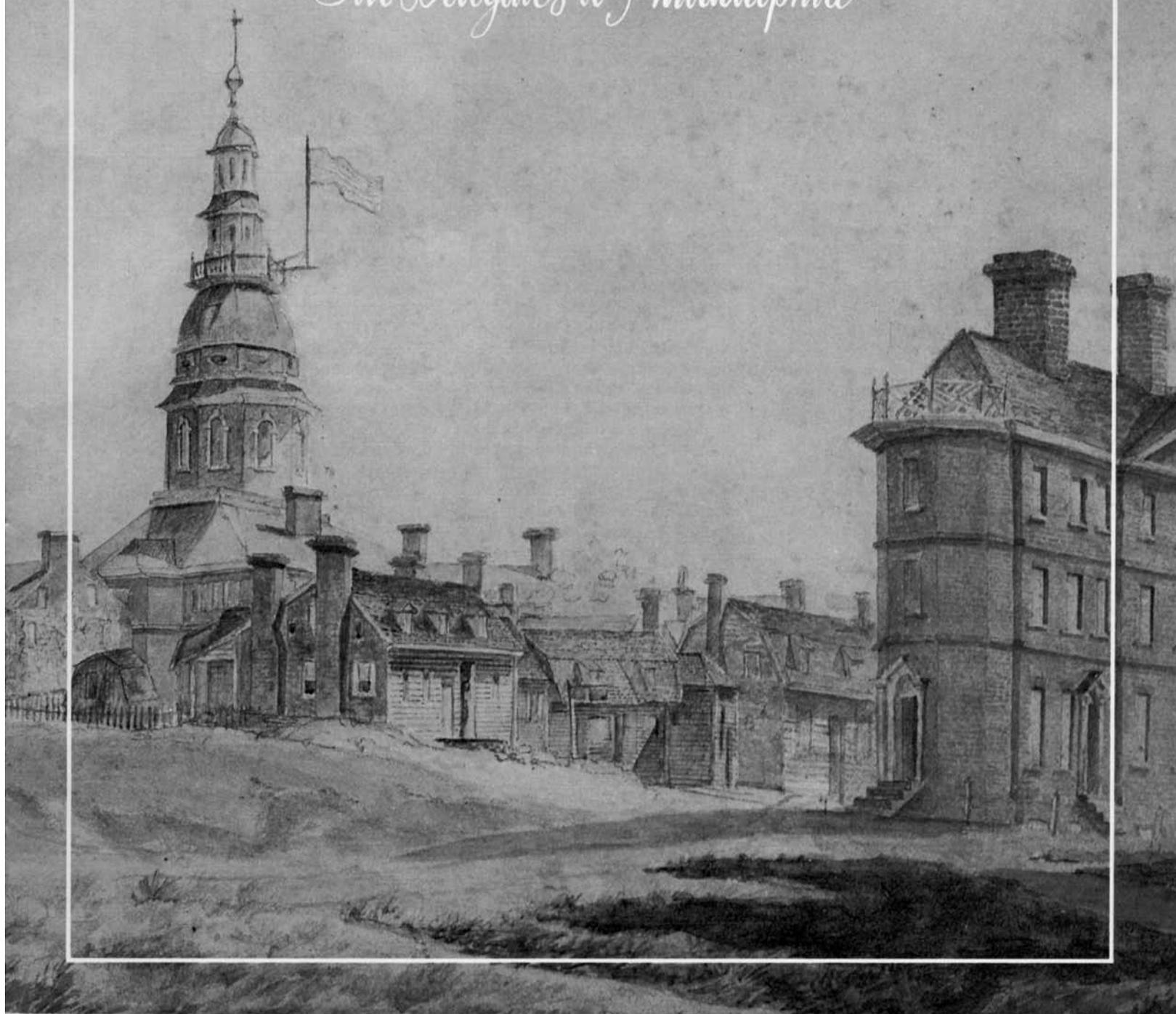


*Maryland
and the
U.S. Constitution
Five Delegates to Philadelphia*



A Message to the Citizens of Maryland



In this bicentennial year of our United States Constitution, we urge all Marylanders to join in the various community, state, and national activities being planned to celebrate the two centuries of participatory democracy our nation has enjoyed under the Constitution. Maryland can take special pride in the role our state and its citizens played in the creation and adoption of the Constitution.

The call for the Philadelphia Convention of 1787 originated with the Annapolis Convention of 1786; our five-man delegation to Philadelphia consisted of talented individuals who distinguished themselves in public life; Maryland's ratification as the seventh state on April 28, 1788,

William Donald Schaefer
Governor

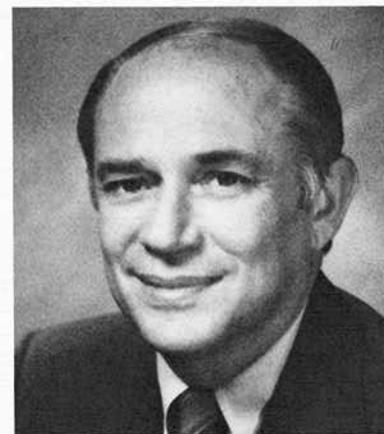


restored momentum to the ratification drive and assured the country of a strong, national government; and the movement for the Bill of Rights originated here in Maryland during our state's Ratification Convention in April 1788.

While Maryland's contributions to the creation of the U.S. Constitution are important, this bicentennial commemoration challenges us to do more than simply look at the history of the event. After all, the U.S. Constitution is still our framework of government, and the fact that it has survived and served us well for nearly two centuries means little if we are unable to relate to it today and in the future.

We urge all Maryland citizens to

Thomas V. Mike Miller, Jr.
President of the Senate



spend the next few years developing programs and engaging in active discussions about the Constitution itself—its history, what it means to us today, and how suited it is for the challenges of the future. Let us commit ourselves to developing and implementing improved history and civics courses in our schools and to stimulating participation by all citizens in public affairs.

Our Constitution begins with three simple words, "We the People." The bicentennial of our Constitution deserves joyous celebration; perpetuating a government that has the people as its foundation requires the active involvement of us all.

R. Clayton Mitchell, Jr.
Speaker of the House of Delegates



An Act for the Appointment of and conferring Powers in Deputies,
from this State to the Federal Convention. —

Be it enacted, by the General Assembly of Maryland, That the
Honorable James M. Henry, Daniel of Saint Thomas Jenifer, Daniel Carroll,
John Francis Mercer, and Luther Martin, Esquires be appointed and
authorised on behalf of this State to meet such Deputies as may be appointed
and authorised by any other of the United States to assemble in Convention
at Philadelphia for the purpose of revising the Federal System and to join
with them in considering such Alterations and further Provisions as
may be necessary to render the Federal Constitution adequate to the
Exigencies of the Union and in reporting such an Act for that Purpose
to the United States in Congress assembled as when agreed to by them
and duly confirmed by the several States will effectually provide for
the same and the said Deputies or such of them as shall attend the
said Convention shall have full power to represent this State for the
Purposes aforesaid and the said Deputies are hereby directed to report
the Proceedings of the said Convention and any Act agreed to therein
to the next Session of the General Assembly of this State. —

By the House of Delegates
May 26th 1787

Read and assented to

By Order

Wm Harwood Clk.

By the Senate May 26. 1787

Read and assented
to

By Order

Wm Smallwood J. D. W. S. S. S.



James McHenry

James McHenry (1753-1816), was the only native Irishman of three men in the Maryland delegation who could claim Irish ancestry. At thirty-three, McHenry had already served in the military and in Congress (1783-1786). He arrived in Philadelphia on Monday, May 28, 1787, the first of the Maryland delegates to appear. The General Assembly had not issued its commission until two days before on May 26. McHenry's strength as a delegate to Philadelphia was his expertise in matters of trade. During his tenure in the Maryland Senate (1781-1786), McHenry drafted legislation relating to the regulation of trade, and, in partnership with his brother, he was a merchant in Baltimore. Another factor that may have led to his selection as a Maryland delegate to the Philadelphia Convention, however, is that he was not closely connected to any local political faction. William Pierce, a fellow delegate from Georgia, suggested such a rationale in his unflattering assessment of McHenry's abilities:

Mr. McHenry was bred a physician, but he afterwards turned Soldier and acted as Aid to General Washington and the Marquis de la Fayette. He is a man of specious talents, with nothing remarkable in him, nor has he any of the graces of the Orator.

As the unofficial chairman of the Maryland delegation, McHenry kept a journal while he was at the Convention that shows how hard he tried, albeit unsuccessfully, to achieve consensus among the Maryland delegates. On August 6, the day that the first draft of the Constitution was reported by the Committee of Detail, all five of the delegates met at Daniel Carroll's lodgings. There McHenry

begged the gentlemen to observe some order to enable us to do the business we had convened upon. I wished we could be unanimous. . . . That we should now and at our future meetings alter the report to our own judgement to be able to appear unanimous. . . . This proposition to conciliate the deputation was rejected.

Apart from his notes, which supplement James Madison's, McHenry's principal contributions to the drafting of the Constitution related to matters of trade, although he and Elbridge Gerry did propose the amendment that prohibited Congress from passing bills of attainder or ex post facto laws. McHenry was particularly concerned that no State be given preference over another in the regulation of commerce. When the Committee of Style's draft of September 12 omitted the language previously proposed by Maryland, McHenry restored the provision that:

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another—nor shall vessels bound to or from one State be obliged to enter, clear or pay duties in another.

The Maryland delegates were required by their commission to report on the proceedings of the Convention at the next session of the General Assembly. On November 29, 1787, McHenry was the first to appear. Speaking on behalf of himself, Daniel Carroll, and Daniel of St. Thomas Jenifer, he explained why they had signed the Constitution. He began with an overview of the reasons for the meeting in Philadelphia, recapitulating a speech given by "an Honorable Member" from Virginia, the major premise of which was that the Articles of Confederation "had not, and . . . could not, fulfill the objects of the Confederation." In all, the Articles of Confederation had produced an ineffective Congress and a confederation of states unable

to defend themselves against the most direct encroachments. In every Congress there is a party opposed to Federal Measures. In every State . . . there is a party opposed to efficient Government.

The wisest regulations may therefore [be] thwarted and evaded. The [National] Legislature [may] be treated with insult and derision. There is no power, no force to carry [the National] Laws in to execution, or to punish the Offenders who oppose them.

As a result:

the Confederation is inferior to the State Constitutions and cannot . . . have that control over them which it necessarily requires. The State Governments were first formed, and the Federal Government derived out of them . . . the Laws of the respective States are paramount and cannot be controlled by the Acts of Congress.

Although the remarks of the gentlemen from Virginia served well as an explanation for calling the Convention in Philadelphia, McHenry did not always agree with the decisions of the Convention. As he explained to the General Assembly,

Many parts of this proposed Constitution were warmly opposed, other parts it was found impossible to reconcile to the Clashing Interests of different States—I myself could not approve of it throughout, but I saw no prospect of getting a better—the whole however is the result of that spirit of Amity which directed the wishes of all for the general good, and where those Sentiments govern it will meet I trust, with a Kind and Cordial reception.

That it did not in some parts of Maryland was in large measure due to the efforts of Luther Martin who followed McHenry to the rostrum.



Luther Martin

Contemporaries and historians are not kind to Luther Martin (1748-1826). A fellow delegate described him as:

educated for the Bar, and is Attorney general for the State of Maryland. This Gentleman possesses a good deal of information, but he has a very bad delivery, and so extremely prolix, that he never speaks without tiring the patience of all who hear him.

At the age of thirty-nine Martin arrived in Philadelphia on Saturday, the 9th of June. On the 27th he spoke in strong support of the Paterson or New Jersey Plan (Martin was born in New Jersey), which called for equal state representation in the new government. After the rejection of the plan, Martin spoke for three hours and announced he would have more to say the following day. According to Madison, on the 28th Martin completed his remarks "with much diffuseness and considerable vehemence," at which point Benjamin Franklin issued his famous call to prayer as the only hope of the Convention. To be fair, Martin was on the committee that drafted the compromise providing for equal representation in the Senate and proportional representation in the House of Representatives. However, increasingly frustrated with the course of events and deeply opposed to the draft document, Martin ceased attending the Convention altogether on September 4. Fellow delegate James McHenry overheard Daniel of St. Thomas Jenifer's conversation with Martin on the subject of ratification:

"I'll be hanged," said Martin, "if ever the people of Maryland agree to it."
To which Jenifer replied: "I advise you . . . to stay in Philadelphia lest you should be hanged."

Historians' characterizations of Martin border on the libelous. That Martin was an alcoholic late in life is a matter of record. Perhaps because of the loss of his wife in 1796 to cancer he turned to drink. By 1801 a Baltimore paper could report "as a remarkable fact that he had been in Washington for an entire week without having once been seen drunk on the streets." In 1787, however, no one reported him drunk at the Convention, not even his most ardent critics.

A more accurate view of Martin is to be found in the records of the Convention and in his report to the legislature where he defended his and John Francis Mercer's refusal to sign the Constitution. On November 29, 1787, Martin followed McHenry to the Speaker's platform of the old House chamber. His speech lasted the balance of the day and occupied much of the following. Forcefully and coherently he argued that the new government would lead to the destruction of state governments. To Martin, the Convention had been dominated by the alliance of two parties, one of which was "for abolishing all the State Governments," while the other was "for such a Government as would give an influence to particular States." He adhered to a third, which was "truly Federal, and acting for general Equality," the principle objectives of which were

for considering, reforming and amending the Federal Government, from time to time as experience might point out its imperfections, 'till it could be made competent to every exigency of State, and afford at the same time ample security to Liberty and general welfare.

To Martin,

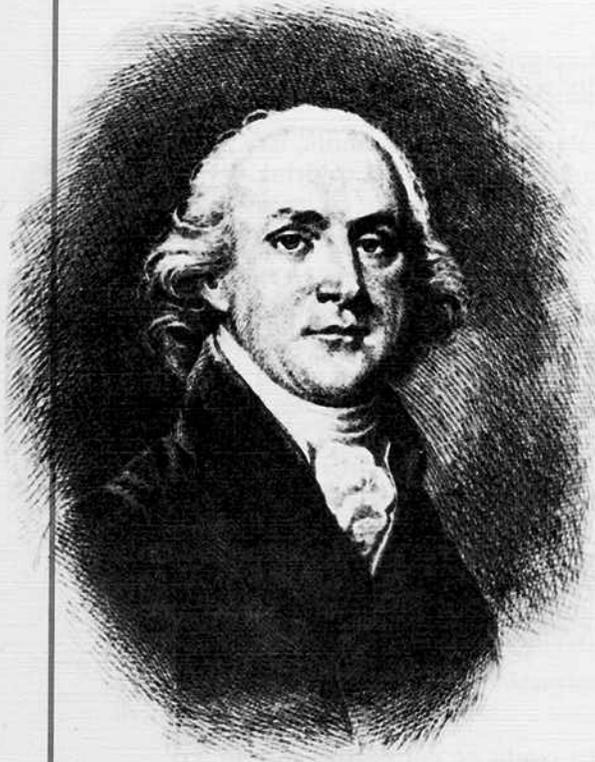
the only method by which an extensive continent like America could be connected and united together consistent with the principles of freedom, must be by having a number of strong and energetic State Governments for securing and protecting the rights of individuals forming those governments, and for regulating all their concerns; and a strong energetic federal government over those states for their protection and preservation, and for regulating the common concerns of the States.

In Martin's judgment, the proposed Constitution was a

motley mixture . . . a system neither wholly FEDERAL, nor wholly NATIONAL—but a strange hotch-potch of both—just so much federal in appearance as to give its advocates, in some measure, an opportunity of passing it as such upon the unsuspecting multitude, before they had an opportunity to examine it, and yet so predominantly national, as to put it in the power of its movers, whenever the machine shall be set agoing, to strike out every part that has the appearance of being federal, and to render it entirely a national government.

Martin's only hope, given the inevitability that the Constitution would be adopted, was for the incorporation of a Bill of Rights to protect both the interests of the states and those of individual citizens. "A stipulation in favour of the rights both of States and of men, is not only proper, but in my opinion, ABSOLUTELY necessary," he wrote on the eve of Maryland's ratifying convention.

During the first Federal Congress in 1789, Luther Martin and the other "amending fathers" quickly succeeded in their goal of incorporating a Bill of Rights into the Constitution. Their success confirmed Martin's assertion that the states could and should act collectively and intelligently, not only in the best interests of themselves, but also of the governed wherever they might be. It also in large measure explains why Luther Martin and so many other "Anti-Nationalists" quickly became such ardent "Nationalists". They had won their point by working within the structure of the newly proposed government, putting forth their best effort to constructively contain excesses where they feared them the most and leaving the details of execution to those who would have to deal with the problems as they arose. It was an achievement for which Martin deserves greater acclaim and recognition than even his contemporaries were willing to give him.



John Francis Mercer

John Francis Mercer (1759-1821) at twenty-eight was the second youngest member of the Constitutional Convention. Mercer was the tenth son in a family of nineteen children born in Virginia to an Irish immigrant. It is no wonder that the motto on his cane read "non nobis solum," (not for ourselves alone), or that he made his fortune by marrying the only daughter of a rich Anne Arundel County planter.

Mercer did not remain long at the Convention. He warned Governor Smallwood that he could not afford to stay in Philadelphia without an advance on his salary, which apparently was not forthcoming. For the twelve days he did attend, however, he did not hesitate to make his views known. He relished debate and was quick to participate, sometimes going too far. Such behavior was not new to him. Very early in his career, as a freshman Congressman in 1783, he argued that even the Articles of Confederation concentrated too much power in Congress:

[In February 1783] Mr. Mercer said if he conceived the federal compact to be such as it had been represented he would immediately withdraw from Congress and do everything in his power to destroy its existence; . . . He said the separate article [under discussion] was a reproach to our character, and that if Congress would not themselves disclose it he would disclose to his Constituents who would disdain to be united with those who patronize such dishonorable proceedings. He was called to order by the President [of Congress] who said that the article in question was under an injunction of secrecy and he could not permit the order of the House to be trampled upon.

In Philadelphia Mercer advocated landholding qualifications for electors of representatives, while vigorously fighting any residency requirement. Trained as a lawyer by Thomas Jefferson, Mercer adopted Jefferson's view of the virtues of a landed electorate. He objected:

particularly to the *mode of election* by the people. . . . The people in Towns can unite their votes in favor of one favorite; and by that means can always prevail over the people of the Country, who being dispersed will scatter their votes among a variety of candidates. . . . [He] did not object so much to an election by the people at large including such as were not freeholders, as to their being left to make their choice without any guidance. He hinted that Candidates [for the Federal Legislature] ought to be nominated by the State Legislatures.

At times, despite McHenry's efforts at conciliation, the Maryland delegation was divided, with Carroll siding with Mercer against Jenifer and McHenry on questions such as residency. That Mercer wanted no residency requirement at all is understandable. While he was living near Annapolis he stood for election to the Virginia House of Burgesses, losing by only a handful of votes.

Mercer considered the House's exclusive power of originating money bills important enough to balance out the equal representation of each state in the Senate. He argued for a quorum of less than a majority in Congress and objected to the Senate's having anything to do with treaties. He wanted no foreigners in Congress and objected to permitting the intervention of federal troops in state affairs without being asked by the local authorities. In light of the subsequent growth in the role of judicial review, Mercer's minority views on the matter in Convention are worth quoting:

Mr. Mercer heartily approved the motion [by James Madison that laws should be submitted to the judiciary and the executive before they are passed into law]. It is an axiom that the Judiciary ought to be separate from the Legislative: but equally so that it ought to be independent of that

department. The true policy of the axiom is that legislative usurpation and oppression may be obviated. He disapproved of the Doctrine that the Judges as expositors of the Constitution should have authority to declare a law void. He thought laws ought to be well and cautiously made, and then to be uncontrollable.

In all, John Francis Mercer was a decided opponent of the Constitution both in and out of the Convention. Several years later he explained his stand in a letter to then President Thomas Jefferson complaining about Jefferson's refusal to appoint Mercer's choice for Commissioner of Loans.

My Politics [are] now and always have been very simple; they have been fundamentally the same thro' life and ever openly declared. I was decidedly opposed to the adoption of the Federal Government, and was termed an Anti-Federal with about as much justice as one generally experiences from party. All the objections I then urged against the Constitution have been since confirmed by experience. They chiefly were that they changed the principle of our Government from Republican to Monarchical. I had ever believed, and still do believe, that the People themselves are the best Electors of their own Officers, and where they cannot well be brought into action, I would prefer those large Assemblages of functionaries who partake most of the qualities of the people. When the source of appointment remains with the people themselves, or even a numerous body of Representatives, the route to office must be by open, generous, disinterested and independent efforts to serve them. Public virtue and patriotism will constitute the best claims to office, and that species of virtue which alone can support republican institutions becomes gradually the basis of private character and the only means by which even Ambition can mount to Power; but when one man or a few men appoint, the access to office is too generally by intrigue, cunning, flattery and servility.

Daniel of St. Thomas Jenifer



Daniel of St. Thomas Jenifer (1723-1790) was born in Charles County. A fourth generation Marylander, he never married. William Pierce, a delegate from Georgia to the Constitutional Convention, described him as

a Gentleman of fortune in Maryland: He is always in good humour; never fails to make his company pleased with him. He sits silent in the Senate, and seems to be conscious that he is no politician. From his long continuance in single life, no doubt but he has made the vow of celibacy. He speaks warmly of the Ladies notwithstanding.

Jenifer was an authority on fiscal matters. He held the office of Intendant of the Revenue for Maryland during and after the Revolution; a post similar to, but far more demanding than, the one he had held under the proprietor before independence. He had a particular hatred of paper money and inflation.

In 1785 Jenifer represented Maryland at the Mount Vernon Conference. The compact he signed for Maryland was a major step forward in interstate cooperation and hinted at what could be done if all the states could be bound together more firmly. By virtue of the compact neither state could regulate fishing or commerce on the Bay and the Potomac without the express approval of the other.

By 1787 Jenifer had been a proprietary placeman, a congressman, a delegate, and president of the Maryland Senate. As a strong advocate of conservative fiscal policies who favored an improved national government, he made his views known as early as 1779 in a letter to Governor Thomas Johnson.

I wish with all my heart we had an executive, and agree with you in opinion that the want of it is a strong reason for entering into some kind of confederation or other. But it has always hurt me to think of confederating on terms that would not be lasting. . . . God grant us wisdom to determine with that judgment and precision which the grand object requires we should do.

The election of Daniel of St. Thomas Jenifer as a delegate to Philadelphia proved controversial. Someone, it was alleged, tried to stuff the ballot box. On the first ballot, Jenifer was tied with Gabriel Duvall (later a U.S. Supreme Court justice). On the second ballot it appeared Duvall had a majority of votes, but the House protested for the most curious of reasons. It accused its own members of not following the rules:

the ballots for Gabriel Duvall, Esquire, appeared to be thirty-seven, and those for Daniel of St. Thomas Jenifer, Esquire, thirty-five, which, upon examination were found to be five more than there were members attending the General Assembly . . . [This was due], we apprehend, to the mistake of some of the delegates, who on a ballot being called for some time before going into one, put their tickets then in the box, and afterwards, when the general ballot took place, not recollecting this circumstance, put in again. . . . We propose that a ballot again be had . . .

The Senate was "somewhat surprised" by the finding of the House and stated flatly that in their opinion there had been no irregularity. To "prevent any further delay in this important business," however, the Senate agreed to include both men in the delegation. Ironically it was Duvall who then decided that he could not find time to go and withdrew his name.

Jenifer arrived in Philadelphia on June 2. Throughout the Convention he said very little. On the debate over the term of office for senators he noted "that in Maryland the Senators, chosen for five years, could hold no other office; and that this circumstance gained them the greatest confidence of the people." He proposed that elections be held every three years, "observing that the too great frequency of elections rendered the people indifferent to them, and made the best men unwilling to engage in so precarious a service."

On matters of trade, Jenifer and the rest of the Maryland delegation presented a united front. However, on other issues the delegation was frequently divided, a fact that Martin attributed to Jenifer's persistence in voting on the opposite side of the question from himself.

Daniel Carroll



Daniel Carroll (1730-1796) was one of two Roman Catholics attending the Constitutional Convention. Born in Prince George's County into a wealthy planter family of Irish descent, he was educated abroad at St. Omer's in Flanders. He served with Daniel of St. Thomas Jenifer in the Continental Congress (1781-1784) and was president of the Maryland Senate when he agreed to join the Maryland delegation in Philadelphia. It was not an appointment he relished. In a letter to Michael Morgan O'Brien soon after his appointment in May, Carroll wrote that:

As this appointment was neither wished for, or expected by me, and I have been detained from home all last Winter, and 6 weeks this Spring, it will be some time before I can enter into the execution of this Trust. I dare not think of residing in Philadelphia during the Summer months.

Nearly fifty-seven, the second oldest delegate from Maryland, Carroll arrived at the Convention on July 9, 1787, and remained through its conclusion. To prepare himself for the deliberations of the Convention, he solicited the advice of his cousin, Charles Carroll of Carrollton, who responded with an outline of a "Plan of Government." Daniel Carroll spoke about twenty times

during the Convention, declaring himself in favor of an election of the President by "the people" or by their electors. Later, as a member of the first Congress under the Constitution, he would add the words "or to the people" to the Tenth Amendment so that it read:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Without success, Carroll tried to broaden the privilege of senators to enter dissent in the Senate's *Journal*, but with the rest of the Maryland delegation he did manage to prevail with regard to the regulation of interstate commerce. His view that the salaries of congressmen should be paid by the federal treasury and not by the states was adopted, but he could not persuade the Convention to prepare an address to the people to accompany the Constitution. To no avail he pointed out that "the people had been accustomed to such on great occasions, and would expect it on this."

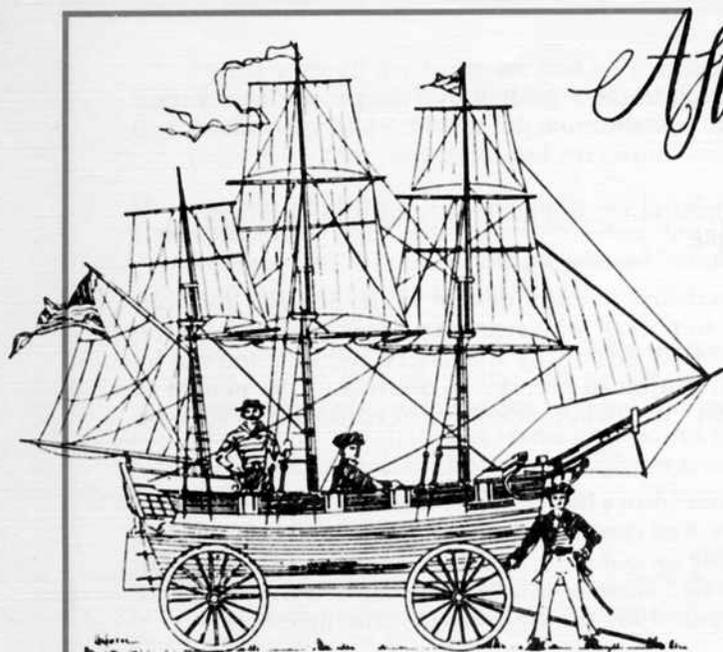
On the final day of the Convention, Carroll favored a last minute move by Nathaniel Gorham of Massachusetts to increase the size of the House of Representatives (after the first census) by reducing the minimum number of people per representative from 40,000 to 30,000. In his only formal speech of the Convention since assuming the chair, George Washington supported the motion. It carried unanimously and resulted in the only erasure made on the final parchment copy of the Constitution prepared for the signatures of the members.

There is no record that Carroll made a formal report to the General Assembly on his return to Annapolis, but he acknowledged using two speeches given by Benjamin Franklin at the Convention. One, concerning representation, he lent to McHenry who incorporated it into his remarks. The second, which Franklin had delivered on the final day, Carroll himself read to the House of Delegates in an effort to counter some of Luther Martin's "misrepresentations" of the Constitution.

Mr. President. I confess that there are several parts of this Constitution which I do not at present approve, but I am not sure I shall never approve them: For having lived long I have experienced many instances of being obliged by better information or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment and to pay heed to the judgment of others.

I doubt . . . whether any other Convention we can obtain may be able to make a better Constitution. For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an Assembly can a perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does. . . . I consent, Sir, to this Constitution because I expect no better, and because I am not sure, that it is not the best. . . . Much of the strength and efficiency of any Government in procuring and securing happiness to the people, depends on opinion, on the general opinion of the goodness of the Government, as well as of the wisdom and integrity of its Governors. I hope . . . for our own sakes as part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution (if approved by Congress and confirmed by the Conventions) wherever our influence may extend, and turn our future thoughts and endeavors to the means of having it well administered.

With few exceptions, the people of Maryland would agree with Franklin and Carroll. On April 28, 1788, Maryland would become the seventh state to ratify the Constitution by a vote of 63 to 11.



Afterword

On May 26, 1787, Governor William Smallwood signed the act commissioning "the Honorable James McHenry, Daniel of St. Thomas Jenifer, Daniel Carroll, John Francis Mercer, and Luther Martin, Esquires" as Maryland's delegates to

meet such Deputies as may be appointed and authorized by any other of the United States to assemble in convention at Philadelphia for the purpose of revising the Federal System and to join with them in considering such alterations and further Provisions as may be necessary to render the Federal Constitution adequate to the Exigencies of the Union.

Only one of the five men finally selected to go to Philadelphia was currently serving in the legislature. Daniel Carroll was president of the Senate. Luther Martin, attorney general, and Daniel of St. Thomas Jenifer, Intendant of the Revenue, were public employees. John Francis Mercer was a former member of Congress from Virginia then living in the Annapolis area. James McHenry, formerly a member of the House of Delegates, was a Baltimore merchant. One contemporary suggested in a letter to Thomas Jefferson that the controversies at home prevented some of the more prominent Marylanders such as Charles Carroll of Carrollton from agreeing to go to Philadelphia. More plausible is the argument that the delegation represented the best balance the legislature could achieve at a time when it was preoccupied with more pressing economic and political issues at home. Of the five finally selected, two were clearly in favor of a stronger national government and two were opposed. One was neutral. Only the election of Daniel of St. Thomas Jenifer proved momentarily controversial.

Maryland's delegates to the Constitutional Convention were, in many ways, as diverse as their constituency. Farmer, lawyer, merchant, wealthy and not so wealthy, verbose and reserved, each represented an aspect of Maryland politics. Although often in disagreement on the structure of the emerging Constitution, these five men were, ultimately, a delegation that did just what it was

charged to do—they represented Maryland thought and Maryland needs in a national forum. On matters of trade, the delegates shared a common belief in the necessity of free commerce amongst the states, because Maryland's economy required that. On other matters, they ran the gamut from support of a strong central authority to a conviction that state's rights should remain preeminent.

On May 25th, 1787, a quorum was finally present in Philadelphia. George Washington became president of the Convention by unanimous choice. From that point until the very last day of the Convention, Washington remained silent on issues before them. The other delegates were not so restrained and their debates often reached exasperating proportions. Perhaps age was a factor. The average age of the delegates was just over forty-three. One of the youngest was Maryland's John Francis Mercer at twenty-eight, who proved among the most contentious. The oldest was Dr. Benjamin Franklin at eighty-one, who may have been the wisest.

In the end, by careful compromise and a willingness on the part of the majority to accept less than what they really wanted, the Philadelphia Convention produced a document of amazing resilience and durability. Symbolic of its deliberately unfinished nature is the only erasure on the final document.

On a Monday afternoon in September 1787, the Constitutional Convention at last was nearing the end of its deliberations and Benjamin Franklin moved that the Convention sign the engrossed copy. Before the final question could be put, however, Nathaniel Gorham of Massachusetts, supported by his colleague Rufus King and by Daniel Carroll of Maryland, offered a further motion that changed representation in the lower house from one representative per 40,000 to one per 30,000. From the president's chair, Washington rose in support of the motion, making "his one and only speech since the opening day." Washington told the delegates that he was

We the People

of the United States, in order to
more domestic tranquility, provide for the common defence, promote the general Welfare, secure
and our Liberty, do ordain and establish this Constitution for the United States of America.

Article 1.

Section 1. All legislative Powers herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year in each State, who shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature. No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and seven Years, and shall, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, which shall be determined by adding to the whole Number of free Persons, including those bound to Servitude, three fifths of all other Persons. The actual Enumeration shall be made within three Years after and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative, and until such Enumeration shall be made, they shall have the same Number which they had at the first Enumeration. The Number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative, and until such Enumeration shall be made, they shall have the same Number which they had at the first Enumeration. When vacancies happen in the Representation from any State, the Executive Authority thereof shall fill the Vacancies.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen for six Years, and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen in the Senate of any State, the Executive thereof may fill the Vacancies until the next Election.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been seven Years, and shall, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless he also be a Senator. The Senate shall choose their other Officers, and also a President pro tempore, in the Absence of the Vice President.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. And no Person shall be convicted without the Concurrence of two thirds of the Members present. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold any Office of Profit or Trust under the United States; but the Party convicted shall nevertheless be liable and subject to Prosecution, Trial, Judgment and Punishment according to Law.

Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State, but the Congress may at any time by Law make or alter such Regulations, except as to the Places of Elections. The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday of December, unless they shall by Law appoint a different Day.

Section 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member. Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

BOSTON, Friday, May 9.

*Ratification of the Federal Constitution by
the State of Maryland.*



sensible of the impropriety of your chairman's intermingling in your debates, yet I cannot help observing, that the small number which constitutes the representative body, appears to be a defect in your plan. It would better suit my ideas and, I believe, it will be more grateful to the wishes of the people, if that number was increased.

So convincing was he that the motion passed without dissent, forcing the only erasure on the beautifully written official copy of the Constitution, an erasure still plainly in evidence today.

The people of Maryland first read about Washington's speech in the Baltimore *Maryland Gazette* of Friday November 16, 1787. To the *Gazette* Washington's remarks were a clear:

instance of the influence of a good and great man. [It] will, we presume, be acceptable to every reader who loves his country, and venerates its darling hero . . .

In a gesture of support for representative democracy, Washington potentially doubled the representation of new states admitted to the Union. The previous July the Confederation Congress had passed the Northwest Ordinance permitting the formation of new states in the Ohio country when their population reached 60,000. With Washington's erasure they could now have two representatives instead of one. Equally important, Washington offered an olive branch to the Constitution's harshest critics, among whom was his neighbor George Mason. In December 1787 Mason admitted in the Baltimore *Maryland Journal* that his fear that the House of Representatives would be "the shadow only of representation" was "in some degree lessened by an amendment often before refused, and at last made by an erasure, after the engrossing on parchment, of the word forty, and inserting thirty." By his support of the change, Washington reached out to friends and foes alike, demonstrating to the world that the carefully written document awaiting the signatures of the Convention could never be finished, but always would be subject to correction and change.

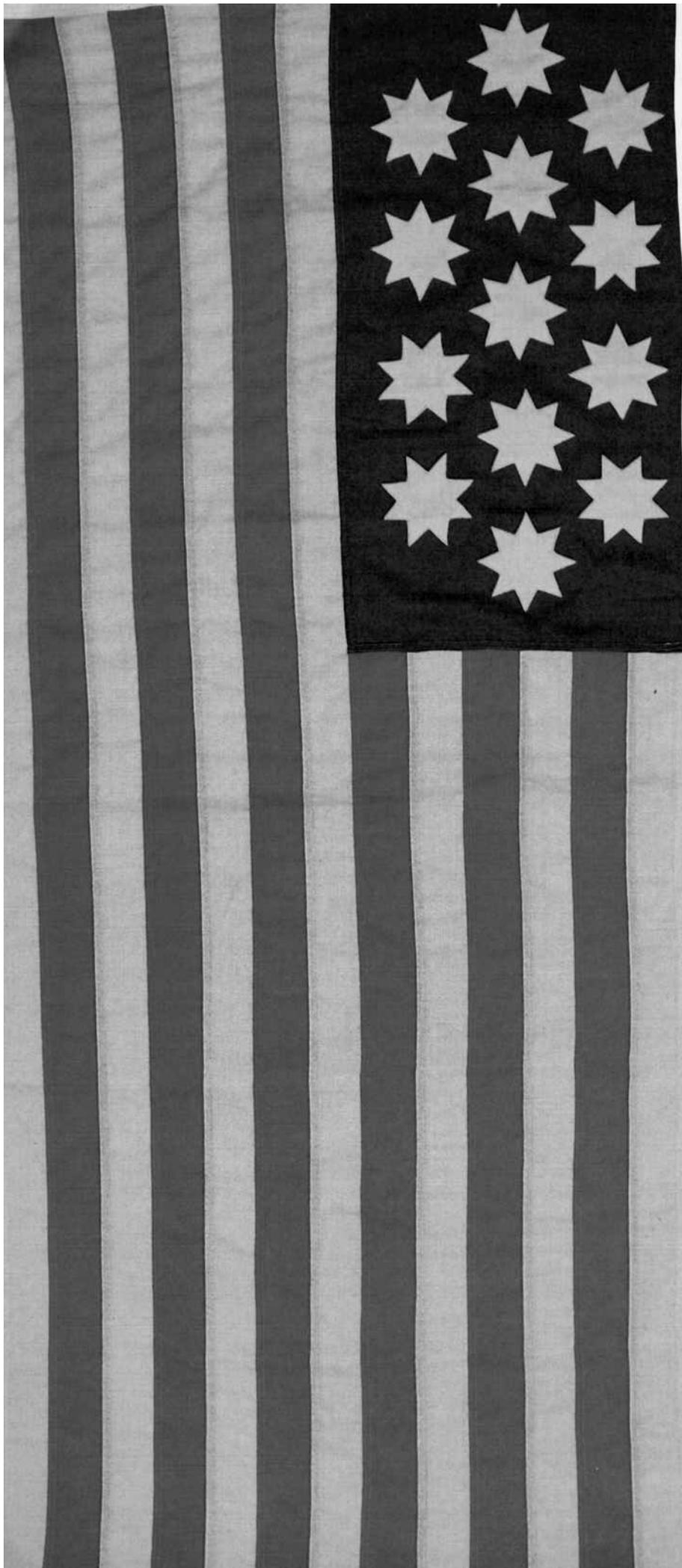
If the choice of a date to celebrate his memory had been left to Washington, he probably would have chosen September 17, the day the Constitution was signed. Washing-

ton clearly recognized the significance of the day. When he came to write his *Farewell Address* to the nation in 1796, he deliberately chose September 17 on which to reflect on the first eight years of government under the Constitution. It is a speech filled with timeless advice, a speech that cautions against too much spirit of party, imprudent public expenditure, and the avoidance of unpopular measures such as taxes. Most importantly, however, it addresses the exercise of power in a republic:

. . . the habits of thinking in a free country should inspire caution in those entrusted with its administration to confine themselves within their respective constitutional spheres . . . The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. . . . The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against the invasions by the others, has been evinced by experiments ancient and modern, some of them in our country and under our own eyes. To preserve them must be as necessary as to institute them. If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed.

Perhaps we would do well to honor Washington, and all the delegates who served with him, every September 17 hereafter as a new immovable holiday. More than any other day in the political life of our country, that is the one which Washington would like us to remember, not so much for what actually transpired, as for the course that was set and the responsibilities we assumed from that day forward.

Edward C. Papenfuse
Maryland State Archivist



Front cover—Detail from the watercolor of Annapolis attributed to C. Milburne (1794). Hammond-Harwood House Association, Annapolis. Photograph courtesy of the Maryland State Archives, MdHR G 1556-10.

Engravings of Maryland delegates by Albert Rosenthal from *History of the Celebration of the 100th Anniversary of the Promulgation of the Constitution of the United States*, ed. Hampton L. Carson (Constitutional Centennial Commission, Philadelphia: J. B. Lippincott Company, 1889).

Drawing of the *Maryland Federalist* by Melbourne Smith and the Maryland Federalist seal designed by Polli Rodriguez courtesy of the Maryland Federalist Foundation.

Photograph of Maryland as the seventh pillar from the *Massachusetts Gazette* May 9, 1788, by Chris Steele. Courtesy of the Massachusetts Historical Society.

Back cover—The John Shaw Flag. Maryland Commission on Artistic Property, MdCAP 807.

Unless otherwise noted, all quotations are from *Records of the Federal Convention of 1787*, ed. Max Farrand (Revised edition, New Haven: Yale University Press, 1937).

Published for a Joint Session of the Maryland Legislature on April 2, 1987, held in commemoration of the 200th anniversary of the Act commissioning Maryland's delegates to the Constitutional Convention in Philadelphia.

Fife and Drum Ceremony at the Joint Session courtesy of the Colonial Color Team and Fife and Drum Corps of the 3d U.S. Inf. (The Old Guard).



Prepared by the Maryland State Archives, with the support of the Hall of Records Commission, the Honorable Robert C. Murphy, Chairman

Text by Dr. Edward C. Papenfuse, with the assistance of Shirley Baltz, Joseph McPherson, Jane W. McWilliams, Richard A. Ryerson, and Gregory A. Stiverson

Design by WordsWorth

April 1987