reference to "what we now refer to as military law and was expressly recognized by Article I, § 8, of the (federal) Constitution."[15] (Clauses 14 and 16 grant Congress the power to pass laws for organizing and disciplining the armed services.)

One authority has written that in England:

> "The term 'martial law' has in the progress of time changed its signification. From earliest periods of which we have authoritative records the sovereigns of England, when engaged in wars, found regulations for the government of their troops necessary .... They constituted the 'martial law' of the early days, and were properly applicable only to soldiers...."[16]

It has been said elsewhere that:

> "Much of the confusion and doubt as to its [martial law's] meaning would have been avoided if modern writers had been careful to confine the term to its original meaning as used by Hale and Coke, namely the law applied to the army and nothing else, the law known as 'military law.'"[17]

It is reasonable to conclude (since authorities agree and no dissent has been found) that to the subjects of the Stuart Kings "martial law" referred to the summary law applicable to the King's fighting forces; that it meant the same to Stuart colonials; that in the early state constitutions, such as Maryland's, a provision was directed to the evil which had been overcome in England only after three centuries' experience;[18] that, in particular, Article 32 of the Maryland Declaration was intended only to prohibit military trial of the civilian, and that only misuse of the term "martial law" would lead one to conclude that the Article prohibits martial rule.

II. THE GOVERNOR'S USE OF MILITARY RULE; CONSTITUTIONAL CONSIDERATIONS; SOME ILLUSTRATIONS

A. THE USE OF MILITARY RULE CONSIDERED IN REFERENCE TO THE STATE CONSTITUTION

The Maryland Constitution provides that it is the governor who "shall take care that the Laws are faithfully executed"[19]; that he "shall be the Commander-in-Chief of the land and naval forces of the State;[20] and that he "may call out the Militia to repel invasions, suppress insurrections, and enforce the execution of the laws."[21]

The legislature has provided that:

> "The Governor shall have the power in case of insurrection, invasion, tumult, riot, breach of peace or imminent danger thereof, or to enforce the laws of this State, to order into service of the State any part of the militia that he may deem proper."[22]

The statute is clear that the executive need not wait until the firebrand has appeared; "imminent danger" is sufficient circumstance to warrant the Governor's using the militia to halt civil violence.

[15] *Ex parte* Zimmerman, 132 F.2d 442, 448 (9th Cir. 1942) (Haney, J. dissenting).

[16] BERKHEIMER, *supra* note 11, at 372.

[17] 14 ENCYCLOPEDIA BRITANNICA 984 (14th ed.) quoted in *Ex parte* Zimmerman, 132 F.2d 442, 448 (9th Cir. 1942).

[18] In *Ex parte* Zimmerman, 132 F.2d 442, 448 (9th Cir. 1942), Judge Haney remarks that state constitutional provisions such as Article 29 embodied the view that "martial law was pure military law."

[19] MD. CONST. art. II, § 9.

[20] MD. CONST. art. II, § 8.

[21] *Ibid.*

[22] MD. CODE ANN. art. 65, § 8 (1957). First enacted in 1922 (ch. 490, § 7).