

out important results, for the convention went on to draft a constitutional provision, which was eventually ratified, empowering the legislature to reapportion the House of Delegates after each decennial census on the basis of population within the restrictions that no county should have less than two delegates, that Baltimore City—which was made independent of Baltimore County—should be restricted to four more delegates than the most populous county (although it was already over four times more populous than the most populous county), and that the whole number of delegates should not be less than sixty-five nor more than eighty.⁵³ Further, in determining population, slaves were to be counted as full persons even though this was vigorously opposed by the Baltimore representatives who found it especially objectionable after the representation of that city had been arbitrarily limited.⁵⁴ The 1837 reform with respect to the composition of the Senate was carried forward unchanged. Each county and Baltimore City was given the right to elect one senator.

For the interim period of over ten years until the results of the 1860 census became available, the following temporary apportionment was provided: Baltimore City, 10 delegates; Baltimore and Frederick counties, 6 delegates each; Washington, 5 delegates; Allegany and Somerset, 4 delegates; Anne Arundel, Carroll, Cecil, Dorchester, Harford, Prince George's, and Worcester, 3 delegates; and Calvert, Caroline, Charles, Howard, Kent, Montgomery, Queen Anne's, Saint Mary's, and Talbot, 2 delegates.⁵⁵ This interim apportionment was itself a significant step for

ward. Whereas before the 1851 Constitution a representative from Baltimore had represented 8.7 times as many persons as a representative from Caroline, the temporary apportionment reduced this ratio to 5.2.

The permanent apportionment systems provided by the 1851 Constitution had an extremely serious weakness. This was the provision that restricted the size of the House of Delegates to a maximum of 80, guaranteed each of the twenty-one counties at least two delegates, and limited Baltimore City's representation. The continued uneven growth of population—for example, from 1850 to 1860 Caroline County increased its population by less than 1,500 while Baltimore City increased its population by over 43,300, the increase alone in Baltimore's population being about four times as much as Caroline's total population—made inevitable serious distortion of the basic provision that House seats should be apportioned according to population. This weakness of the 1851 Constitution did not have time to develop, though, for the permanent apportionment provisions took effect only when the results of the 1860 census became available.

THE 1864 CONSTITUTION

The Civil War broke out in January 1861. Although the Maryland legislature voted against secession, there was strong popular support for the Confederate cause. As a consequence the Union army occupied Maryland in order to ensure its continued adherence to and support of the Union. The military sought to translate its domination of the State into a corresponding political domination of the unionist forces.⁵⁶ Consequently, "test oaths" of allegiance were imposed as a condition for voting

⁵³ MD. CONST. art. III, § 3 (1851).

⁵⁴ DEBATES AND PROCEEDINGS *supra* note 50, at 297.

⁵⁵ MD. CONST. art. III, § 3 (1851).

⁵⁶ Brief for Appellants, at 49, Maryland Committee v. Tawes, 377 U.S. 656 (1964).