

# WILLIAM PINKNEY'S PUBLIC CAREER 1788-1796

By MAX P. ALLEN

## I. ACTIVITIES IN THE HOUSE OF DELEGATES, 1788-1792

Following the Annapolis Convention of 1788, William Pinkney returned to his law practice in Harford County.<sup>1</sup> It is quite unlikely that he had any part in the effort to provoke a controversy regarding Thomas Lloyd of Philadelphia, who was permitted to take notes in shorthand of the proceedings at Annapolis. It was claimed that although Lloyd had originally sympathized with the opponents of ratification, he had been "bought off" by the majority with the idea of preventing or delaying publication of the debates, which were supposed to reflect little credit on the tactics used to secure ratification.<sup>2</sup> As a matter of fact, within a reasonable time there appeared an advertisement that Lloyd's "Debates on Adoption in Maryland" would be published as soon as there were six hundred subscribers.<sup>3</sup>

The principal opposition to adoption of the Constitution in Maryland came from eleven men representing only three counties. In the October elections, five of these were returned to the House of Delegates,<sup>4</sup> while the circumstances attending the canvass in Baltimore were such that Samuel Chase saw fit to contest the results.<sup>5</sup> Anne Arundel County elected John F. Mercer and

<sup>1</sup> For an account of Pinkney's earlier activities, consult Max P. Allen, "William Pinkney's First Public Service," *Maryland Historical Magazine*, XXXIX (December, 1944), 277-292. Bibliographical comment has been confined largely to that article.

<sup>2</sup> *Maryland Gazette* (Annapolis), May 22, 1788.

<sup>3</sup> *Ibid.*, June 19, 1788.

<sup>4</sup> *Ibid.*, Oct. 16, 1788.

<sup>5</sup> It had been a bitter battle between the "doctors and the lawyers," McHenry and Dr. John Coulter being credited with 635 and 622 votes, respectively, while Chase had 505 and David McMechen, 404. Chase and McMechen, who had been heralded as "Enemies to the New Federal Government," claimed that they had been the victims of disorderly proceedings. They petitioned the House of Dele-

Jeremiah T. Chase; Baltimore County, Thomas C. Deye and Charles Ridgely of William; and Harford County, William Pinkney. These gentlemen must have felt that their refusal to sign the Constitution at Annapolis met with the approval of their constituents.

When the legislature convened on Tuesday, November, 4, 1788, Pinkney was on hand, his first recorded vote being in favor of a meeting of the House of Delegates each day of the November session.<sup>6</sup> The following day he was placed on a committee with McHenry and three others to investigate the petition of one Adam Fonerden praying for an exclusive right to make and sell a machine called a "card-teeth Cutter."<sup>7</sup> Pinkney brought in his first committee report two weeks later.<sup>8</sup> By the end of the session he had become an outstanding member, drawing many important committee assignments. This may be attributed largely to his ability and the zeal which always characterized his handling of responsibilities. It does not seem profitable to examine all of his legislative activities of this period, especially since so many of them had to do with bills which were local or special in nature. Instead it will be attempted to indicate his connection with only more fundamental affairs.

Much legislation affecting relations with the national government provoked little argument in Maryland, *e. g.*, the cession of a district ten miles square for the seat of the new capital.<sup>9</sup> Those

gates to set aside the election, and the matter was given considerable attention all during the session. Pinkney, Mercer, J. T. Chase, Deye, and Ridgely consistently supported the claims of their erstwhile leader at the ratifying convention held the preceding April. Several witnesses were examined, one of whom admitted that he had "betted two beaver hats on the losers."

On December 13 Pinkney was made chairman of a committee to bring in a mode of handling controverted elections. Apparently the suit was dropped without a final decision being reached. On December 20, 1789, it was recorded that parties to the suit should pay the costs of issuing 188 summons, amounting to approximately £62. At the next session, it was decided that Dr. Coulter should pay his share of the costs, the vote being 31-15, Pinkney voting with the majority. Additional details may be had by consulting the following: *Maryland Gazette*, Oct. 16 and 30, 1788; *Votes and Proceedings of the House of Delegates of Maryland*, Nov. Sess., 1788, pp. 4, 5, 15, 17, 18, 19, 44; *ibid.*, Nov. Sess., 1789, Dec. 1 and Dec. 20; *ibid.*, Nov. Sess., 1790, Dec. 16. The best secondary account is Bernard C. Steiner, *The Life and Correspondence of James McHenry* (Cleveland, 1907), pp. 114-115.

<sup>6</sup> *Votes and Proceedings*, Nov. Sess., 1788, p. 3.

<sup>7</sup> *Ibid.*, p. 4.

<sup>8</sup> *Ibid.*, p. 17.

<sup>9</sup> *Laws of Maryland*, Nov. Sess., 1788, Ch. XL. Passed Dec. 23.

who had been so insistent on a Bill of Rights were gratified in 1789 by being able to ratify twelve proposed amendments, ten of which were added to the Constitution.<sup>10</sup> Pinkney brought in a committee report in 1790, which passed 48 to 4, instructing Maryland's United States Senators to join with those of Virginia in securing sessions of Congress which were open to the public.<sup>11</sup> On the other hand, there was considerable opposition to acceding to another joint proposition sponsored by Virginia that these two states advance money for the construction of national public buildings. Virginia agreed to put up \$120,000, with Maryland's share fixed at \$72,000. Pinkney voted consistently against such an appropriation, but was in the minority.<sup>12</sup> Together with Plater and Ridgely, he triumphed momentarily in backing a resolution that the assumption of state debts was a "measure dangerous in consequences to the governments of the several states." However, five days later, the Federalists succeeded in getting this resolution rescinded by the narrow margin of 27 to 26.<sup>13</sup>

As Pinkney's prestige grew in the legislature, many of his old associates also moved up in the world, indicating that he must have been in a group that was unusually capable. J. T. Chase had already taken Alexander C. Hanson's place as judge in the general court, the latter having become chancellor of Maryland.<sup>14</sup> Samuel Chase, freed of his financial burdens by the legislature,<sup>15</sup> was beginning to accumulate offices faster than he could take care of them, so that the ire of the legislature was eventually aroused. He did, however, yield his place in the Maryland Senate, to which he was elected in 1791 (Pinkney being one of the senatorial electors),<sup>16</sup> to succeed Thomas Johnson as chief justice of Maryland,

<sup>10</sup> *Ibid.*, Nov. Sess., 1789, Ch. VI. Passed Dec. 19.

<sup>11</sup> *Notes and Proceedings*, Nov. Sess., 1790, Dec. 1. Two years later the Lower House was still trying "to procure the opening of the doors of the senate of the U. S." and expressing disappointment that one of Maryland's Senators had acted contrary to this idea. The Upper House, however, did not concur in the matter. See *ibid.*, Nov. Sess., 1792, Dec. 22.

<sup>12</sup> *Ibid.*, Nov. Sess., 1790, Nov. 17 and 18.

<sup>13</sup> *Maryland Gazette*, Dec. 23, 1790.

<sup>14</sup> *Ibid.*, Oct. 8, 1789. Hanson held the position of chancellor until his death seventeen years later. The Pinkneys and the Hansons were personal, as well as political, enemies, according to Mrs. L. R. Carton, a great-great-granddaughter of Pinkney.

<sup>15</sup> Allen, *Maryland Historical Magazine*, XXXIX, p. 285, note 42.

<sup>16</sup> *Maryland Gazette*, Sept. 22, 1791. McHenry and Charles Carroll of Carrollton would have been two of his colleagues if he had not resigned.

the latter becoming a federal judge.<sup>17</sup> Plater was elected governor at the beginning of the November session, 1790, with Pinkney the first-named member of a House of Delegates committee to meet with a Senate committee to examine the ballots.<sup>18</sup> The latter had now become prominent enough to be censured in one of the numerous letters which McHenry dispatched to Alexander Hamilton.

An opinion prevails in our House of Delegates that our constitution wants mending and Mercer, Pinkney and Craik are to lead in the business. They do not venture, I mean the two first, for the last is rather federal [ , ] to expose their true reason, though they have not been able to conceal it. I cannot tell how the project may terminate, but I like our constitution as it stands and trust the people, having heretofore found it a good one, will not easily be brought to any radical alterations.<sup>19</sup>

The same year President Washington asked McHenry for suggestions regarding the appointment of a federal district attorney for Maryland. The latter replied, among other things, that Luther Martin was the best qualified for it but the last who deserved it, on account of his politics. He suggested that Washington speak to William Paca about the necessity of leading men removing misapprehension concerning the laws. It was McHenry's idea to "lead Paca from Mercer, who is, if possible, more desperately mischievous, than when the open, decided, and declared enemy of the constitution."<sup>20</sup>

It is likely that no ordinary business of a state legislator would attract much attention outside his capital city, not to mention the country generally, regardless of his competency or persistency. It

<sup>17</sup> *Ibid.*, Sept. 1, 1791.

<sup>18</sup> *Notes and Proceedings*, Nov. Sess., 1791, Nov. 14. Pinkney missed most of the first week of this session and the first half of December.

<sup>19</sup> McHenry to Hamilton, n. p., Nov. 19, 1791, in Steiner, *James McHenry*, pp. 132-133. Soon after this Pinkney brought in a long committee report growing out of a memorial of citizens of Pennsylvania and New Jersey that they had been discriminated against by the paper emission of 1780. It is a comprehensive discussion which reached the conclusion that there had been no discrimination. See *Notes and Proceedings*, Nov. Sess., 1791, Nov. 25.

<sup>20</sup> McHenry to Washington, Baltimore, Aug. 16, 1792, in Steiner, *op. cit.*, p. 134. Mercer was seeking re-election to Congress. He rather rivaled Chase in being continually involved in some kind of acrimonious dispute. His opponent this time was Major David Ross, whose pen was very active in behalf of a Quaker named John Thomas who was campaigning against Mercer. Mercer won, however, as did William Vans Murray and Samuel Smith, both of whom were well started on prominent careers. See the *Maryland Gazette*, Sept. 27, Oct. 4, and Nov. 1, 1792, and April 18, 1793.

seems desirable, therefore, to dwell at some length on two topics which brought Pinkney very much into the limelight and which even today have not passed into oblivion.

## II. PINKNEY AND SLAVERY

Pinkney's fame as an orator rests largely on his speeches made before the Supreme Court<sup>21</sup> and in the United States Senate.<sup>22</sup> His reply to Rufus King of New York on the admission of Missouri to the Union was delivered February 15, 1820.<sup>23</sup> At the time many persons looked upon Pinkney merely as an eloquent advocate of Southern views on slavery. As a matter of fact, he did not defend slavery but rather the right of Missouri to enter the Union without an infringement on her sovereignty which would make her inferior to the other states, a point of view on constitutional law which is accepted today. Under the circumstances, therefore, he could not be accused of abandoning the liberal position he took as a young legislator regarding Quakers, Catholics, Jews, and Negroes.

During his very first week in the legislature, Pinkney was placed on a committee which included Mercer, Ridgely, Potts, and Forrest, to make such changes in the Maryland Declaration of Rights and Constitution as would give religious toleration.<sup>24</sup> Having already established a reputation for freedom from bigotry, it was not surprising to find him the following month unsuccessfully supporting a recent memorial of the Society of Quakers. This group waged a long campaign to bring about the repeal of a

<sup>21</sup> Albert J. Beveridge has done much to rehabilitate Pinkney's reputation as one of the outstanding constitutional lawyers of his day. Consult his *Life of John Marshall*, IV (Boston, 1919), 133 ff. The text of Pinkney's famous speech in the case of the *Nereide* is available in Henry Wheaton, *Some Account of the Life, Writings and Speeches of William Pinkney* (New York, 1826), pp. 455-516.

Justice Joseph Story listed twenty-four men as being leading orators in the period 1800 to 1840. He included two Marylanders: Luther Martin and William Pinkney. See Story to A. Hayward, Cambridge, Massachusetts, Jan. 4, 1840, in William W. Story, ed., *Life and Letters of Joseph Story*, II (Boston, 1851), 325.

<sup>22</sup> Pinkney presented his credentials on January 4, 1820, as the successor of Alexander C. Hanson, lately deceased, the son of Chancellor A. C. Hanson. See *Annals of Congress*, 16 Cong., 1 Sess., p. 54. For a speech made about five years earlier in the House of Representatives on the treaty-making power of Congress, consult Reverend William Pinkney, *Life of William Pinkney* (New York, 1853), pp. 337-361.

<sup>23</sup> Most of this is published in *Annals of Congress*, 16 Cong., 1 Sess., pp. 390-418. A similar rendition is given in Pinkney, *op. cit.*, pp. 288-337.

<sup>24</sup> *Notes and Proceedings*, Nov. Sess., 1788, p. 8.

law which forbade manumission of slaves by last will and testament.<sup>25</sup> Eventually Pinkney joined the majority in voting for postponement of the question until the eighth day of the next session.<sup>26</sup> During the course of this action he made a speech which Mathew Carey considered worthy of publication in that rather curious periodical which he edited at Philadelphia.<sup>27</sup> Wheaton's description of the speech is interesting, especially since he heard so many of Pinkney's best efforts. He was of the opinion that it breathed "all the fire of youth and a generous nature, although it . . . [might] not perhaps be thought to give any pledge of those great powers of eloquence and reasoning which he afterwards displayed."<sup>28</sup> When the matter of legalizing manumission by testament came up the following year, Pinkney spoke again. At the time of the exchange with King in 1820, mentioned above, he declared that the 1789 performance "was much better than the first speech and for a young man . . . well enough."<sup>29</sup> This was putting it modestly, as is demonstrated by the resumé of it which follows.

Pinkney began by admitting that although his past sentiments had been disregarded, he nevertheless would once more lend his "feeble efforts" to so important a cause of freedom.<sup>30</sup> As obstacles to his efforts he noted "mistaken ideas of interest, the deep-rooted prejudices which education has fostered and habit matured, the general hereditary contempt for those who are the objects of these provisions, the common dread of innovation, and above all, a recent defeat." He marveled at the technicalities surrounding manumission. "The door to freedom . . . [was] fenced about with such barbarous caution, that a stranger would be naturally led to believe that our statesmen considered the existence of its opposite among us as the *sine qua non* of our prosperity." He objected to placing all the blame on England for slavery being established in America. "They strewed around the

<sup>25</sup> Luther Martin had tried to limit or ban the slave trade at Philadelphia in 1787. Although Frederick Douglas is probably the best known of Maryland Negroes in the nineteenth century, the outstanding one at this time was Benjamin Banneker (1731-1806), whose almanac was commended by McHenry in 1791. See Steiner, *James McHenry*, p. 127.

<sup>26</sup> *Notes and Proceedings*, Nov. Sess., 1788, p. 49.

<sup>27</sup> *American Museum: or Universal Magazine*, VI (1789), 74 ff.

<sup>28</sup> Wheaton, *op. cit.*, p. 8.

<sup>29</sup> Quoted from *ibid.*

<sup>30</sup> The more or less direct quotations given here are taken from *ibid.*, pp. 8-23.

seeds of slavery; *we* cherish and sustain the growth. *They* introduced the system; *we* enlarge, invigorate, and confirm it." As consequences of the present policy he predicted the destruction of reverence for liberty and interference with production in agriculture, commerce, and manufacturing. He quoted Montesquieu to the effect that although civil liberty may be tolerable where there is political slavery, in a democracy it is contrary to the spirit of the constitution.<sup>51</sup>

Pinkney then proceeded to offer some answers to objections which might be raised to the bill. He denied that freedmen would be tools of usurpation, pointing out that Sulla could retire unmolested because of the fidelity of the slaves he had freed. "When we see freed-men scrupulously faithful to a lawless abandoned villain, from whom they received their liberty, can we suppose that they will reward the like bounty of a free government with the turbulence of faction, or the seditious plots of treason!"<sup>52</sup> Manumission was easier in India than in Maryland. He considered it lamentable for Maryland to be surpassed by Eastern despots in humanity and justice. Then he dealt with the belief of some that nature had "black-balled" Negroes out of society. He insisted that Negroes are merely men with a different complexion and features, the beauty of which is largely a matter of taste. Their ignorance and vices were "solely the result of situation, and therefore no evidence of their inferiority." Like neglected flowers they proved only "the imbecility of human nature unassisted and oppressed."

He presented many more arguments which will not be reproduced here except in barest outline. Thus, he denied that Negroes were lazier than white men. He pointed out that creditors could be safeguarded against losses which might accrue from manumis-

<sup>51</sup> It would seem rather remarkable for this youthful Maryland attorney to be familiar with Montesquieu and Rousseau. Professor Albert Schinz of the University of Pennsylvania discussed eighteenth century philosophers before the Graduate History Club of Indiana University on November 26, 1941. He pointed out that many scholars believe that the French Revolution gave the philosophers popular renown, rather than that their writings popularized the ideas which culminated in the Revolution. He reported that his own research indicated that only the intellectuals had copies of such books as Rousseau's *Social Contract*.

<sup>52</sup> Pinkney again quotes Rousseau: "Nothing more assimilates a man to a beast than living among freemen, himself a slave. Such people as these are the natural enemies of society, and their numbers must be dangerous." Quoted in Wheaton, *op. cit.*, p. 17.

sion, while slaves over fifty years of age need not be set free at all unless adequate indemnities be set up to prevent their becoming a public charge. He showed little sympathy for heirs who might be impoverished, glorying "in the cause of their distress as . . . [he] wished them a more honest patrimony." He contrasted the policy of Sparta and Athens toward slavery, as well as Maryland and Pennsylvania,<sup>85</sup> to prove that kindness need not lead to turbulence. Then came his peroration:

You are not asked to abolish slavery but merely to set aside a tyrannical act of an earlier legislature forbidding manumission by last will. Often reforms cost public expenditures; this does not, yet many will be made happy.

Will you, then, whose councils the breath of freedom has heretofore inspired; whose citizens have been led by Providence to conquests as glorious as unexpected, in the sacred cause of human nature; whose government is founded on the never-mouldering basis of equal rights; will you, I say, behold this wanton abuse of legislative authority; this shameful disregard of every moral and religious obligation; this flagrant act of strained and unprovoked cruelty, and not attempt redress when redress is so easy to be effected.<sup>84</sup>

The results of this magnificent effort were trifling. The legislature voted to continue the act of 1752 until the end of the following session.<sup>85</sup> Being absent from November 6 to 17 at the 1790 session, Pinkney was not placed on the committee appointed November 10 to reconsider manumission by testament. However, he was selected to deliver to the Senate the bill which finally passed the House of Delegates largely as a result of his activities during the past three years.<sup>86</sup> The Senate accepted the measure in the form advocated by Pinkney.<sup>87</sup> Section 2 repealed old laws forbidding manumission, while the third section made manumis-

<sup>85</sup> Benjamin Franklin was president of the Pennsylvania Society for Promoting the Abolition of Slavery and the Relief of Free Negroes. There was a similar society in Maryland, which had many prominent members, including Samuel Chase, Martin, and Sterett (but not Pinkney). See the *Maryland Gazette; or, the Baltimore Advertiser*, Nov. 27 and Dec. 15, 1789.

<sup>84</sup> Wheaton, *op. cit.*, p. 23. For a favorable comment on this speech in the United States Senate in 1852, see *Works of Charles Sumner*, III (Boston, 1875), 119.

<sup>85</sup> *Laws of Maryland*, Nov. Sess., 1789, Ch. LXI. Passed Dec. 25. For Pinkney's efforts consult *Votes and Proceedings*, Nov. Sess., 1789, Nov. 15, Nov. 17, Dec. 8, and Dec. 22. He did not vote on the bill finally passed in the House of Delegates on Dec. 24, which merely postponed action.

<sup>86</sup> *Ibid.*, Nov. 19, 1790.

<sup>87</sup> *Laws of Maryland*, Nov. Sess., 1790, Ch. IX. Passed Dec. 14.

sion legal if it were not to the prejudice of creditors and if the slave were not over fifty years of age. Section 5 set a penalty of £300 for transporting free Negroes out of the State. The last section contained humane provisions for old or disabled slaves.

But Pinkney was far from being an abolitionist at this time. The following year he brought in a committee report bitterly condemning the memorials of the Quakers for making applications which "instead of conducing to ameliorate the situation of those whose cause they advocate, have an effect unfortunately the reverse, by tending to destroy the spirit of acquiescence among our slaves, by which alone their happiness can be secured, and to inspire them with regret and anxiety for evils that do not admit a remedy." Pinkney voted with the majority which accepted this report, the vote being 45 to 21.<sup>38</sup> Consideration was then given to a complaint of the Dorseys regarding the Maryland Society for Promoting Abolition. Pinkney was again one of a large majority which thought that the Society had "acted badly." However, he helped defeat by a margin of only two votes a motion declaring that the organization was unnecessary, oppressive, and subversive.<sup>39</sup> It was the final judgment of 48 members (including Pinkney) that the abolitionists had conducted themselves in a "most uncandid, unjustifiable, and oppressive manner, and their conduct . . . [could] not be justified upon any principle by which good citizens ought to be actuated."<sup>40</sup>

### III. THE CONGRESSIONAL ELECTION OF 1790

The most important public question of the day which affected Pinkney at all vitally had to do with the election of Congressmen, Maryland's original quota being six. It was suggested in 1788 that the State be divided into two districts, with the Western Shore returning four members to the House of Representatives and the Eastern Shore two. Instead, the State was divided into six districts, although electors were to be entitled to vote for all six members rather than just one.<sup>41</sup> Pinkney was one of a minority of twenty-four who voted against requiring a candidate to stand

<sup>38</sup> *Votes and Proceedings*, Nov. Sess., 1791, Nov. 21 and 23.

<sup>39</sup> *Ibid.*, Dec. 21.

<sup>40</sup> *Maryland Gazette*, Dec. 29, 1791.

<sup>41</sup> *Laws of Maryland*, Nov. Sess., 1788, Ch. X. Passed Dec. 22.

in his home district.<sup>42</sup> He helped defeat an amendment requiring a residence of twelve months in the district prior to the election. Failing in his effort to restrict the measure's operation to two years, he nevertheless voted for it as passed.<sup>43</sup>

At the next session, he was placed on a committee of seven to formulate another bill on the subject. As reported it contained no residence requirements within a district as a prerequisite to holding office. Thus a candidate might conceivably seek election in more than one district. If returned the winner in two districts he was given thirty days to inform the governor and executive council which district he preferred to represent, a new election then being necessary in the other. This rather peculiar measure was rejected in the Senate.<sup>44</sup> A similar measure also failed of passage in the 1790 House of Delegates. Instead, the qualifications were increased by requiring a candidate to have resided in the district for twelve months prior to the election.<sup>45</sup>

With such maneuvering in the background, the Congressional election of 1790 proved especially interesting. On September 25, William Harwood, for many years clerk of the House of Delegates, presided at a kind of convention at Annapolis which prepared a Congressional "slate" for the consideration of the voters, the announced purpose being a desire to balance the representation in the State. It was arranged as follows: 1st district—Michael J. Stone; 2nd district—James Tilghman of James; 3rd district—Benjamin Contee; 4th district—George Gale; 5th district—Samuel Sterett; 6th district—Daniel Carroll.<sup>47</sup> Pinkney and five others also entered the race, although little information is available regarding the campaign. It will be observed, however,

<sup>42</sup> *Voices and Proceedings*, Nov. Sess., 1788, Dec. 3. A week later Pinkney also voted with a minority which sought to restrict each elector's vote to his own district.

<sup>43</sup> *Ibid.*, Dec. 10.

<sup>44</sup> *Ibid.*, Nov. Sess., 1789, Dec. 2 and 3.

<sup>45</sup> *Voices and Proceedings of the Senate of Maryland*, Nov. Sess., 1789, Dec. 18.

<sup>46</sup> *Laws of Maryland*, Nov. Sess., 1790, Ch. XVI. Passed Dec. 10. Pinkney was absent this session from Nov. 20 to Dec. 8, so he was not present when the bill passed the House of Delegates on Nov. 24.

<sup>47</sup> *Maryland Gazette; or, the Baltimore Advertiser*, Sept. 28, 1790. The third district was comprised of Annapolis, Anne Arundel County, and Prince George's County; the fourth included Harford County, Baltimore, and Baltimore County. *Laws of Maryland*, Nov. Sess., 1788, Ch. X. Passed Dec. 22. Pinkney had lived practically all of his life in the Third but was, of course, a resident of the Fourth district in 1790.

that Sterett was the lone "slate" candidate to be victorious, the successful aspirants and the votes they received being as follows:<sup>48</sup>

Samuel Sterett .....	16,420
William Pinkney .....	10,435
Joshua Senev .....	9,887
William Vans Murray .....	9,647
Philip Key .....	9,640
Upton Sheridine .....	9,387

It will be recalled that voting was on a state-wide basis, indicating that Pinkney probably could have been elected in every district except Sterett's. Apparently he had misjudged his popularity, thereby accounting for his opposing Contee in the third district rather than Gale in the fourth.

A few days after the election Pinkney and the other five just mentioned were declared "duly elected Representatives of . . . [the] State in the Congress of the United States." However, Governor Howard and John Kilty gave notice that they planned to "enter on the proceedings, their dissent to the above decision."<sup>49</sup> Accordingly, on November 5, the Governor delivered a brief argument to the Council showing that it was contrary to the Act of 1788 for a man to represent any district except the one in which he resided. Pinkney's reply has not been preserved, although he presumably took the position that a State could not add to the constitutional qualifications of a national officer. On November 8, John Kilty replied at length to Pinkney's contentions but apparently to no effect. Almost a year later Pinkney resigned of his own volition, without ever having actually attended a session of Congress, although by so doing he precipitated quite a controversy.<sup>50</sup> For matters which would seem trivial today

<sup>48</sup> *Maryland Gazette*, Oct. 28, 1790. Two years previously Sterett had been badly beaten by both James McHenry and John Coulter when Baltimore elected delegates to the Annapolis ratifying convention, according to Steiner, "Maryland's Adoption of the Constitution," *American Historical Review*, V (Oct., 1899), 43. So it is rather difficult to explain this remarkable showing of an Anti-Federalist.

<sup>49</sup> Proceedings of the Executive Council, Nov. 2, 1790. For discussion of the prerogatives of this body, consult the next section of this chapter. As an aftermath of this incident the Maryland Constitution was amended to bar federal officeholders from holding state offices. See *Laws of Maryland*, Nov. Sess., 1791, Ch. LXXX and *ibid.*, Nov. Sess., 1792, Ch. XXII. (It took two years to amend the constitution. Pinkney voted against such a law on Dec. 10, 1790.)

<sup>50</sup> *Laws of Maryland*, Nov. Sess., Nov. 5 and Nov. 8, 1790; *ibid.*, Nov. Sess., 1791, Oct. 13, 1791. The resignation was dated Sept. 26, 1791, the Governor ordering an election to fill the vacancy on Oct. 13.

caused great concern then because of the lack of precedent to take care of an unusual situation.

On November 9, 1791, Speaker Jonathan Trumbull of Connecticut<sup>51</sup> laid a communication before the House from Governor Howard of Maryland. Without mentioning the dispute over eligibility, the latter merely stated that Congressman William Pinkney had submitted his resignation on September 26 to the governor and the executive council. So a writ of election had been issued to fill the vacancy and John Francis Mercer had been duly elected in accordance with the laws of Maryland.<sup>52</sup> Howard's letter was referred to the committee on Contested Elections, appointed on October 26, despite some objection as to the legality of such a procedure.<sup>53</sup>

There is no record of the deliberations of this committee, but on Monday, November 21, its report recognizing the election of Mercer was referred to a committee of the whole house.<sup>54</sup> The following day a rather lengthy debate ensued on accepting the report. Giles of Virginia pointed out that in the British House of Commons it was impossible to resign; he also thought it improper for a governor to be permitted to declare that there was a vacancy and then fill it, despite Seney's defense of the legality of Maryland's action.<sup>55</sup> Smith of South Carolina rather objected to the report, but thought it the best way to handle the matter—if properly discussed. He thought this procedure preferable to the British practice of appointing members to fictitious offices, thereby automatically disqualifying them for membership in the Commons.<sup>56</sup> Williamson of North Carolina and Gerry of Massachusetts were of the opinion that since Senators could resign,

<sup>51</sup> He had been chosen two weeks previously. He was the brother of John Trumbull, soon to be Jay's secretary in England and later a member of the Spoliation Commission to which Pinkney also belonged.

<sup>52</sup> *Annals of Congress*, 2 Cong., 1 Sess., pp. 166 and 209. Mercer notified the citizens of Anne Arundel County that he was a candidate to succeed Pinkney on Oct. 4, 1791. See *Maryland Gazette*, Oct. 6, 1791.

<sup>53</sup> Samuel Livermore of New Hampshire had taken the position that it was improper to delegate to a committee a constitutional prerogative of the House. He was now a member of the committee, along with William B. Giles of Virginia, Elias Boudinot of New Jersey, Elbridge Gerry of Massachusetts, Benjamin Bourne of Rhode Island, James Hillhouse of Connecticut, and John Steele of North Carolina. See *Annals of Congress*, 2 Cong., 1 Sess., p. 145.

<sup>54</sup> *Ibid.*, p. 200.

<sup>55</sup> *Ibid.*, p. 205. It will be recalled that Seney had been elected to Congress at the same time Pinkney was.

<sup>56</sup> *Ibid.*, p. 206.

Representatives should be able to do so likewise. Gerry also brought out the fact that the King had organized the Commons to control the Lords; hence resignations had been prohibited to keep from weakening that body and to save the King the expense of a new election.<sup>57</sup> William Vans Murray agreed with his colleagues from Maryland that the report should be accepted, "both on account of propriety and conveniency." He considered that it was impracticable to seek English precedents where interpretation of the Constitution was involved. The debate ended with Sedgwick of Massachusetts still expressing concern over giving much authority to state executives in regard to vacancies.<sup>58</sup> On Wednesday further attention was given the matter in committee of the whole. The report in slightly different form was finally accepted. Having reviewed the salient facts in the case, the committee reached this conclusion:

Resolved, That it is the opinion of this committee that John Francis Mercer is entitled to take a seat in the House as one of the Representatives for the State of Maryland, instead of William Pinkney.<sup>59</sup>

Thus in a period of slightly more than two years, Chase's obscure young follower at Annapolis had made speeches in the Maryland legislature which had attracted rather wide attention and he had been the principal in an incident which occupied the attention of some of the outstanding men in the United States for several days. He was to render several more years of service at home before embarking on a national career in 1796 which continued almost without interruption until his death in 1822.

#### IV. VARIED SERVICES, 1792-1796

After serving in the legislature for four years, Pinkney apparently did not seek re-election. At any rate his name did not appear in the roster of members elected to the 1792 House of Delegates.<sup>60</sup> The following month, however, along with the announcement that Thomas Sim Lee had again been chosen gov-

<sup>57</sup> *Ibid.*, p. 207.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*, p. 209.

<sup>60</sup> *Maryland Gazette*, Oct. 18, 1792. Pinkney apparently moved to Annapolis during 1792.

error, appeared the statement that the executive council would consist of James Brice, John Kilty, Henry Ridgeley, John Davidson, and William Pinkney.<sup>61</sup> A few comments now seem in order regarding Maryland's governmental machinery.

The constitution of 1776 provided that annually, on the second Tuesday of November, the legislature by joint ballot should elect "five of the most sensible, discreet, and experienced men" to be a council for the governor. They had to be over twenty-five years of age, residents of the State for more than three years, and possessed of a freehold valued at more than £1,000. Three of these were to constitute a quorum to conduct such business as affix the great seal to laws, commissions, and grants; authorize payments by the state treasurer; order proclamations by the governor; make official election certifications; and hear petitions for clemency.<sup>62</sup>

Several State officers were paid salaries fixed by the legislature in 1785, but most of them were on the civil list.<sup>63</sup> Usually quite a struggle developed each year over the enactment of the civil list, between friends and enemies of a particular officer. The pay ranged from £1,000 for the governor down to eighteen shillings, nine pence *per diem* for members of the legislature. The latter were penalized twenty shillings for each day missed without adequate cause.<sup>64</sup> The chancellor (who at this time was the elder A. C. Hanson) received £650, while £600 went to the chief judge of the general court (a position held successively by William Paca, R. H. Harrison, Thomas Johnson, Samuel Chase, Robert Goldsborough, and J. T. Chase), £250 to the clerk of the executive council, and £150 to members of the council.<sup>65</sup> Pinkney's younger brother, Ninian, held a series of clerkships in the early 1790's, becoming clerk of the council about the time the elder

<sup>61</sup> *Ibid.*, Nov. 15, 1792. According to the Proceedings of the Executive Council for 1792, the governor was elected on Nov. 12 and the council the following day. Governor Plater, who had presided at the Annapolis Convention of 1788, died early in 1792, so Lee had served only about eight months. See *Maryland Gazette*, Feb. 16, 1792.

<sup>62</sup> See sections 26, 32, 33, 34, 35, and 36 in Francis N. Thorpe, *The Federal and State Constitutions* . . . , III (Washington, 1909), 1695-1697.

<sup>63</sup> *Laws of Maryland*, Nov. Sess., 1785, Chs. XXVII and XXVIII.

<sup>64</sup> *Ibid.*, Nov. Sess., 1787, Ch. V. The penalty was raised to six dollars per day in 1794. See *ibid.*, Nov. Sess., 1794, Ch. XL. Passed Dec. 26.

<sup>65</sup> *Ibid.*, Nov. Sess., 1791, Chs. LI and LXXIV. Passed Dec. 27 and Dec. 30, respectively.

brother's services came to an end in 1795.<sup>66</sup> Ninian is reputed to have acted in this capacity for about thirty years through thirteen administrations.<sup>67</sup>

During the first year Pinkney served on the council, he missed fifty-five of the one hundred twenty meetings, largely because of his extensive law practice.<sup>68</sup> So he could scarcely have played a prominent part in any consideration given to the requests of the refugees from Santo Domingo<sup>69</sup> or the problems which resulted from Washington's Proclamation of Neutrality.<sup>70</sup> Nevertheless, when Lee and the five members of the council were re-elected, Pinkney was the first-named counsellor (instead of the last, as had been the case the preceding year), signifying that he was president of the group. In case anything happened to Lee, he would act as governor until a successor had been elected.<sup>71</sup>

After becoming presiding officer, Pinkney attended the meetings of the council with greater regularity than in the preceding year. In addition to the duties mentioned above, the counsellors also naturalized aliens, released purchasers of confiscated lands from their contracts, received notices of violations of the neutrality laws by French privateers, and communicated with consular representatives of European nations. Pinkney continued to

<sup>66</sup> Samuel Chase recommended Ninian to McHenry's approbation in 1794 for the position of clerk of the Maryland Senate. See Chase to McHenry, Baltimore, Nov. 2, 1794, in Steiner, *op. cit.*, pp. 153-154. The following year McHenry made this rather peculiar recommendation of Chase for a Federal judgeship, which he received in 1796: "Chase and I are on neither good nor bad terms, neither friends nor enemies. To profound knowledge, he adds a valuable stock of political science and information." McHenry to Washington, n. p., June 14, 1795, in *ibid.*, p. 159.

<sup>67</sup> Rosamond R. Beirne and Edith R. Bevan, *The Hammond-Harwood House and Its Owners* (Baltimore, 1941), p. 41.

<sup>68</sup> The material in this section is based principally on the Proceedings of the Executive Council for the years 1792 to 1795, preserved in excellent condition at the Hall of Records, Annapolis.

<sup>69</sup> The council records practically ignore the refugees, although they were mentioned frequently in contemporary newspapers. McHenry solicited subscriptions at Baltimore for their relief in the summer of 1793. See Steiner, *op. cit.*, p. 142. The legislature appropriated \$500 for them. See *Laws of Maryland*, Nov. Sess., 1793. Some of the pertinent correspondence of Governor Lee and the French consul at Baltimore may be found in Box 90 of the John T. Scharf MSS., in the custody of the Maryland Historical Society.

<sup>70</sup> On Sept. 5 Annapolis citizens had a meeting, presided over by Chancellor Hanson, which adopted resolutions praising Washington's policy. The latter made a gracious acknowledgment of this vote of approval. See *Maryland Gazette*, Sept. 26, 1793.

<sup>71</sup> *Ibid.*, Nov. 21, 1793. According to the Proceedings of the Executive Council, this election took place on Nov. 15.

act as president during Governor John H. Stone's first term. The personnel of the council had changed slightly, John Kilty having resigned to become clerk of the council. He was succeeded by Christopher Richmond, the latter giving way in turn to William Kilty.<sup>72</sup>

During his last year on the council, Pinkney was also mayor of Annapolis, a fact which apparently previous biographers have missed or ignored. He probably served from September 30, 1794, to September 29, 1795. At any rate, there is evidence that these are the approximate dates. Thus, on October 24, 1794, the Christopher Richmond mentioned above "appeared, and after qualifying according to Law before William Pinkney Esquire [,] mayor of the City Annapolis [,] took his seat at the Board."<sup>73</sup> There are scattered references to Pinkney in the Proceedings of the Common Council of Annapolis.<sup>74</sup> He was succeeded in office by Allen Quynn.

In October, 1795, Anne Arundel County returned to the House of Delegates Pinkney, John G. Worthington, Horatio Ridout, and Edward Hall.<sup>75</sup> Pinkney first put in an appearance on November 9, six days after the session began.<sup>76</sup> Much attention was given the operations of the Patowmack Company, organized in 1785 with the idea of connecting the Potomac and Ohio rivers with a canal.<sup>77</sup> George Washington was the first president of the corporation and retained a lively interest in all efforts to improve the navigation of the Potomac and James rivers.<sup>78</sup> Pinkney voted

<sup>72</sup> *Maryland Gazette*, Nov. 20, 1794. Although elected on Nov. 18, Pinkney was not sworn in until Nov. 21.

<sup>73</sup> Proceedings of the Executive Council, Oct. 24, 1794. Richmond had been elected on Oct. 6. For another reference to Pinkney's mayoralty, consult Elihu S. Riley, *The Ancient City. A History of Annapolis, in Maryland* (Annapolis, 1887), p. 14.

<sup>74</sup> These rough minutes are bound in vol. XIII of the Records of Annapolis, which have been described by Dr. Morris L. Radoff, Maryland Archivist, in the *Maryland Historical Magazine*, XXXV (March, 1940), 74-78.

<sup>75</sup> *Maryland Gazette*, Oct. 15, 1795.

<sup>76</sup> *Votes and Proceedings*, Nov. Sess., 1795, Nov. 9. James Brice succeeded him as president of the council.

<sup>77</sup> Alvin F. Harlow, *Old Towpaths; the Story of the American Canal Era* (New York, 1926), pp. 10-12.

<sup>78</sup> Washington to Tobias Lear, Philadelphia, Dec. 21, 1794, in Jared Sparks, ed., *Writings of George Washington*, XI (Boston, 1836), pp. 6-8. Washington also displayed concern over the establishment of a national university, toward the endowment of which he proposed to leave fifty shares of stock in the Patowmack Company. See Washington to the Commissioners of the Federal District, Philadelphia, Jan. 28, 1795, in *ibid.*, pp. 14-16; Washington to Jefferson, Philadelphia, March 15, 1795, in *ibid.*, pp. 19-22.

consistently for bills advancing the interests of the Patowmack Company and for another measure whose purpose was to give publicity to a prospective canal between Chesapeake bay and the Delaware river.<sup>79</sup> Further opportunity to have official relations with men who played such a prominent part in the early United States history was provided by a resolution which nominated Pinkney, William Cooke, and Philip B. Key (all outstanding lawyers of the time) to serve as commissioners to settle a boundary dispute with Virginia. Eventually, however, it became necessary to substitute Charles Carroll of Carrollton and J. T. Chase for Pinkney and Key.<sup>80</sup>

In what turned out to be Pinkney's last session as a member of the House of Delegates he capitalized fully on an opportunity which presented itself to make a favorable impression on President Washington. In the latter part of November, 1795, the following declaration was adopted:

Resolved unanimously, that the General Assembly of Maryland, impressed with the liveliest sense of the important and disinterested services rendered to his country by the President of the United States; convinced that the prosperity of every free government is promoted by the existence of rational confidence between the people and their trustees, and is injured by misplaced suspicion and ill-founded jealousy; considering that public virtue receives its best reward in the approving voice of a grateful people, and that, when this reward is denied to it, the noblest incentive to great and honorable actions, to generous zeal and magnanimous perseverance, is destroyed; observing, with deep concern, a series of efforts, by indirect insinuation, or open invective, to detach from the first magistrate of the Union the well-earned confidence of his fellow citizens; think it their duty to declare, and they do hereby declare, their unabated reliance on the *integrity, judgment, and patriotism* of the President of the United States.<sup>81</sup>

John E. Howard, soon to be elected United States Senator, and Governor Stone immediately sent copies of this declaration to President Washington, who replied with his usual graciousness. It seems proper to quote one of his letters almost in full.

<sup>79</sup> *Maryland Gazette*, Dec. 31, 1795.

<sup>80</sup> *Laws of Maryland*, Nov. Sess., 1795. (Resolutions were not numbered, but merely listed at the end of the acts passed.) In 1794, Chancellor Hanson, Chief Justice Chase, Pinkney, and James Tilghman of Queen Anne's County, had been appointed by the legislature to draw a complete code of testamentary laws. Finally the job fell to Hanson alone, with a guarantee of "a liberal and competent allowance for his time." His recommendations were printed Feb. 14, 1797.

<sup>81</sup> Sparks, *Writings of George Washington*, XI, p. 98.

By Thursday's post I was favored with your letter of the 27th ultimo, enclosing a Declaration of the General Assembly of Maryland. At any time the expression of such a sentiment would have been considered as highly honorable and flattering. At the present, when the voice of malignancy is so hightoned, and no attempts are left unessayed to destroy all confidence in the constituted authorities of this country, it is peculiarly grateful to my sensibility; and, coming spontaneously, and with the unanimity it has done from so respectable a representation of the people, it adds weight as well as pleasure to the act.

I have long since resolved, for the present time at least, to let my calumniators proceed without any notice being taken of their invectives by myself, or by any others with my participation or knowledge. Their views, I dare say, are readily perceived by all the enlightened and well-disposed part of the community; and by the records of my administration, and not by the voice of faction, I expect to be acquitted or condemned hereafter.<sup>82</sup>

James McHenry has furnished some details of the affair which doubtless influenced Washington the following year when he was considering the nomination of commissioners to be sent to London under Article VII of the Jay Treaty.

Mr. Pinkney, a man of real talents and genius, and a fascinating speaker, took charge of the *Declaration*. He originated it in the House, and supported it beautifully and irresistibly. His influence and conduct on the occasion overawed some restless spirits, and reached even into the Senate.<sup>83</sup>

On his thirty-second birthday (March 17, 1796), Pinkney could have looked back with no little pride in his accomplishments. In the past eight years he had never been without some kind of public office. He was happily married to Ann Maria Rodgers and had three children—William, Emily, and Isabella.<sup>84</sup> For the past three years he had been one of the busiest attorneys in the State, being well on his way to becoming the head of the Maryland bar.

His acuteness, dexterity, and zeal in the transaction of business; his readiness, spirit, and vigour in debate; the beauty and richness of his

<sup>82</sup> Washington to Stone, Philadelphia, Dec. 6, 1795, in *ibid.*, pp. 97-98. His letter to Howard may be found in *ibid.*, pp. 96-97.

<sup>83</sup> McHenry to Washington [Annapolis], Dec. 5, 1795, in *ibid.*, p. 98. McHenry was a member of the Maryland Senate at this time.

<sup>84</sup> For additional information regarding Mrs. Pinkney, consult Allen, *Maryland Historical Magazine*, XXXIX, pp. 281-282. The writer is indebted to Mrs. Carton for the names of the Pinkney children.

fluent eloquence, adorned with the finest imagery drawn from classical lore and vivid fancy; the manliness of his figure and the energy of his mien, united with a sonorous and flexible voice, and a general animation and graceful delivery, were the qualities by which he attained this elevated standing.<sup>85</sup>

<sup>85</sup> Wheaton, *op. cit.*, p. 24. Wheaton is quoting a Mr. Walsh. Some idea of Pinkney's activities as a lawyer may be obtained by consulting volumes 2 and 3 of Harris and McHenry's *Reports*. The principal cases of the time with annotations are rather readily accessible in William T. Brantly, ed., *Reports of Cases Argued and Adjudged in the Court of Appeals of Maryland and in the High Court of Chancery*, III (Baltimore, 1883). For a case illustrating Pinkney's "abstruse learning upon the law of real property," read his arguments in *Martindale vs. Troop* (1793), given in *ibid.*, pp. 168-192. It is outside the scope of the present article to deal adequately with Pinkney's legal career. For additional references, see Allen, *op. cit.*, p. 281, note 16.