement in Maryland represented the state’s character well—firm and forceful, but not radical. Wars had consequences. The colonies’ decision for independence would surely result in an imperial backlash. Maryland’s elites, many of them merchants, had much to lose from the uncertainty of conflict. Broken commercial ties could easily jeopardize the health of the up-and-coming community.²⁶

The Ninth Convention that was called to draft Maryland’s state constitution began its work on 14 August 1776. Three days later, the delegates “took into consideration the resolution of congress declaring the United Colonies free and independent states” and then “*unanimously*” resolved that the “convention will maintain the freedom and independency of the United States with their lives and fortunes.” Immediately thereafter, Samuel Chase moved that “a committee be appointed to prepare a declaration on and charter of rights, and a plan of government agreeable to such rights.” By day’s end, the Convention “proceeded to ballot” for a committee to draft a plan of government and a declaration and charter of rights. Matthew Tilghman, a delegate from Talbot County who had been unanimously elected as president of the Convention, along with representatives of Maryland’s commercial interests—Charles Carroll of Carrollton, Charles

²⁵ Taylor, *Papers of John Adams*, IV, 369–70, 372–73; and CDR, 72.

²⁶ Crowl, *Maryland*, 29–32; Land, *Colonial Maryland*, 316; and Papenfuss, *Decisive Blow* (3 July 1776 resolutions).

Carroll, Barrister, William Paca, George Plater, Robert Goldsborough, and Chase—comprised the seven-man committee.²⁷

On 27 August 1776, George Plater reported a declaration and charter of rights, and about two weeks later, on 10 September, he presented a constitution and form of government. After three weeks of deliberation, on 3 November, Maryland's delegates agreed to a slightly amended form of the declaration of rights, and five days later, on 8 November, the Convention "having gone through the form of government paragraph by paragraph," the constitution was adopted in a form that varied negligibly from the committee's original draft. Aside from the Convention's selection of a council of safety on 10 November, the Convention's last major action, on 11 November, was to order that the declaration of rights and constitution "be immediately printed" and disseminated to each of Maryland's counties—twenty-two copies to each county "by express." The Convention also ordered that its journal be printed "as soon as conveniently may be" and be sent to each of the Convention delegates. The Constitution was not submitted to the people for their assent. For this reason among others, Maryland's constitution of 1776 represented, in Philip Crowl's words, "the most conservative of all of the state constitutions framed in 1776–1777."²⁸

Maryland Under the Constitution of 1776

The Maryland constitution provided for a bicameral legislature, the General Assembly, which was to meet at least once a year, on the first Monday in November, and consisted of the Senate and the House of Delegates. The constitution made clear at the outset that property holding would be the key to political influence in Maryland. Those eligible to elect members of the House of Delegates—four delegates per county and two each for Annapolis and Baltimore—were charged to select "the most wise, sensible, and discreet of the people," who were to be residents of their respective counties or Baltimore for at least one entire year before the election. Delegates had to be more than twenty-one years in age with property, real or personal, "above the value of five hundred pounds current money," which was no small sum for the period. Annapolis' requirements for serving in the House of Delegates included residing within the city and having "a Freehold or visible Estate" of at least £20 sterling. Members of the House of Delegates would be elected annually.²⁹

The Maryland Senate was to be chosen by electors representing the individual counties and towns—two electors for each county and one each for Annapolis and Baltimore. Senate electors were to convene at Annapolis, or at another locale appointed for the meeting of the General Assembly, on the third Monday in September 1781 and on the same day in every fifth year

²⁷ Papenfuse, *Decisive Blow* (Convention Journal).

²⁸ Papenfuse, *Decisive Blow* (Convention Journal); and Crowl, *Maryland*, 30–32. In her work on the Revolution in Charles County, Md., Jean Lee argues that, "measured against the colonial past," the new state constitution (1776) "promised substantial change." Lee points to the elimination of "grievous and oppressive" poll taxes" and a reduction in suffrage qualifications. And while property qualifications for candidacy to the state Assembly increased, perhaps a mark of elites' aggrandizement of power, Lee also contends that members of Maryland's House of Delegates became "more regularly accountable to their constituents" because of annual elections. See Jean B. Lee, *The Price of Nationhood: The American Revolution in Charles County* (New York, 1994), 131.

²⁹ RCS:Md., 776–77; and Thorpe, III, 1695. See also *The Bye-Laws of the City of Annapolis in Maryland . . .* (Annapolis, 1769) (Evans 11156), 8–9, for requirements to hold statewide offices from Annapolis.

following. At least twenty-four electors had to gather to elect members of the Senate. Fifteen senators, men of “the most wisdom, experience and virtue,” were to be selected for the office. The electors could choose from among themselves. They could also choose men at large. Nine were to represent the Western Shore, and six were to represent the Eastern Shore. The nine highest vote recipients among gentlemen of the Western Shore and the six highest vote recipients among those from the Eastern Shore would be elected. The men selected must have been Maryland residents for at least three years before the elections. They were to be more than twenty-five years in age with property, real and personal, “above the value of one thousand pounds current money.” A president of the Senate was to be chosen from among the senators by ballot of the senators. Maryland’s Senate would garner praise from some corners of the United States during the debates over the U.S. Constitution, which followed on the heels of the Constitutional Convention in September 1787. South Carolinian Charles Pinckney, for instance, regarded the Maryland Senate as “the best model of a senate that has yet been offered to the union.”³⁰

At an executive level, Maryland’s governor was to be “a person of wisdom, experience, and virtue” and would be selected annually on the second Monday of November “by the joint ballot of both Houses (to be taken in each House respectively).” A Council consisting of five men selected annually—again by joint ballot, this time in the manner governing the selection of state senators—on the second Tuesday of November, would aid the governor in his work. Members of the Council were to be “the most sensible, discreet, and experienced men” and were held to the same age and property qualifications as senators, which again spoke to the state’s unique constitutional conservatism. Qualifications for governor were higher still: “No person, unless above twenty-five years of age, a resident in this State above five years next preceding the election—and having in the State real and personal property, above the value of five thousand pounds, current money, (one thousand pounds whereof, at least, to be freehold estate) shall be eligible as governor.” The governor would not be eligible to the office for longer than three successive years, and he would have to wait for a period of four years before being re-eligible for the office.³¹

Maryland’s delegates to Congress were to be selected annually. The delegates representing the state at the national level were not to serve in that capacity for more than three years of any six-year period, and at least two of the delegates were to be changed on an annual basis. Additionally, Maryland required its delegates to be at least twenty-one years of age and to have resided in the state for at least five years before the subsequent election. The delegates also had to be men of significant means, which meant having real and personal estate “above the value of one thousand pounds current money,” the same monetary requirement of the state’s senators.³²

All of this spoke to the character of Maryland’s constitutional settlement. Maryland’s constitution was an elite document, and its intentions were abundantly clear in requirements for officeholding. To wield political power in revolutionary Maryland one needed considerable

³⁰ Thorpe, III, 1693–95; and Charles Pinckney, “Speech at the Opening of the South Carolina Convention,” 14 May 1788, in the *Charleston City Gazette*, 3 June 1788.

³¹ Thorpe, III, 1695–96.

³² RCS:Md., 779.

wealth as well. “Under its [the Maryland constitution’s] aegis,” wrote Crowl, “Maryland was to be governed for a full generation by an oligarchy of lawyers, merchants, and landed gentry.”³³

Maryland’s Declaration of Rights, a forty-two article document, established its purpose at the outset. Since Parliament, “by a declaratory act,” had “assumed a right” to make laws for the American colonies “in all cases whatsoever,” the delegates to Maryland’s constitutional convention believed it necessary to establish a “good constitution” for the state, which included a “sure foundation” of established rights. Among those were an entitlement to the common law of England and the right to jury trials (Article III), the right to participatory government (V), and a guarantee of the separation of powers (VI). The Declaration of Rights also included the freedom of speech and debate in the legislature (VIII) and the prohibition of *ex post facto* laws (XV). Defendants had the right to know the charges against them in a criminal prosecution, the right to counsel, the right to confront witnesses, and the right to a speedy trial (XIX). Excessive bail and cruel and unusual punishments were prohibited (XXII), as were standing armies without legislative consent and mandatory quartering of soldiers in private homes during peacetime (XXVI, XXVIII).³⁴

The Declaration of Rights also ensured an independent judiciary (XXX) and, not least, the liberty of the press (XXXVIII). Singular among the Declaration’s principles was the conviction that non-resistance to arbitrary power (IV) was “absurd, slavish, and destructive of the good and happiness of mankind.” The doctrine of non-resistance to arbitrary power was a corollary of the doctrine of the divine right of kings. In denying the principle of non-resistance, the Maryland Convention was also denying the right of any arbitrary authority over the people of Maryland.³⁵

One of few reforms in Maryland’s constitution was the Declaration of Rights’ mitigation of religious disfranchisement—for Christians, including Roman Catholics. The state constitution effectively ended the establishment of the Church of England. Article XXXIII of the Declaration granted freedom of worship to all Christians, who would be “equally entitled to protection in their religious liberty.” Article XXXIII also gave the state legislature power to levy a tax “for the support of the christian religion” and permitted each person taxed to direct his taxes toward the support of “any particular place of worship or minister, or for the benefit of the poor of his own denomination.” The Declaration provided for the Church of England’s property rights in perpetuity, but it did not bind the legislature to provide maintenance for Anglican properties.³⁶

Confiscation of Loyalist Estates and Paper-Money Politics in Maryland

The issue of loyalism in Maryland was intertwined with politics and property, much as it was throughout the American states. While Congress tried to offer direction on this front, the states had to chart courses that were possible within their unique political climates. Consensus on the matter was not so easily arrived at in Maryland. Political loyalism was certainly problematic. Maryland could not afford insurrectionists in its midst. But long-lasting internal tension in Maryland stemmed mostly from the confiscation of Loyalist estates and the debt associated with their sale.

³³ Crowl, *Maryland*, 32.

³⁴ RCS:Md., 770–76.

³⁵ RCS:Md., 771, 773, 775.

³⁶ RCS:Md., 774.

Maryland had passed a law as early as 4 July 1776 to keep Loyalists from extending their reach or propagating their sentiments within the state. The law was probably a response to a resolution that Congress considered on 24 June declaring British supporters to be guilty of treason. Maryland's attempt to legislate its inhabitants' political behavior did not impress Loyalists in Worcester and Somerset, both counties on the Eastern Shore, where insurrection eventually erupted in February 1777 and lasted at least until April. General William Smallwood of Charles County, Maryland, later the governor under whom the state adopted the U.S. Constitution, was directed by Congress to assist Maryland's General Assembly in quelling the Eastern Shore disturbances. Some Worcester and Somerset Loyalists doubted that the Revolution would last, and they sent their wives and children to weather the storm in New York, where British troops remained stationed for the duration of the war. Others removed to Britain. Because of their location, Loyalists on the Eastern Shore benefited from a degree of British protection, and they in turn aided the British cause in Maryland, resorting to arms and providing counsel to British commanders. Many other Maryland Loyalists, particularly those who once held high posts in the colonial government and a significant contingent of Anglican clergy, abandoned the fray early on and made their way to Great Britain, perhaps hoping to return one day. Those Loyalists who left risked significant economic loss. Some who stayed shared their fate.³⁷

As early as November 1777, Congress recommended that the states confiscate and sell off Loyalists' property. The basis of a resolution that emerged in Congress on 27 November was that Loyalists had forfeited not only their property, real and personal, by allying with Britain in the civil war, but also had given up "the right to the protection of their respective states." The protection of property was not owed to those who purportedly turned their backs on the American cause. Congress went a step further, though. In the same resolution it advocated that proceeds from the sale of Loyalist estates be invested in "continental loan office certificates." Loyalists would not simply lose their property, but the sale of their property would be one of several ways to finance the American war effort. The violation of property rights did not sit well with some Marylanders, especially members of the elite state Senate. The Maryland House of Delegates and Senate found themselves locked in a perennial dispute on opposite sides of the question of confiscation following the congressional resolution.³⁸

Between 1779 and 1780, the two houses of the Maryland Assembly could not agree on the confiscation of Loyalist properties. The House had unanimously supported a confiscation bill in December 1779, and the Senate rejected the "extraordinary" bill on the grounds of insufficient time for debate, which an "abstruse, difficult, and important" matter deserved. Circumstances had prevented the bill from receiving "more mature deliberation." Inclement winter weather might soon impede travel across the Chesapeake, and the Senate adjourned to allow members from the Eastern Shore to make their way home. The Senate questioned the House's support for a bill that would, in the Senate's estimation, only enrich speculators and other unscrupulous persons, who would acquire properties on too lenient terms. The Senate again rejected a confiscation bill from the House in the April session of 1780.³⁹

³⁷ JCC, V, 475; and J. Thomas Scharf, *History of Maryland from the Earliest Period to the Present Day* (3 vols., Baltimore, 1879), II, 296–304.

³⁸ JCC, IX, 971; and Crowl, *Maryland*, 42–43.

³⁹ *Votes and Proceedings of the House of Delegates of the State of Maryland. November Session, 1779. . . .* (Annapolis, 1780) (Evans 16831), 45; *Votes and Proceedings of the Senate of the State of Maryland. November Session, 1779. . . .* (Annapolis, 1780) (Evans 16832), 23, 24–25, 51, 55, 59–60, 60–61; and Crowl,

In January 1781, when the Senate finally conceded to a bill providing for the confiscation of Loyalists' property, senators stipulated by amendment that debts owed to British citizens and Loyalists would be exempted from confiscation. In other words, Americans could not justly escape paying their debts because of the ongoing conflict. The question of debts owed to British citizens brought with it a unique problem. Would debts paid in depreciated continental currency be held as legitimate? A "black list" including the names of men who paid depreciated currency into the Maryland treasury in 1781 aroused contention throughout the state and played into Maryland politics up to April 1788, when elections to the state ratifying convention were held. Once the two houses agreed on a bill, the sale of Loyalist properties in Maryland was initially entrusted to three commissioners. Following the resignation of several commissioners, the sale of the property would be put in the hands of Daniel of St. Thomas Jenifer, who was serving as intendant of the revenue and, after that post had been terminated, as special agent of Maryland's governor and council. The confiscated estates, the bulk of which would be sold before 1788, were sold under Jenifer's tenure in these two positions.⁴⁰

By the mid-1780s, Maryland's confiscation of Loyalist estates had grown entangled with the issues of paper money and debt relief in the state. "Paper money and debtor relief were the major political issues in Maryland during the mid-1780s," writes Gregory Stiverson. The sensitive nature of these already complicated fiscal and political questions was exacerbated by the debt associated with the sale of Loyalist estates. Disputes over the issues were primarily legislative in nature, and they developed in a way that eventually led to government stalemate. The Senate, which was not directly elected by the people, and the House of Delegates, which was more accountable through annual direct elections, repeatedly found themselves in conflict over debt relief, much as they had been during the stalemate over confiscation. Conflict between the two houses was heightened by a general state of tension about the postwar economy, particularly the burden of wartime debts and the hardship of redeeming paper currency that had been issued to fund the war. Additionally, the weight of a nationwide depression was crushing the potential for economic development in all the states.⁴¹

Maryland had a history with paper money during the Revolutionary era. By the time of the 1785–86 controversy in the General Assembly, the state had made at least three separate emissions of paper currency: continental state money, black money (£50,000), and red money (£200,000). The first two emissions were made as legal tender in 1780, and the last was issued in 1781. The currency depreciated in value from the outset. Maryland's initial plans were to redeem the red money between 25 December 1784 and 25 June 1785 and the black money by 1 May 1786. In order to retire the black money and the continental state money more quickly, the General Assembly passed an act during the November session of 1784, a "consolidating act," which provided that the currency emissions would be received at par for tax arrearages due before

Maryland, 42–45. See also *Proceedings of the Two Houses of Assembly of the State of Maryland, on the Subject of Confiscation of British Property* (Annapolis, 1780) (Evans 16830).

⁴⁰ *Votes and Proceedings of the Senate of the State of Maryland. October Session 1780*. . . . (Annapolis, 1781) (Evans 17208), 21, 40, 46; and Crowl, *Maryland*, 45–46. For a copy of the "black list," see William Arthur O'Brien, "Challenge to Consensus: Social, Political and Economic Implications of Maryland Sectionalism, 1776–1789" (Ph.D. diss., University of Wisconsin-Madison, 1979), 460–62. For references to the black list during elections to Maryland's ratifying convention, see RCS:Md., 557, 559–60, 564–65, 616.

⁴¹ Gregory A. Stiverson, "Maryland's Antifederalists and the Perfection of the U.S. Constitution," *MHM*, 83 (1988), 20.

1 March 1784. A second act passed in the November session of the following year expanded the previous provisions, allowing the emissions of 1780 to be received at par for taxes due before 1 January 1785. The legislature's actions in 1784 and 1785 increased the currencies' value, which made it difficult for debtors to pay their debts contracted at the peak of wartime inflation. The General Assembly's actions also provided for the systematic collection of the public debt, particularly the outstanding bonds for confiscated Loyalist estates and all tax arrearages, by 1 January 1790. The situation was ripe for conflict, and a significant part of the Maryland populace began clamoring for inflated currency. This was accompanied by increasing animus directed at wealthier members of Maryland society.⁴²

Maryland's elites, including merchants and propertied men, questioned the need for debt relief. Some perceived debtors as spendthrifts who tied up the repayment of just debts in legal appeals. Others saw in them people who had hoped to pay legitimate debts with depreciated currency. Some prominent Marylanders had speculated in the purchase of confiscated Loyalist estates, hoping to pay off their mortgages with depreciated currency. Without depreciated currency many of these men stood to lose fortunes. On the other hand, debtors often looked at creditors and those representing their interests, like the Senate, as too aristocratic and, therefore, out of touch with the plight of people who risked losing their property and livelihoods despite prudence.⁴³

In 1785–86, the Maryland House of Delegates would emerge as the champion of debt relief. No one serving in the Maryland Assembly could be described as poor, but some members of the House of Delegates sympathized with Maryland's debtors. Samuel Chase, William Paca, and Luther Martin, among others, who were themselves heavy speculators in confiscated property, began a lengthy campaign for paper money, and for debt relief, more generally. Political interest—the desire to be returned to office—and personal economic security surely factored into their support.⁴⁴

Maryland and the Articles of Confederation

Arriving at a lasting system of government for the newly independent United States was not a process without difficulty. Americans' first attempts to draft such a government began as soon as independence seemed likely. In fact, Richard Henry Lee's motion of 7 June 1776, which called for the colonies to declare themselves "free and independent states," also included a proposal for "a plan of confederation" to be "prepared and transmitted to the respective colonies for their consideration and approbation." Lee's hopes would be realized when, on 12 June, the Continental Congress selected a grand committee (one delegate from each state), chaired by John Dickinson of Pennsylvania, to prepare that plan of government.⁴⁵

On 12 July the committee returned a draft of the Articles of Confederation to Congress, which ordered eighty copies to be printed. Between 22 July and 20 August, Congress debated the merits and deficiencies of the plan and amended it accordingly. At the conclusion of that period, Congress again ordered that eighty copies, this time of the amended plan of government, be

⁴² Cowl, *Maryland*, 61–63, 87–89.

⁴³ Cowl, *Maryland*, 91–92.

⁴⁴ Stiverson, "Maryland's Antifederalists," 20; and Cowl, *Maryland*, 63, 96–98.

⁴⁵ CDR, 78.

printed and distributed to the delegates. Military hostilities kept Congress from devoting its complete attention to the matter of a new plan of confederation. But on 8 April 1777 Congress voted to spend two days each week tailoring the text, committing itself to advancing the necessary work. Seven additional months passed before all the states' concerns had been addressed. On 10 November, three men—Richard Law of Connecticut, Richard Henry Lee of Virginia, and James Duane of New York—were appointed to report additional amendments to Congress, which they did the following day, seven amendments in total. On 13 November, Lee and Duane, in addition to James Lovell of Massachusetts, were appointed to revise and arrange the new plan of government and to prepare a circular letter to the states. Congress adopted the Articles of Confederation on 15 November and ordered that 300 copies be printed. The copies took the form of a twenty-six page pamphlet signed by President of Congress Henry Laurens. Along with Laurens' circular letter, which explained the challenge of writing a constitution to accommodate each state's or region's interests, the Articles were sent to the legislatures for their deliberation. Maryland's legislature received copies of the Articles on 3 December. Congress asked that the state legislatures authorize their delegates to approve the plan of government on 10 March 1778.⁴⁶

Nine states had given their assent to the Articles of Confederation by 10 March, but all of those states—with the exception of Virginia, which was prepared to ratify unconditionally—had qualifications or amendments to propose. Maryland also had reservations. On 13 December 1777, a motion was put in the House of Delegates to delay consideration of the new plan of government until the following legislative session, but it was defeated. On 17 December, the House had produced three resolutions instructing Maryland's delegates to Congress. The Maryland Senate concurred with those resolutions on 22 December.⁴⁷

When Maryland's delegates returned to Congress in June 1778, they presented their instructions, which clarified the state's principal areas of dissatisfaction. Firstly, Marylanders were concerned that, under Article IV, "paupers" from one state might become a financial burden on the citizens of another. To support and sustain "friendship and intercourse" among the states in the union, Article IV extended the "privileges and immunities of free citizens in the several states" to "free inhabitants" in the others. The provision provided for the free flow of people and goods, and Maryland legislators wondered if some states might be disproportionately disadvantaged under the scheme.⁴⁸

Secondly, Maryland legislators sought "an explanation" of Article VIII, which dealt with the costs of war and defense and the expense of providing for the general welfare. Any cost was to be offset "out of a common treasury" which the states were to contribute towards "in proportion to the value of all land within each state, granted to or surveyed for any Person." The "united states in congress assembled" would determine the mode by which such an estimate would be arrived at "from time to time." Congress gave each state legislature "authority and direction" to levy taxes for meeting a proportion of expenses to support the new government. Maryland instructed its delegates in Congress to determine whether each state's proportion would be based on the lands

⁴⁶ CDR, 78, 96, 100n.

⁴⁷ CDR, 96, 97–98, 100n.

⁴⁸ CDR, 87, 97.

surveyed “at the time of ratifying the Articles of Confederation” or if the proportion would be updated based on newly surveyed lands.⁴⁹

Thirdly, Maryland legislators wanted their congressional delegates “to remonstrate” the importance of settling the question of western lands. Because Maryland had been granted no western lands in its charter, the matter was pressing in state legislators’ minds. Some states would benefit to the detriment of others. Maryland legislators believed it “essentially necessary for rendering the Union lasting” that Congress should have “full power” to determine and “fix” the western borders of states that had claims extending to the Mississippi River or the “South Sea” (i.e., the Pacific Ocean). Maryland considered itself “justly entitled to a right in common with the other members of the Union” to the “extensive tract of country” to the west of the U.S. frontiers. The land would be secured from Britain or the Indians “by the blood and treasure of all” and, for that reason, should “be granted out on terms beneficial to all the United States.”⁵⁰

Maryland’s protest over western lands was the only contentious point among the state’s three resolutions, and some observers, even one of Maryland’s congressional delegates, had doubts whether the state would succeed in its objection. On 2 March 1778, John Henry, part of Maryland’s delegation, wrote to Nicholas Thomas, who was then serving as speaker of the Maryland House of Delegates, that he despaired of the delegates achieving their aim. There was little promise in light of other states’ likely opposition. On 10 March, the date originally established by Congress for a decision on the Articles, Henry wrote to Governor Thomas Johnson hoping that the issue of western lands would be decided soon. He concluded regretfully, “I fear it never will [be decided] in our favour.” In a second letter to Nicholas Thomas, on 17 March, Henry concluded that his fellow delegates had made up their minds on the subject, suggesting that “all attempts” to invest Congress with power to fix the states’ western boundaries would be “vain and fruitless.” The likelihood that the states would cede their western lands to Congress was not great, Henry noted. “The bare mentioning of the Subject rouses Virginia, and conscious of her own importance, she views her vast Dominion with the surest expectations of holding it unimpaired.”⁵¹

Because so few states were represented in Congress in March 1778, when that body originally called for ratification of the Articles, and because some delegates had not received instructions from their legislatures, Congress delayed further action on the Articles until 20 June, when it resolved that the delegates would present their instructions two days later, on 22 June. At that time no amendments but those presented by a state would be considered. In anticipation of that date, the Maryland Assembly renewed the instructions given at its October session. The delegates were “bound” by those former instructions, according to the June session of the legislature, and were unable to ratify the Articles until the Assembly received a response to its concerns and gave its delegates “express authority” to ratify.⁵²

On 22 June 1778, Maryland’s delegates tendered their instructions to Congress, and Congress rejected all three amendments. The amendments recommended by six other states were

⁴⁹ CDR, 89, 97.

⁵⁰ CDR, 97–98.

⁵¹ Paul H. Smith, ed., *Letters of Delegates to Congress, 1774–1789* (26 vols., Washington, D.C., 1976–2000), IX, 205, 258, 305.

⁵² CDR, 96, 98.

also rejected between 22 and 25 June. Following debate on 25 June, Congress appointed a committee to draft a form of ratification to appear after Article XIII, the final article of the new plan of government. The delegates approved the form of ratification on the following day, and Congress ordered the Articles engrossed on parchment. On 9 July delegates from eight of the ten states that had ratified signed the engrossed copy of the Articles of Confederation. Georgia and North Carolina, which had ratified the Articles on 26 February and 25 April, respectively, were not present for the signing, but delegates from both states would add their names to the parchment by 24 July. Delegates' signatures from three states were left outstanding, two for a matter of months—New Jersey, whose delegates signed on 26 November 1778, and Delaware, whose delegate signed on 22 February 1779—and one, Maryland, for almost two and a half years.⁵³

Maryland's rationale for not ratifying the Articles was amplified in "A Declaration" that was agreed on in the Maryland Assembly on 15 December 1778 and was read to Congress on 6 January 1779. According to the text, Maryland would under no circumstances ratify the new plan of government until Congress was given full power to fix the western boundaries of states that had been given western lands in their founding documents. With the exception of western lands that had been surveyed and purchased by individuals at the outset of the war, Maryland consistently contended that other lands to the west should be held in common for the United States.⁵⁴

Virginia tried to force Maryland to ratify the Articles. By late February 1779, Maryland was the only non-ratifying state. Virginia's delegates arrived at Congress prepared for another refusal by Maryland. On 19 December 1778, Virginia's General Assembly had approved "certain powers and instructions" for its congressional delegates, and those instructions, laid before Congress on 20 May 1779, led the Virginia delegation to move that the new Confederation "be closed as soon as may be," rendering the Articles "forever binding" on the states that had acceded to the plan of government. The delegates' resolutions provided for a particular day and month to be named by which any states wishing to confederate had to ratify.⁵⁵

Perhaps anticipating such browbeating, Maryland's delegates came prepared to make a case for their state's insistence that all claims to western lands be relinquished under the Articles. Instructions from the Maryland legislature laid before Congress on 21 May made clear that the state's delegates were acting not on "the mere opinions of individuals," but from "the sense and deliberate judgment of the state [of Maryland]." The legislature, in its instructions, alluded to the question of western lands when it acknowledged the "almost equal division" of the states. Some states' "interests," and Virginia's, in particular, had been clouded by "local attachments and prejudices, and the avarice and ambition of individuals," according to the Maryland legislature. Were those prejudices and that ambition to "give way to the dictates of a sound policy," one established on "the principles of justice," Maryland argued, all of the states would be better served. Maryland flattered itself that the "apparent diversity of interests" might "soon vanish," providing the confederated states an opportunity to unify "on terms mutually advantageous to all." In the absence of the war with Britain, which had led some states to ratify "contrary to their

⁵³ CDR, 96–97, 98–100, 136n–37n.

⁵⁴ Merrill Jensen, *The Articles of Confederation: An Interpretation of the Social-Constitutional History of the American Revolution, 1774–1781* (Madison, Wis., 1970), 202–4.

⁵⁵ JCC, XIV, 617–18; and Jensen, *Articles of Confederation*, 203–5.

own interests and judgments,” Maryland believed that local attachments would outweigh the benefit of union, that the formerly acceding states “will consider it as no longer binding,” and that some of those states will take the “first occasion” to assert their own prerogative in the interest of “securing their independence.”⁵⁶

Maryland considered Virginia’s designs obvious. In its view, the states that were “ambitiously grasping at territories” would vastly enrich themselves through the sale of western lands and then lord it over their neighbors, perhaps “by open force,” but more likely through other states’ “depopulation” and “impoverishment.” Maryland was confident in the justice of its cause. By opposing western land claims, Maryland saw itself as ensuring the mutuality and perpetuity of the Confederation. Claims to western lands, like those of Virginia and Massachusetts, were “injurious to more than one half, if not to the whole of the United States.” Such claims had to be supported “by the clearest evidence” of justice. Maryland had heard no such arguments from claimants. The Maryland legislature also had concerns that any states newly formed out of western lands not held by Congress might become unduly influenced by their parent states, which might create hierarchies of governance, confederacies and sub-confederacies, that would perhaps defeat “the letter and spirit of the proposed confederation.” Maryland’s strongest argument, and one of its original ones, for pressing the issue of western lands was that territory “wrested” from the British through shared military action—“by the blood and treasure of the thirteen states”—was rightly “common property” and should, therefore, “be parcelled out by Congress into free, convenient and independent governments” as Congress saw fit. Maryland had considered the matter “dispassionately” and “coolly” and instructed its delegates not to ratify until “an article or articles” ceding western lands to Congress had been added to the proposed plan of government. Maryland’s instructions, entered into the journals of Congress, was a boon to its position and an important remonstrance against Virginia and other states’ continued case for their charter prerogatives.⁵⁷

Maryland and Virginia remained in a contest of wills over the question of western lands until the end of 1780. The threat of a British invasion and the pressure to unify in the interest of securing French aid finally led the Maryland legislature to reconsider its longstanding posture toward the Articles. On 29 November 1780, a joint committee of Maryland’s two houses was appointed to draft instructions to the state’s congressional delegates. Within two months, on 27 January 1781, the House of Delegates passed a bill allowing Maryland’s congressional delegation to ratify the Articles. On the following day, the Senate rejected the House bill. In response to the rejection, the House drafted a conciliatory message urging the Senate’s approval. The message cited the “utility” of ratifying the Articles. According to the House of Delegates, the “advantages and necessity” of a united confederacy was “obvious” at the time. The war was in the front of everyone’s mind. While the Senate did not inform the House of its rationale for refusing to pass the bill, the House could only presume that the chief difficulty was still the issue of western lands. The House maintained the justice of Maryland’s perennial petition for Congress to

⁵⁶ JCC, XIV, 619–22. For the “almost equal division” of the states on the issue of western lands, see the 23 June 1778 vote tally by state delegation (CDR, 99–100), where six states (N.H., Mass., Conn., Va., S.C., and Ga.) voted against empowering Congress to administer the western lands and five states (R.I., N.J., Pa., Del., and Md.) voted in favor of such a proposal. New York’s delegation was divided. North Carolina was absent.

⁵⁷ JCC, XIV, 619–22.

have sole authority over western lands, but the time had come for the state to put aside its point, even if it was just:

The present appears to us to be a seasonable time to shew, that as our claim was better founded in justice than the exclusive claims of others, having supported it with firmness till a disposition is shewn of candidly considering it, we chuse rather to rely on the justice of the confederated states, than by an over perseverance incur the censure of obstinacy.⁵⁸

According to the House of Delegates, Congress' powers would be settled on "a known and permanent basis" with Maryland's decision to ratify the Articles. The confederated states' "confidence and satisfaction" would also increase. Of principal importance, Maryland's ratification would "gratify the wish of our illustrious ally" (i.e., France) and confirm the United States, in the eyes of Britain and the rest of Europe, "as one firm cemented body." The Senate agreed to the act of ratification four days later, on 2 February. The state forwarded its new instructions to delegates in Congress, grounding the legislature's decision in the importance of union and the need for French military aid against British encroachments in the Chesapeake.⁵⁹

On 12 February 1781, representing the Maryland delegation, Daniel Carroll, Maryland planter and merchant and cousin of Charles Carroll of Carrollton, "laid before Congress" a copy of the act ratifying the Articles. Daniel Carroll and John Hanson, a Maryland merchant and soon-to-be president of Congress, signed the Articles in Congress on 1 March, which finally completed the new government.⁶⁰

Maryland and the Road to the Constitutional Convention

Even before the Articles of Confederation were adopted, proposals surfaced for a general convention to amend the Articles. Instead of a convention, Congress in February 1781 proposed a five percent tariff (the Impost of 1781), the revenue of which would be earmarked to pay the war debt. Maryland's legislature approved the impost on 12 June 1782, along with eleven other states. Rhode Island rejected the plan, effectively killing it. The second attempt to give Congress an independent source of revenue, the Impost of 1783, met with opposition, too, this time from New York. The Maryland Assembly passed the Impost of 1783 on 6 March 1786, and the remaining states, excluding New York, had ratified the proposal by that spring. Maryland's approval of the impost was noteworthy for its indication that Congress' power to collect the impost could be exercised "as soon as twelve states, including this state," shall pass laws complying with the request. Maryland's stipulation was an interesting departure from the unanimity requirement to pass amendments provided in Article XIII. In November 1784, Maryland also adopted amendments to the Articles giving Congress power to regulate commerce

⁵⁸ CDR, 136n–37n; *Votes and Proceedings of the House of Delegates of the State of Maryland. October Session, 1780. . . .* (Annapolis, 1781) (Evans 17207), 38, 102–3, 106–7; and *Votes and Proceedings of the Senate of the State of Maryland. October Session, 1780. . . .* (Annapolis, 1781) (Evans 17208), 38–39.

⁵⁹ CDR, 136n–37n; *Votes and Proceedings of the House of Delegates of the State of Maryland. October Session, 1780. . . .*, 106–7; and *Votes and Proceedings of the Senate of the State of Maryland. October Session, 1780. . . .*, 49–50.

⁶⁰ CDR, 135–37n.

and to apportion federal expenses (taxes) among the states proportionally according to population.⁶¹

Some delegates in Congress who favored a strong central government had almost become convinced of the impossibility of working within the Articles. The imposts had highlighted the difficulty. They and other sympathizers steadily turned toward a constitutional convention. A conversation outside of Congress also began around the same time, as some newspaper publishers, pamphleteers, and private correspondents focused their energies on rectifying the governmental impasse. Decisive changes needed to be made for government to work.

The Virginia legislature can be credited with advancing the cause beginning in December 1784, when James Madison convinced the legislature to invite Maryland representatives to discuss worsening interstate commerce between the two, which reflected the type of stalemate, or potential stalemate, that had become a signature of the United States under the Articles of Confederation. The meeting of the two states anticipated the growing concerns that led to future gatherings.⁶²

Due to the oversight of Virginia's governor, the meeting between delegates did not occur in Alexandria, Virginia, as originally planned. Instead, the conference of March 1785 took place at George Washington's home, Mount Vernon, near Alexandria, on the shores of the Potomac River. Tensions during the post-Revolutionary era had been exacerbated by the state of the economy, which was seriously depressed at the time. The gathering at Mount Vernon attempted to ameliorate differences between Virginia and Maryland over the navigation of the Chesapeake Bay and the Potomac.⁶³ Of necessity, Maryland's planters and merchants had to ship their produce and wares through the Chesapeake, including the section under Virginia's control, and Virginia commerce in the northern regions of the state and the Shenandoah Valley relied on access to the Potomac, then under the complete control of Maryland. The neighboring states' historic dispute over western lands, coupled with their unique geography—Virginia's claim to the capes of the Chesapeake, Maryland's claim on the Potomac—and the severity of the economic downturn, could have easily led to a taxation war between the state governments. Achieving concord between the states was not especially difficult. Each had something the other desired. Virginia was represented by two commissioners and Maryland by three commissioners—Samuel Chase, Daniel of St. Thomas Jenifer, and Thomas Stone. By 28 March, following a slightly delayed start, the commissioners had drafted a compact consisting of thirteen articles. The final article of the agreement provided that, once Maryland's and Virginia's legislatures gave their "approbation," the articles of the compact "shall be confirmed and ratified" by an act in each state "never to be repealed or altered by either without the Consent of the other." Maryland's legislature adopted a series of resolutions implementing the compact on 23 November 1785. In the interest of securing a freer flow of commerce among the mid-Atlantic states, Virginia and

⁶¹ *Votes and Proceedings of the House of Delegates of the State of Maryland. November Session, 1781*. . . . (Annapolis, 1782) (Evans 17585), 158; *Votes and Proceedings of the Senate of the State of Maryland. November Session, 1785*. . . . (Annapolis, 1786) (Evans 19773), 73; and *Laws of Maryland* . . . [November 1785 Session] (Annapolis, 1786) (Evans 19770), Chapter LXIV.

⁶² Alan V. Briceland, "Virginia: The Cement of the Union," in Conley and Kaminski, *Constitution and the States*, 202.

⁶³ *Ibid.*, 202–3; and *Votes and Proceedings of the Senate of the State of Maryland. April Session, 1787*. . . . (Annapolis, 1787) (Evans 20490), 63.

Maryland expressed an interest in annual meetings to discuss any further problems affecting interstate commerce. Widening the amity, Maryland proposed that Pennsylvania and Delaware, who also had a stake in the region's key waterways, be included in future negotiations.⁶⁴

Virginia's second, more decisive move toward a convention of the states was its call for a meeting of commissioners from all of the states to discuss the commercial problems that had left the government politically lame. On 21 January 1786, the Virginia Assembly passed a resolution calling for commissioners "to take into consideration the trade of the United States," which would include a discussion of the "relative situations" of trade in the individual states and thoughts about how "a uniform system" in states' commercial regulations could better support national life. The outcome was intended to be an act that, when unanimously agreed upon in Congress, would secure the commercial and political future of the fledgling country. On 19 February, Edmund Randolph, who chaired the Virginia delegation, sent copies of the 21 January resolution to the state executives. On behalf of the Virginia legislature, Randolph requested that the other states select commissioners to meet on "the first Monday in September next" in Annapolis. Virginia had already selected its commissioners, eight in total. New Englanders, in particular, were suspicious of the meeting's designs. They imagined that its purpose was as much political as commercial. Nine states appointed delegates to meet in Annapolis. Twelve commissioners from five states would attend (N.Y., N.J., Del., Pa., and Va.).⁶⁵

Though the meeting of states would convene in Maryland's capital, Maryland appointed no delegates. The two houses of the legislature disagreed with each other whether the state should send representatives to a meeting that might impinge on the authority of Congress. The Senate, in particular, believed that the proposed meeting of states would be "liable to some weighty objections." Maryland's House of Delegates did not share the Senate's qualms. On 8 March, the House registered its approval of the gathering in Annapolis by nominating commissioners. Three days later the Senate cited fears that the meeting would be misconstrued or misunderstood abroad, especially in Europe, that it would "give umbrage to congress," and that U.S. citizens might be disquieted, thinking that the Confederation Congress lacked "the will or wisdom" to regulate commerce effectively. Given appropriate powers, the Senate had no doubt that Congress could competently manage the nation's commercial affairs. The Senate did not question Virginia's good intentions but thought that calling such conventions might prove a dangerous innovation for the young republic.⁶⁶

The Annapolis Convention began meeting on 11 September 1786, one week later than proposed in Randolph's letter, at which time the commissioners elected Delawarean John Dickinson to the chair. The men met over parts of four days, concluding the Convention on 14 September. The commissioners prepared a report to the legislatures of the states that had been represented in Annapolis, but copies of the report were also sent to Congress and other state executives. The report prepared by the commissioners represented real potential for strengthening

⁶⁴ Briceland, "Virginia," 202–3; Robert A. Rutland, ed., *The Papers of George Mason, 1725–1786* (3 vols., Chapel Hill, 1970), II, 812n–14n, 816–21; and *Votes and Proceedings of the Senate of the State of Maryland. November Session, 1785*, 7.

⁶⁵ CDR, 177n, 180–85.

⁶⁶ Stiverson, "Maryland," 139–40; *Votes and Proceedings of the House of Delegates of the State of Maryland. November Session, 1785*. . . . (Annapolis, 1786) (Evans 19772), 185; and *Votes and Proceedings of the Senate of the State of Maryland. November Session, 1785*, 84–85.

the central government. The mere gathering of states' representatives in Annapolis had suggested that there were "important defects in the system of the Foederal Government." A "closer examination" revealed the probability that those defects were "greater and more numerous" than anyone imagined. The poor state of national affairs reflected the depth of the government's deficiencies. "Some mode" was needed to unite the states. The commissioners had in mind a convention of all thirteen states. That convention would be for the "special and sole purpose" of discussing weaknesses in the Articles of Confederation. The United States' situation was "delicate and critical." The "united virtue and wisdom" of the entire confederacy was necessary, which led the state delegations at Annapolis to recommend "the appointment of Commissioners, to meet at Philadelphia on the second Monday in May next, to take into consideration the situation of the United States." After making recommendations for rectifying the shortcomings of the Articles of Confederation, delegates were "to report such an Act for that purpose" to Congress.⁶⁷

Doubts about the constitutional legitimacy of the commissioners' call for a convention occurred to some people, like John Jay. Even if the Confederation Congress took up the commissioners' proposal, some questioned whether Congress had power to act in the matter. The Articles of Confederation, under Article XIII, had provided a way of amending the plan of government. Would any approach other than that be acceptable for addressing its deficiencies? The matter was debatable. Congress' action, or lack thereof, would be critically important to the country's future.⁶⁸

Congress had received the Annapolis commissioners' report by 20 September 1786 and, on 11 October, appointed a grand committee of ten members (three states being absent) to consider action on the report. Opposition to the report within Congress prevented further action on the matter until the new federal year, when on 12 February 1787 a quorum was finally achieved in Congress. As a result of agrarian uprisings around the country in 1786 and 1787, the culmination of which was violent armed rebellion in western Massachusetts, Shays's Rebellion, Congress and more of the states were amenable to considering the report of the Annapolis Convention. On 13 February, Congress added two additional delegates to the ten-member grand committee of October 1786. On 19 February, by a majority of one vote, that committee endorsed the Annapolis commissioners' idea of calling a convention in Philadelphia. Two prominent attempts to limit the purpose and power of any convention—one by New York, the other by Massachusetts—were made in Congress. New York moved to postpone consideration of the grand committee's report in favor of a motion based on instructions that New York's delegates had received from their state legislature. That motion was rejected. Massachusetts also proposed that consideration of the committee report be postponed and recommended that Congress call a convention for "the sole and express purpose of revising the Articles of Confederation." Any suggested changes would go into effect following Congress' and the states' approval of them. Nine states voted on the motion. Eight favored it.⁶⁹

Based on the report of the Annapolis commissioners, seven states (Va., N.J., Pa., N.C., Del., Ga., and N.H.) had already elected delegates to Philadelphia when Congress approved Massachusetts' motion. Five other states (Mass., N.Y., S.C., Conn., and Md.) elected delegates following the motion. (New Hampshire's legislature held two elections.) Every state in the

⁶⁷ CDR, 177n, 181–85.

⁶⁸ CDR, 177n–78n.

⁶⁹ CDR, 178n–79n.

confederacy, with the exception of Rhode Island, which refused to elect delegates, would be represented at Philadelphia.⁷⁰

The six months leading up to the Maryland Assembly's appointment of delegates were difficult and sometimes rancorous ones in the state legislature. The two houses of the Maryland legislature had been at odds with each other over paper money. That issue had strained the goodwill of legislators, who on both sides of the question of debt relief concurred in the necessity of shoring up the central government. An unexpected adjournment of the House of Delegates on 20 January 1787, a tactic endorsed by paper-money men, was intended to divest the Senate of its longstanding advocacy on behalf of creditors. The Senate was dismayed at the House's approach. The House of Delegates prepared to remain in adjournment until 20 March, and the Senate did not expect to reconvene until 20 April. Little had been accomplished during the legislative session. The two houses reconvened in early April, partly at the behest of Governor William Smallwood, who had issued a proclamation for the Assembly to meet. At that time the two houses agreed that five men would represent the state at Philadelphia.⁷¹

The House nominated ten men on 20 April 1787. The Senate nominated four on the next day. During the nomination and election process, several delegates refused to serve or resigned when elected. Among them were Samuel Chase; Thomas Johnson, a lawyer who had served in both the state House and Senate and as governor; and William Paca, a lawyer-planter who had also served Maryland as a state legislator and governor. These were not the last of the refusals and resignations. Completing the five-man Maryland delegation proved more challenging than many had imagined. More than a month after the two houses had begun the process of nominating and electing delegates the composition of the delegation was still unclear. The Maryland delegation was finally filled out on 24 May, the same day on which the two houses passed an act that "appointed and authorised" the delegates to represent the state at Philadelphia. That act provided that the delegates, "or such of them as shall attend the said convention," would be entrusted with "full power" to represent Maryland's interests. The men were listed by name: James McHenry, Daniel of St. Thomas Jenifer, Daniel Carroll, John Francis Mercer, and Luther Martin. On the following day, the two houses adopted a resolution to pay the delegates. The act that appointed the five men was signed into law on 26 May. A quorum of delegates had only just been reached in Philadelphia.⁷²

The Constitutional Convention

Maryland's delegates to the Philadelphia Convention were men of significant stature in the state. McHenry had served as a surgeon in the Continental Army and, later, as assistant secretary to General George Washington and aide-de-camp to General Lafayette. An Irish immigrant to the fledgling United States, McHenry eventually settled in Baltimore, where he established himself as a merchant and land developer. Jenifer had long been a Maryland political insider. His service to both the proprietary regime and the Revolutionary-era government bore witness to the fact. A Charles County planter of means, Jenifer had distinguished himself in many areas of Maryland state politics. Carroll, a Montgomery County planter, hailed from one of Maryland's distinguished families. Carroll had also established his reputation during years of repeated

⁷⁰ CDR, 193n–94n.

⁷¹ RCS:Md., 780n–81n.

⁷² RCS:Md., 781n–82n, 804–5.

officeholding on the state level. Along with Pennsylvanian Thomas FitzSimons, he was one of two Catholic delegates to sign the Constitution. Mercer was a relatively recent arrival to the state, having settled in Maryland in 1785. A Virginia planter who had served during the Revolution, Mercer, along with Martin, represented the Antifederalist perspective within the delegation. Martin was the final member of the delegation. Unlike his fellow delegates, who primarily represented Maryland's planting and mercantile interest, Martin was a lawyer. Born in New Jersey, Martin relocated to Baltimore, where he embarked on a multi-decade tenure as Maryland's attorney general. His reputation as a litigator would only expand, principally for his later defense of Aaron Burr during the famous 1807 treason trial.⁷³

With the exception of Martin, none of the other Maryland delegates participated in any decisive way during the four months of the Federal Convention. Jenifer and Martin, who appeared in the Convention on 2 and 9 June 1787, respectively, attended more of the secret proceedings than other Maryland delegates. McHenry and Carroll were also present for significant portions of the Convention. Mercer attended for less than two weeks, 6–17 August. Martin's opposition to the proceedings of the Convention and the plan of government produced by it was noteworthy. Naturally distrustful of the Virginia Plan for its potential to increase the prominence and power of that state and other large states, like Massachusetts and Pennsylvania, Martin supported William Paterson's proposed amendments to the Articles of Confederation (i.e., the New Jersey Plan), which had maintained the states' equal representation in Congress. Martin may have even been involved in drafting the amendments. That fact is not clear. Paterson's plan was rejected; the Maryland delegation was divided on the proposal.⁷⁴

Once the new plan of government began to take shape, Martin expressed serious qualms about its lack of a bill of rights. He feared that citizens might easily fall prey to a government under which individual rights were not explicitly guarded, not even to the extent that they had been in some state constitutions. Martin's and Mercer's absence from the Convention before its conclusion reflected the men's growing distrust of a new system of government that, in their minds, was being empowered beyond expectation and need. Such a system might put the states' sovereignty at risk. Maryland's three other delegates did not share the scruples of Martin and Mercer, and, along with thirty-five fellow delegates from other states, signed their names to the Constitution on 17 September 1787, the date on which the Convention closed. In his role as Convention president, George Washington transmitted the Constitution to Congress, requesting that it be sent to the states for their consideration. The new Constitution would become effective among the ratifying states after nine had given their assent.⁷⁵

Upon their return to Maryland, the state's delegates would be asked to give account of the Convention's proceedings. The General Assembly was scheduled to meet in early November 1787. Once in session, the House of Delegates wasted little time in calling on the men who attended at Philadelphia. On 23 November, the House requested that its five delegates appear on

⁷³ RCS:Md., 767–69. For further details about Maryland's delegates to the Philadelphia Convention (including age, religious affiliation, education, military service, colonial/state service, and service under the U.S. Constitution), see the "Biographical Gazetteer," RCS:Md., 767, 768, 769.

⁷⁴ Farrand, III, 587–89; CDR, 250n–51n; and Stiverson, "Maryland," 142–43.

⁷⁵ CDR, 304n–5n; and Stiverson, "Maryland," 143–44. Signatures of the three Maryland delegates accompanied those of thirty-six other men, though only thirty-five men actually signed the Constitution. Delawarean George Read signed for fellow Delaware delegate John Dickinson.

29 November to give a report. Four of the five delegates certainly attended the House as requested. No record exists of Mercer's attendance, though Daniel Carroll noted that Mercer was in Annapolis while the Assembly was in session. The aftermath of the Philadelphia Convention revealed the delegates' decidedly different perspectives on what had taken place. Martin suggested that a strong monarchical faction had existed at the Convention. In Martin's estimation, that faction wanted to destroy the state governments in the interest of greater centralization. The delegates disagreed among themselves over the existence of such a faction and, if there was a faction, who might have been sympathetic with it. As he had been at the Convention, Martin would continue to be an outspoken critic of the Constitution at the state level. Martin's *Genuine Information*, a twelve-installment analysis and critique of the Convention and Constitution printed between December 1787 and February 1788 in the Baltimore *Maryland Gazette*, would give voice to his many anxieties about living under a significantly strengthened national government, a government that Marylanders were being asked to debate and ratify. Martin and others—newspaper printers, essayists, letter writers, and pamphleteers—were beginning the work of laying bare the Constitution for Marylanders. The debate was public and private, peaceful and rancorous, ordinary and erudite. It was a debate that was happening across the country, and the culmination of it in Maryland would arrive in April 1788: the Maryland state Convention.⁷⁶

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⁷⁶ For more on the delegates' disagreement over a monarchical, or kingly, faction in the Federal Convention, see the headnote and documents in Appendix IV, "The Constitutional Convention and the Controversy over Kingly Government" (RCS:Md., 820–30).