

Chapter 8

CONSTITUTIONAL REFORM

1836

One of the most dramatic episodes in the history of the General Assembly of Maryland occurred during the 1830s, in the process of achieving a measure of constitutional reform. Arguably, for a time, constitutional government itself was hanging in the balance. Certainly, the doubts and difficulties of these years were comparable only to the perplexities of beginning the legislative processes during the 1630s, retaining an operative government during the convention period of the 1770s, and meeting the crisis in federalism during the 1860s.

The basic fault lay in the Constitution of 1776, which was far from being an instrument of democracy. In the entire State government, the House of Delegates was the only part of the operating structure subject to popular election; and with all the restrictions on the right of suffrage, even the word "popular" was a misnomer. The State Senate, the Governor, and the Governor's Council all were chosen by electors. The judiciary and all officers in the executive branch were appointive. In the area of local government, members of the levy courts (the early equivalent of county commissioners) were appointive officers.

Some progress had been made during the late 1790s and early 1800s in easing restrictions on the right of suffrage, but the House of Delegates and the electors for the Senate remained the only State positions open to election. Complaints were frequent and heated during the early decades of the nineteenth century. By the 1830s, the tide of Jacksonian democracy brought it all to a climax. A phrase much used at the time was "reform or revolution"; there were abundant indications that the choice might be just that grim.

Several particular situations were the main objects of criticism. Two of the favorites were those to achieve popular election for the State Senate and the Governor. Many persons sought to eliminate the Governor's Council. Additional representation was sought for Baltimore City, along with ending the separate representation of Annapolis in the House. On a lesser note, local election was sought for clerks of court and for registers of wills. A right of elective choice for the members of levy courts also was discussed; this was largely achieved by statute, in local bills creating boards of county commissioners and making them elective. Moreover, despite all the progress made in amending the Constitution, there still were calls for a constitutional convention which could revise the entire document.¹

THE PROCESS OF AMENDING THE CONSTITUTION

A fundamental part of the problem of constitutional reform lay in the procedure established for that purpose in

1. For general accounts of the period, see MATTHEW PAGE ANDREWS, *1 TERCENTENARY HISTORY OF MARYLAND 761 et seq.* (Chicago-Baltimore, 1925) [hereinafter cited as ANDREWS]; J. THOMAS SCHARF, *3 HISTORY OF MARYLAND — FROM THE EARLIEST PERIOD TO THE PRESENT DAY 187 et seq.* (Baltimore, 1879) [hereinafter cited as SCHARF]; DONALD MARQUAND DOZER, *PORTRAIT OF THE FREE STATE — A HISTORY OF MARYLAND 350 et seq.* (Cambridge, Md., 1976) [hereinafter cited as DOZER].

See also Report of the Constitutional Convention in Maryland 37-42 (Baltimore, 1967); A. Clarke Hagensick, *Revolution or Reform in 1836: Maryland's Preface to the Dorr Rebellion*, 57 *MARYLAND HISTORICAL MAGAZINE* 346-66 (1962) [hereinafter cited as Hagensick]; Bernard C. Steiner, *The Electoral College for the Senate of Maryland and the Nineteen Van Buren Electors*, *ANNUAL REPORT OF THE AMERICAN HISTORICAL ASSOCIATION* 129-67 (1895) [hereinafter cited as Steiner].

McSherry has an excellent summary of the period. See JAMES MCSHERRY, *A HISTORY OF MARYLAND FROM ITS SETTLEMENT IN 1634 TO THE YEAR 1848*, at 347-52 (Baltimore, 1850).

There is another general summary in FLETCHER M. GREEN,

the Constitution of 1776. Along with the other aspects of conservatism in that document, amendments to the Constitution were not to be entrusted to the people. Instead, as specified in Article 59, amendments required action by two successive sessions of the Legislature, with an election intervening. Article 59 was buttressed by the Declaration of Rights (Article 42), providing that the form of government "ought not to be altered, changed or abolished by the legislature" except as provided in the Constitution.

The procedure for amending the Constitution served virtually as a blockade against change for many years prior to the middle 1830s. Opponents of change argued that change could be accomplished in this regular and orderly way; and that whatever might be the high-flown principle of democracy giving to a people the right to fashion its fundamental law, that right could be exercised by and through the Legislature. That situation certainly was in mind during the many proposals considered in the General Assembly for a constitutional convention to fashion a completely new frame of government; it seemed obvious to the proponents of the convention method that it could accomplish change more quickly and probably more satisfactorily than would the General Assembly.

THE SENATE OF MARYLAND

Efforts to accomplish a reform of the Senate were perhaps the most numerous of all the facets of reform. It had been created and continued in the Constitution of 1776 (Articles 14-21) as an obvious bastion of conservatism. Its members were chosen by an electoral college comprised of two elected

CONSTITUTIONAL DEVELOPMENT IN THE SOUTH ATLANTIC STATES, 1776-1860, at 240-48 (Chapel Hill, 1930).

delegates from each county and one each from Baltimore City and Annapolis. Its total membership was to be 15, nine from the Western Shore and six from the Eastern Shore. Partisan politics played a heavy part in this process; even a slight majority in the electoral college guaranteed almost without exception that all the members of the Senate would be of the dominant party. They were elected for terms of five years, in sharp contrast to the annual elections for members of the House of Delegates. Moreover, vacancies occurring during a term were to be filled by the Senate itself; it was claimed at one time that during a five-year term, all but one of the senators had been chosen by the Senate through this process.²

The rationale of a bicameral legislature, a Senate chosen by indirect election, and power vested in the Senate for its own perpetuation was expounded at some length by John V. L. McMahon, a historian, an attorney, and for a period a member of the Legislature.³ The presence of two houses, he said, was "to obviate the inconvenience of a personal discharge" of the powers of government by the people themselves and to "filtrate it and give it a judicious direction." As for the electoral college:

In adopting the peculiar mode of electing our senate the framers of our constitution appear to have had in view two prominent objects: The equal influence of the

2. With the added factor of controlling the State Senate, the tidewater counties generally had entire control of the State government. The Senate problems were the principal issue in State politics during the early 1830s. See W. Wayne Smith, *Jacksonian Democracy on the Chesapeake: The Political Institution*, 62 MARYLAND HISTORICAL MAGAZINE 382, 383 (1967).

3. AN HISTORICAL VIEW OF THE GOVERNMENT OF MARYLAND 478-82, passim (Baltimore, 1831). McMahon was a native of Cumberland. He practiced law both there and in Baltimore. He was a strong promoter of the bill to incorporate the Baltimore and Ohio Railroad.

counties in its choice, and the selection of senators as the representatives of the State at large and not of particular sections. The present was the only system by which these two objects could have been concurrently accomplished.

Continuing, by the device of an electoral college,

in form the mere miniature of the house of delegates, each county was insured an equal influence in selecting senators for the entire State, which was considered tantamount to a specific equal representation in the senate itself, and, at the same time, the persons selected by the college were made, by the very manner of their choice, to regard themselves as the representatives of the whole State, or at least of their respective shores.

Further, an abolition of the electoral college would make the Senate "a mere copy" of the House of Delegates, and thus "the efficacy of the two houses, as checks upon each other," would be much impaired.

To meet the criticism that by being elected only at long intervals the Senate had no change in membership by popular voice for periods of five years, McMahon suggested a division of the Senate into three classes, so that a part of the membership would be elected every year or two.

The plan for having an electoral college to choose the Maryland Senate was said to be a model for election of the President of the United States. Also, in providing that United States senators were to be elected by State legislatures, the draftsmen of the Federal Constitution clearly liked the idea of a stable and conservative second house of the Congress.⁴

4. See in the FEDERALIST PAPERS, No. 63:

Without a select and stable member of the government, the esteem of foreign powers will not only be forfeited by an unenlightened and

Proposals to change and "reform" the Senate of Maryland were frequent and popular. Public clamor for the change arose as early as 1816. A bill in the session of 1826 would have given one senator to each county and Baltimore City. After rejecting an amendment to give a senator also to Annapolis, the House passed the bill by a vote of 53 to 23. It failed in the Senate, for obvious reasons, and thus could have had no chance of meeting the constitutional requirement for being passed in two sessions of the Legislature.

The bill for direct election of senators was introduced again in both the 1827 and 1828 sessions, and in the latter year it passed the House by a vote of 48 to 23. The bill was introduced once more in the session of 1829, and again it failed. This time, in substitution for the bill, a strongly-worded resolution was put before the House of Delegates, asking for an informal poll on the question at the elections in 1830. The resolution was introduced on February 27, 1830, stating its case with force and directness:

Whereas, the original Government of this State was based upon the principles of Monarchy and Aristocracy; and whereas the influence of these principles continued to the time of the formation of the constitution; and whereas principles were retained in the constitution which are inconsistent with the spirit of a free republic; and which tend to subserve the private interests of privileged classes, to the great injury of the common

variable policy . . . , but the national councils will not possess that sensibility to the opinion of the world which is perhaps not less necessary in order to merit, than it is to obtain, its respect and confidence . . . The people can never wilfully betray their own interests; but they may possibly be betrayed by the representatives of the people; and the danger will be evidently greater where the whole legislative trust is lodged in the hands of one body of men, than where the concurrence of separate and dissimilar bodies is required in every public act.

(Modern Library ed., New York, 1941, at 407, 411).

people; and whereas the mode of electing the Senators, is an anomaly, without an example in any state of the confederation; and whereas the genius of this anomaly, in the offspring of its creation, is calculated to inspire feelings, and to generate conduct, in opposition, or hostility, to the expressed wishes, or best interests of the general mass of the whole state; and whereas the appointment of Senators by the intervention of forty electors, for a long term of years, with the power of filling vacancies in their own body, is in effect and operation, to create an absolute and despotic power for that term; and that power being irresponsible, for removal, and above the people, might wield their force to avoid, or defeat the equitable principles of the declaration of rights, to uphold the unrighteous views of a monied aristocracy, or to support the interests of certain official, or favored individuals, to the infinite injury and great injustice, of the aggregated population . . . and virtually to hold at check for five years, the essential energy of the constitution, or to gag and stifle a free expression of the General voice in Legislation, whilst always prompt in passing acts to subserve the schemes of their creators, or the favored few of their constituents

.....

The resolution was strong stuff, and it did not pass the Legislature.

Again in the 1830 session the bill was introduced, this time supported by petitions from 1,120 "citizens" of Washington County and "sundry citizens" of Frederick County. The bill passed the House by a vote of 46 to 24, but later it was returned from the Senate with the notation "will not pass." The proposal also was before the Legislature at succeeding sessions during the early 1830s, and each time it failed. A resolution introduced on January 8, 1834, changed the purpose somewhat. Instead of having a senator from each county, it would have had the State laid off into districts, with senators elected directly by the people from each district.

Niles' Weekly Register continued the prodding for reform which it had begun years earlier. In its issue of October 8, 1831, for example, it pointed out that in the recent elections for the House of Delegates, 57 Clay delegates and 23 Jackson delegates had been elected. In the new Senate, however, chosen by an electoral college with a preponderance of Clay adherents, all 15 senators were of that party.⁵ It was estimated also that when the time came for joint ballots in the Legislature, for the offices of Governor, Council, United States Senator, and others, there would be 72 Clay votes and only 23 Jackson votes. Two years later, the partisan complexion of the House had changed; with 42 Jackson men and only 36 anti-Jackson men elected. The Senate remained solidly anti-Jackson, so that joint ballots would be decided by the anti-Jackson forces.⁶

THE HOUSE OF DELEGATES

Proposals to change or reconstitute the House of Delegates were another part of the reform movement of the 1830s. The issues here were less clear and direct than for the Senate, with the suggested changes being correspondingly different. Some proposals were simply to change the number of delegates given to each county, with no change in the equality of representation; others were to provide some form of proportional representation; and others were concerned chiefly with the inequality of representation given to the City of Baltimore.

One improvement had been made in the election procedures of the House since the Constitution of 1776 had taken effect. Property qualifications for suffrage had been

5. The *Frederick Herald* commented that all 15 new senators were "firm friends" of Henry Clay. September 24, 1831.

6. *Niles' Register*, October 19, 1833.

removed in 1802, making the election of its members more democratic than earlier. However, regardless of size and population, each county had four seats in the House; the House as a whole was badly out of arithmetic proportion. Both Annapolis and Baltimore City had provisions in the Constitution (Articles 4 and 5) for electing two delegates. By the early 1830s, therefore, the House had the equivalent of twenty counties.⁷ As a result, the eleven counties with the lowest populations could theoretically control the House and have a heavy influence in electing the Governor and Council, the United States senators, and other officers.

Bills to change county representation were introduced into the sessions from 1826 to 1830, with proposals ranging from two delegates to four delegates for each county. A strong call for proportional representation came during the final weeks of the session of 1831, on March 2, 1832. A House resolution then submitted complained that Maryland was not conforming with the provision in the Federal Constitution (Article IV, section 4) that every state should be guaranteed a republican form of government. No state can enjoy such a form of government, it was said, unless the voice of a majority of its people can be heard. The resolution cited that according to the census of 1830 the whole population of the State was 446,913. Five contiguous counties were said to have a total population of 238,079, being in the majority by 29,245; yet these counties had only 22 of the 80 delegates in the House. Their "united voice could not be heard, and their united will and efforts may be totally unavailing, which state of things is the very essence of despotism, however mild or lenient its measures."

7. The four counties not yet formed were Carroll (1836), Howard (1851), Wicomico (1867), and Garrett (1872).

BALTIMORE CITY

Although there was unequal representation among the counties, in proportion to their populations, the case of Baltimore City was most often cited. The Constitution and Form of Government (Article 14) originally assured the city of two delegates in the House, as compared to four from each county. In contrast, the city had a population nearly one-fourth that of the entire State, far larger than any county.

Niles' Register had complained about this situation for years during the 1820s, citing population figures in contrast to representation to show a wide discrepancy.

The arguments against increased power for Baltimore City concerned primarily its representation in the House of Delegates and in the Senate, but they could have a wider thrust. Thus, as early as 1819 and 1820, during discussions about making the offices of Governor and Council subject to popular election, it was declared from some of the counties that such a change "would be throwing the whole government of the State into the power of Baltimore, which with her population of 62,000, could nominate and elect from among her own citizens, at any time she pleased, any person as governor."⁸

Niles Register, in its issue of May 19, 1827, announced (optimistically, as events were to prove even into the next century) that "we have the pleasure to believe that the people of Maryland are considerably softened in their prejudice against the city of Baltimore." At the same time, Hezekiah Niles accurately stated the problem that was to plague Baltimore City for many, many years: "There is often a strange and unaccountable jealousy, in persons resident in the county against those whose habitation is in large towns"

8. SCHARF, *supra* note 1, at 148.

GOVERNOR AND COUNCIL

The duality of the Governor and his Council was a favorite object of criticism during the 1820s and 1830s. The offices as created in the Constitution of 1776 (Articles 25, 26, 30-36) reflected the Revolutionary distrust of executive power, in having their prerogatives and tenure closely limited. At the same time, as evidence of the lack of fervor for democracy so characteristic of the times, they were not to be chosen by popular vote. The Governor and all members of the Council were to be elected annually by joint sessions of the two houses of the Legislature.

The scheme of indirect election emphasized some of the items of resentment against the General Assembly. It was an increasingly malapportioned group of legislators who chose the Governor and his Council. The Senate which took part in the joint ballot was itself usually malapportioned, being generally all from one party as chosen by the Senate's electoral college. The House of Delegates, although elected by popular vote, gave a preponderance to the small and least populous counties because of the four delegates given equally to each county.

As a result, the rural counties in the tidewater area were seen as dominating both the legislative and the executive branches of the State government. Tidewater counties took their political strength from the Federalist and later the Whig parties; the Democratic-Republicans, or Democrats, came mainly from the upland and western areas.

From 1777 to 1836, nine Democrats and 18 Federalist-Whigs were elected to the Governor's office.⁹ The Council, chosen as an advisory body for the governor,

9. Hagensick, *supra* note 1, at 349. See also JOHN V. L. McMAHON, AN HISTORICAL VIEW OF THE GOVERNMENT OF MARYLAND, FROM THE COLONIZATION TO THE PRESENT 489 (Baltimore, 1831).

reflected the same party preference. It once was attacked as being a piece of "odious political machinery . . . which is totally irresponsible to the people."¹⁰

Critics of the offices of Governor and Council as then chosen had two simple aims: to have the Governor elected directly by the people, and to abolish the Council completely. Such an amendment to the Constitution was passed as early as 1825, but it was not confirmed by the next Legislature and therefore failed. A more specific proposal for the Council was discussed, but not passed, during the session of 1826; it would have abolished the Council and made the Senate the constitutional advisor of the Governor. In the same session, a bill for the popular election of the Governor failed in the House, 19 to 56. The dual bill for popular election of the Governor and abolition of the Council was introduced again during the session of 1827. On January 10, 1828, by a vote of 39 to 32, the House of Delegates referred it for consideration on the "fourth of July next." A bill in the 1829 session for popular election of the Governor for a three-year term failed in the House, 13 to 55.

During the session of 1830, on February 8, 1831, another bill was introduced to have the people elect the Governor. On a question in the House, "will the House consider the bill?" the vote was negative, 27 to 37. Similarly, early in the session of 1831, when leave was asked to introduce such a bill, the House refused to grant the request, by a vote of 27 to 44.

There the question rested for a number of years. It was apparent that popular election of the Governor and abolition of the Council would have to wait upon some change in the composition and philosophies of the General Assembly. The only other alternative, that for having a

10. *Niles' Register* (October 8, 1836).

constitutional convention to draft a completely new constitution, also was not faring well.

Two constitutional amendments took effect in 1836 which could have had some influence upon the voting pattern in the House of Delegates. One of them increased the number of delegates in Baltimore City from two to four (1835, Chapter 98; 1836, Chapter 76). The other created Carroll County (1835, Chapter 256; 1836, Chapter 19). The effect was to add six votes in the House from the northern and mainly Democratic areas. By 1836, however, other and more compelling events were bringing on a general constitutional revision.

APPOINTIVE POSITIONS

The drive toward placing government in Maryland directly within the control of the voters included also a number of positions subject to the appointive powers of the Governor and Council. This campaign was less spirited and intense than those for the Senate, the House of Delegates, and the Governor and Council; but on a lower level of government it was equally indicative of democracy in action.

The positions at issue were not specifically named in the Constitution. They were covered generally in the omnibus language creating the appointive jurisdiction of the Governor and Council:

The governor for the time being, with the advice and consent of the council, may appoint the chancellor, and all judges and justices, the attorney general, naval officers, officers in the regular land and sea service, officers of the militia, registers of the land office, surveyors, and *all other civil officers of government (assessors, constables and overseers of the roads only excepted)*¹¹

11. Constitution and Form of Government, 1776, Art. 48. Emphasis added.

Two of these local offices which generally were linked together were the county registers of wills and the clerks of the county courts.¹² They were subject to appointment by the Governor and Council, under the blanket provision in Article 48 of the Constitution. A bill was passed at the 1830 session (Chapter 34) to make them elective, but a confirming bill was not passed in 1831 as required for constitutional amendments.

The General Assembly found a more subtle approach for the election of the local officers whose work most closely affected the counties. This was the office of the Levy Court. As its name suggests, the main function of the Levy Court in each county was to set the levy for local taxes. The office was not specifically mentioned in the Constitution, but it was construed as included among the "other civil officers" appointed by the Governor and Council. In this instance, the approach was statutory, by creating a new office of "county commissioners." Several such bills were introduced around the end of the 1820s. Thus, in the session of 1829, this legislation was considered in local bills for the counties of Talbot, Washington, Allegany, Calvert, and Frederick. Two or three years earlier, bills of this kind had been introduced for Baltimore, Cecil, and Harford counties. The general plan of the bills was to give the levy power to county commissioners, by statute; and as no specific provision in the Constitution was being transgressed, the bills were not deemed to be unconstitutional. The office of county commissioners usually was made elective in the individual counties.

Queen Anne's County made an unusual approach to the

12. The Frederick County Delegation was able at one point to have the House of Delegates pass a constitutional amendment as a local bill, in an effort to make the two positions elective in that county only. *Frederick Herald*, February 25, 1832.

levy court. Without changing the name of the office, that county had a bill introduced during the session of 1832 to place on referendum the question whether its voters preferred to elect the Levy Court themselves or to continue having the Governor and Council make the appointments. The Senate objected to the bill, saying that for the year 1834 it conceivably could result in two levy courts, one elected by the people and one appointed by the Governor. Another extreme possibility mentioned by the Senate was based upon the provision in a House amendment that the judges of election in Queen Anne's County were to report the results of the referendum to the General Assembly. From the workings of this language, said the Senate, the county "may at an important period, be altogether without such a tribunal as a levy court or commissioners of the tax."

Perhaps the Senate's real objection to the bill was acknowledged in the opening paragraph of the message to the House. "We believe it impracticable to deliberate dispassionately," wrote the Senate, "and incompatible with the true spirit of representative government to require the people to legislate at the polls on any subject unless such as may be of rare and fundamental importance."¹³

CALLS FOR A CONSTITUTIONAL CONVENTION

One logical approach for all the interest groups seeking particular changes in the Constitution was to propose a constitutional convention, with the hope that all proposed amendments could be considered and, if accepted, incorporated into one omnibus measure.

A bill for this purpose was before the House of Delegates during the session of 1826, asking "that the sense of the

13. *House Journal*, March 18, 1833, at 575.

people of this state be taken on the expediency of calling a convention, to reform the constitution, and for other purposes." On February 7, 1827, by a vote of 43 to 23, the House struck out the first section of the bill; and later on the same day a motion to reject the bill received an affirmative vote.

Similar bills were presented in subsequent years. In the House, together with proposals for particular constitutional amendments, they were referred to a special committee on the Constitution. During the session of 1832, that committee presented a long report which recommended a referendum vote on the possibility of having a constitutional convention.

"A majority of the people of this state are dissatisfied with many of the features of the present constitution," declared the committee, "which they deem at war with republican principles." The report cited next the language of the Declaration of Rights (Articles 1 and 2) "that all government of right originates from the people; is founded in compact only, and instituted solely for the good of the whole"; and "that the people of this State ought to have the sole and exclusive right of regulating the internal government and police thereof." These principles, it was continued, "are principles too dearly bought by our ancestors, and too firmly engrafted in the hearts of the people, to be ever surrendered."

The mode for altering and amending the Constitution, by two successive legislative enactments, was termed "ineffectual" for giving a form of government "which public sentiment desires." Accordingly, the committee recommended, it is "proper to take a fair expression of the sense of the voters of this state, on a subject of such deep concernment to their rights, their welfare and their happiness."

The committee proposed, therefore, that in conjunction

with the regular elections in the following October (1833), each voter be asked whether or not he wished to have a constitutional convention; that if a majority of the voters voted in the affirmative, the next session of the Legislature would make arrangements for a convention; and that the Governor then would issue a proclamation calling for an election for delegates to a constitutional convention. This resolution, of course, was not passed by the General Assembly.

The House of Delegates, during the session of 1835, debated at length a bill to require the General Assembly to provide for a constitutional convention if it should be approved by a majority of the voters in the State. The House approved the bill on March 7, 1836, by a vote of 32 to 22; the bill did not pass the Senate.

Agitation continued for a constitutional convention even after the omnibus amendment bill was passed in 1836 and 1837. Such a bill was discussed at length during the session of 1839, without being passed. During the 1840 session, on February 20, 1841, the House killed a similar bill, by a vote of 26 to 38.

"REFORM OR REVOLUTION"

By the mid 1830s the several lines of political complaint were converging into an intense swell of clamoring public opinion. The issue was openly and frequently stated and feared: reform or revolution; and there were times when revolution seemed close at hand. The reformers merged their campaign into a series of "reform conventions" throughout the State. The conventions issued long and reasoned appeals for constitutional reform; and their proceedings were given wide circulation in the growing number of newspapers. It was a unique and perhaps the most

serious confrontation ever suffered by the General Assembly of Maryland.¹⁴

The main issues ultimately were resolved within the established constitutional framework. This was detailed in Article 59 of the Constitution and Form of Government adopted in 1776. It provided that

this form of government, and the declaration of rights, and no part thereof shall be altered, changed or abolished, unless a bill so to alter, change, or abolish the same, shall pass the general assembly and be published at least three months before a new election, and shall be confirmed by the general assembly after a new election of delegates, in the first session after such new election

It is very clear, however, that the Legislature if left to its own devices would not have enacted the changes; and that constitutional reform would not then have occurred except for the pressures and demands of the conventions and of the populace generally.

Responding to the unrest, the Senate during the session of 1834 considered a bill which had many of the features of what finally was contained in the omnibus reform bill of 1836 and 1837. These proposals were not adopted in 1834.

In all, some six or more reform proposals were introduced into the Legislature during the years from 1833 to 1836. They usually were rejected in the House of Delegates, by

14. The constitutional crisis has been reported in all the standard histories of Maryland. See generally ANDREWS, *supra* note 1, at 769-72; SCHARF, *supra* note 1, at 187-96; Dozer, *supra* note 1, at 349-58; MARYLAND—A HISTORY, 1632-1974, at 274-79 (R. Walsh & W. L. Fox eds. Baltimore, 1974) [hereinafter cited as Walsh & Fox].

See also Hagensick, *supra* note 1, at 346-66; REPORT OF THE CONSTITUTIONAL CONVENTION COMMISSION 37-41 (Baltimore, 1967); STEINER, *supra* note 1, at 129-67.

votes in average ratios of 4 to 3. While the two political parties split within themselves on the several votes, the main opposition came from the Whig majority. These votes in turn, generally mirrored sectional differences; changes mainly were proposed by the northern and western counties and resisted by the southern and Eastern Shore counties.¹⁵

There was an extensive set of constitutional amendments before the House of Delegates at its 1835 session, all to be considered by a special committee appointed for that purpose. As listed in the House *Journal* for January 18, 1836, five specific items were included in the package:

1st. That the Governor be elected by the people.

2nd. That the Executive Council be abolished.

3rd. That the Senate be elected by the people, according one member to each county and the city of Baltimore.

4th. That all appointments to office devolved upon the Executive, shall be made by the Governor, by and with the advice and consent of the Senate.

5th. That the representation in the House of Delegates shall be so apportioned, as to secure to each county three members, with an increase of one member for every 10,000 white population, with a restriction, that the representation of the city of Baltimore shall not exceed that of the largest county in the State.

The House of Delegates debated these possible changes for a number of days later in the session of 1835. On March 1, it adopted a bill covering the items listed above, with some changes; the bill was not enacted, however.

The Legislature was back for a short special session that spring, beginning on May 28, 1836. It was the first summer session since 1813, when the British fleet was in the Chesapeake Bay. It passed an eight-million dollar internal

15. Cf. Walsh & Fox, *supra* note 14, at 274-75.

improvements bill which had not been completed during the regular session. The funds were to be provided for the Baltimore and Ohio Railroad, the Chesapeake and Ohio Canal, the Eastern Shore Railroad, and other projects. This bill passed by considerable majorities in both houses, being approved 48 to 29 in the House and 11 to 2 in the Senate. Commercial and business interests in Baltimore City had given strong support to the bill, with visions of commerce from Pittsburgh and the Ohio River valley passing through Baltimore's harbor. *Niles' Register* for June 11, 1836, wrote exultingly of the new law and of "the new bonds of attachment which it will create between the interior of our country and the seaboard, by those delightful associations of which free intercourse and mutual benefits are the parents. Those are ties which politics or politicians cannot sever, and hence all should regard this act as an additional guaranty of union and strength."¹⁶

The temporary euphoria on the internal improvements bill was short-lived, however. Even before the successful conclusion of the special session of May 28, 1836, with Baltimore City in the vanguard, the first of the several reform conventions reminded the General Assembly that political improvements in the Constitution still were not accomplished.

REFORM CONVENTION

The first and main Reform Convention was held in Baltimore on June 6, 1836. Delegates, all informally selected, were present from the counties of Baltimore, Cecil, Frederick, Harford, Montgomery, and Washington (and, of course, the Baltimore County delegates included those from Baltimore City).

¹⁶. See also *Niles' Register* for April 9, 1836.

The Convention passed a series of resolutions, with recommendations to the people and to the General Assembly. The people, it was suggested, should use the October elections to choose candidates pledged to support a constitutional convention in 1837. For the guidance of the General Assembly, the proposal was that a referendum election be held on the first Monday in May, 1837; that an election for delegates to the convention be held on the first Monday in June (provided, of course, the people had so voted in the May referendum); and that the Constitutional Convention should assemble in Annapolis on July 4, 1837.

Then came the clencher. If, said the Reform Convention, the General Assembly, "within forty days after the commencement of its session . . . shall refuse or neglect to provide" for the May referendum, the Reform Convention would reconvene "for the adoption of such ulterior measures as may then be deemed expedient, just and proper, as may be best calculated, without the aid of the Legislature, to ensure the accomplishment of the desired results."

What were the "ulterior measures" which would be "expedient, just and proper . . . , without the aid of the Legislature, to ensure the accomplishment of the desired results"? The Reform Convention did not say.

Actually, the Reform Convention had reason to be optimistic when it passed its resolutions, with its threat, in June of 1836. The preceding regular session of the Legislature had seemed favorable to some elements of reform. Chapter 98 of 1835 had proposed adding two new members of the House from Baltimore City; and Chapter 256 of 1835 had proposed the formation of Carroll County. These two proposals, if confirmed at the session of 1836, would add six new members from areas favorable to reform. At that point, unfortunately for the immediate results, the reform movement became embroiled in presidential politics.

The Democratic candidate for President was Martin Van

Buren; and after some difference of opinion, the Whigs nominated William Henry Harrison. Opponents of Van Buren had hope of causing the election to go to the House of Representatives. All this turmoil, during the late summer of 1836, hardened party attitudes. Not only did this impede any bipartisan effort toward reform; it also, and almost disastrously, sent the two parties into a bitter confrontation following the choosing of electors for the Senate of Maryland.¹⁷

ELECTIONS FOR THE SENATE

The regular elections for electors to choose members of the Senate were held on the first Monday in September, 1836. These elections and the procedure for the electors were controlled by Article 14 of the Constitution and Form of Government. Each county was to choose two electors; and Annapolis and Baltimore City were to elect one each. With 19 counties in the State, the electoral college had a total of 40 members. Article 14 then required the electors to meet in Annapolis on the third Monday in September, following the elections every five years.

The Constitution (Article 15) also set a quorum of 24 for the meeting of electors. This figure had been in the Constitution since its adoption in 1776; but since only one county had been formed during those 60 years (Allegany, 1789), the original intent of the Constitution was not much disturbed. Tradition has it that the fixed quorum of 24 members was for the protection of the counties on the Eastern Shore.¹⁸

17. Cf. SCHARF, *supra* note 1, at 188-89; REPORT OF THE CONSTITUTIONAL CONVENTION COMMISSION 39 (Baltimore, 1967).

18. SCHARF, *supra* note 1, at 190. Note also the provision in Article 59 of the Constitution of 1776 "that nothing in this form of government which relates to the eastern shore particularly shall at any time

In the choices for Senate electors, Democratic candidates received 53.4 percent of the popular votes, but because the electoral college was chosen on a county basis, the Democrats elected only 19 out of the total of 40. The other 21 members of the electoral college were Whigs. Also, as was well known throughout the State, with hardly an exception over the years, the party winning a majority of seats in the electoral college had proceeded to elect a Senate with *all* its members from that party. Whenever a joint vote of both houses of the General Assembly was required (as in the elections for Governor, Council, United States Senator, and others), the party holding a solid vote in the Senate was likely to control the joint ballot.

If stated in terms of the total populations of the political sub-divisions choosing electors, the disparity was very marked between totals elected for the Democrats and the Whigs:

Chosen in accordance with the constitutional system of geographical apportionment, the twenty-one Whig electors represented ten counties having a total population of only 85,179 or, in Federal numbers including three-fifths of the slaves, 138,020 while the nineteen Van Buren electors represented eight counties and the

hereafter be altered, unless for the alteration and confirmation thereof at least two thirds of all the members of each branch of the general assembly shall concur." It would have required compliance with this provision for any attempt to change the quorum of 24 for the Senate's electoral college.

There were 38 votes in the Senate electoral college as established in 1776. The eight counties on the Eastern Shore had 16 votes; and the ten counties on the Western Shore had 20 votes, plus one each for Baltimore Town and Annapolis. The requirement for 24 votes as a quorum in the electoral college (Constitution, Articles 14 and 15) thus gave the Eastern Shore a measure of protection in that body. Allegany County was formed in 1789; Carroll, in 1835 and 1836; Howard, 1851; Wicomico, 1867; and Garrett, 1872.

two cities which had a total population of 205,922, or in Federal numbers, 267,669. A minority of the people of the state, in contravention of the will of the majority, had it in their power, therefore, through their Whig representatives in the electoral college to fix the political complexion of the state senate for the next five years¹⁹

As early as September 10, 1836, only a few days after the election, *Niles' Register* was alarmed at the indication that in spite of the majority votes received by the Democrats, the Whigs would have 21 electors, and the Democrats, only 19. Predictably, therefore, the newly elected Senate would be entirely composed of Whigs. Two weeks later, in the issue of September 24, the *Register* published the totals of popular representation, citing that the 21 Whig electors represented 85,179 white inhabitants, while the 19 Democratic electors represented a much larger total of 205,922 white inhabitants.

In that same issue of September 24, 1836, the *Register* reprinted an emotional call for action, which recently had been issued in Frederick:

REFORMERS, TO THE RESCUE

Now or Never

The people of Maryland, at the recent senatorial elections have, by a decided majority, signified solemnly, their will, that no man ought to be placed in the next senate of the state, hostile to a radical change in its legislative and fundamental laws; and it is the duty of every good citizen, to see that the will of the people is carried into full effect; and there being good cause to fear that a majority of the senatorial electors who have been chosen, will contemptuously disregard the well-known wish of those for whom they are to select lawgivers, every friend of order, and of that reform

which can alone long preserve it, is earnestly urged to attend a meeting, to be held at the court house in Frederick, at early candle light this evening, to discuss means to carry into effect the will of the people of Maryland in the formation of the state senate.

"Appalled at the prospect that a minority of the electorate and a scant majority of the electoral college could select a Senate composed exclusively of Whigs, Democrats throughout the State resolved upon a pattern of defiance which they felt would force the Whigs to accede to demands for reform."²⁰

The meeting in Frederick was either the first or a very early response to the resolve of the Democrats. It was described in a Frederick paper²¹ as "one of the largest and most respectable meetings ever held in Frederick." Two chairmen and two secretaries were appointed, and the addresses "were responded to most enthusiastically by the assembled multitude." The resolutions adopted spoke at length upon the "forfeiture" of public confidence by "the whole of the last senate and a majority of the house of delegates."

The meeting in Frederick could speak directly only to the two electors from that county. The proposal was novel and ingenious:

That the senatorial electors of this county, be instructed to require of the twenty-one Whig electors a pledge, that no member of the former senate, and no member of the house of delegates, who opposed the bill calling a convention of the people, shall be elected to the next senate of the state. That at least eight of the members of the senate to be chosen by the electoral college shall be selected from among persons known to entertain opinions and sentiments coinciding with the

19. DOZER, *supra* note 1, at 350-51.

20. Hagensick, *supra* note 1, at 350.

21. *Frederick Citizen*, September 16, 1836.

principles and opinions held by, and governing a majority of the people (205,922), who have elected 19 V. B. electors, and that in the formation of the senate there shall be a majority of members known to be favorable to such a thorough and radical reform of the constitution of the state as will ensure to all citizens living under it, equal political rights and privileges.

The citizens of Frederick were aiming high in this demand, seeking at least eight of the 15 members to be chosen for the new Senate. They continued:

Unless the pledges required by the preceding resolution, are solemnly given in true faith, the two electors from this county, be requested to refuse to enter into an election of senators: provided that the electors from other counties and cities, having a majority of the white population of the state therein, will co-operate with them to defeat the election of a senate, hostile to a reform of the constitution required in the first resolution.²²

Similar meetings were held in Elkton, Bel Air, Hagerstown, and Baltimore City; and they passed resolutions about the same as those from Frederick County.²³ The idea of boycotting the meeting of electors, thereby continuing the absence of a quorum, has been called "disarmingly simple."²⁴ It seems to have originated with the *Baltimore Republican*, the organ of the Democratic Party in the State.²⁵

22. *Frederick Citizen*, September 16, 1836; *Niles' Register*, September 24, 1836; SCHARF, *supra* note 1, at 190-91.

23. *Niles' Register*, September 24, 1836; Walsh & Fox, *supra* note 14, at 276.

24. Hagensick, *supra* note 1, at 351.

25. REPORT OF THE CONSTITUTIONAL CONVENTION COMMISSION 39 (Baltimore, 1967).

THE "NINETEEN"

The 40 members of the Senate electoral college gathered in Annapolis on the appointed day, September 19, 1836; but not in one group. The 21 Whigs assembled officially and qualified for office, while the 19 Democrats met privately and did not qualify. The Democrats were well aware that if any three of them should meet with the Whigs and qualify for office, even if they did not cast ballots, there would be a quorum and the remaining 21 Whigs could select the new Senate.

On the first day, September 19, the Whigs met at 12 o'clock noon in the Senate chamber. After qualifying for office, they remained until three o'clock, hoping that the Democrats (or at least a few of them) would attend. They then recessed until five o'clock, when they met again for several hours before adjourning until the next morning.²⁶

Negotiations between the two groups were attempted for several days, but without success. The Democrats then left Annapolis and returned home. At the same time, they released a long address to the people of Maryland:

Impelled by a deep and solemn sense of duty to acquiesce in the necessity which imperiously required a surrender into your hands of the high trust committed to us — it becomes us to submit fully and frankly the considerations by which our conduct has been influenced. It is well known that, in those counties and cities which we represent, the great body of the people are unchangeably riveted in the conviction, that the government of this state is based and administered upon unjust and anti-republican principles, and that similar views are entertained by respectable numbers of our fellow citizens residing in other parts of the state. That such an opinion is well founded, seems scarcely to admit of controversy. By the existing government, the

26. *Niles' Register*, September 24, 1836.

governor and members of the senate are not elected directly, as they ought to be, by the people; and many public officers who ought to be subjected to the control of those whose trustees they are, hold their respective offices, contrary to sound political principle, by a tenure for life.

In the formation of both branches of the legislature political power is apportioned arbitrarily without regard to any principle of moral or political justice. . . . The majority is allowed fewer representatives than the minority: thus inverting the first principles of a free government. . . . The counties of Kent and Calvert, with a population of 19,401, are allowed as many representatives in the senatorial electoral college and the house of delegates as the counties of Frederick and Washington with a population of 71,056, and Kent and Calvert, each, have double the number of delegates allowed to the city of Baltimore with a population of 80,625.

Quoting Article 4 of the Declaration of Rights, continued the statement of the 19 electors, the people have a right "to reform the old or establish a new government." This principle applies "whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual . . ." The names of all 19 electors were appended to this recital of principles.

At the same time, the 19 Democratic electors addressed another message to the 21 Whigs:

The friends of reform in Maryland have sought repeatedly to obtain from the legislature, by an exertion of the powers confided to that body by the fifty-ninth section of the constitution, such amendments of that instrument as are indispensable, and it is with regret we say that all their applications were in vain, and indeed it may be said, they were not even treated with that respectful deference to which the remonstrances of a large majority of the people are justly entitled. It would be needless for us here to

spread out in detail, the several applications for reform which have been made.

In concluding this address to the 21 Whigs, the 19 dissidents looked ahead in all frankness and confidence to the ultimate solution, in their minds, if the electoral college failed completely in its task of choosing a new Senate; and if, for that reason, the Legislature could not function.

We cannot doubt your concurrence with us in the perfect conviction of the competency of the people to accept a surrender of the legislative functions of the government, and that deeply imbued with the spirit of patriotism and justice, and guided by the lights of experience they will, through the instrumentality of a convention, so adjust and apportion them as to secure the inestimable blessings of a republican government.

Giving substance to this thought, the 19 electors in their address to the people included a recommendation that at the time of the elections in November, each county should choose six delegates to meet in Annapolis on the third Monday of that month, "clothed with full powers to extend the authority of all civil and military officers now in commission, until a convention hereafter to be chosen, can be convened to amend the old or form an entire new government for the people of Maryland."²⁷

The 21 Whig electors quickly composed and published a long reply to the 19 Democrats. It was entitled "Reform or Revolution in Maryland," and it was addressed to the people of the State. It recited first that the group had been elected under constitutional procedures and that they were "sincerely desirous of performing with scrupulous fidelity the duty devolved upon them." While meeting and qualifying for office in the constitutional mode, they

²⁷. *Niles' Register*, September 24, 1836.

recounted, they had heard reports that the 19 electors would not meet with them:

At first we did not credit the rumor. We did not believe it possible that any mere agents of the people of Maryland, selected for a specific purpose, the performance of a single and well defined duty, would gravely determine to make it depend upon any thing else than a fair construction of the constitution and the laws. We could not suppose that we, who were known to be under the most sacred and solemn obligation to execute a trust faithfully and conscientiously, could be approached with a proposition of bargain touching the performance of our duty. We never for a moment entertained the idea of trafficking upon such a subject

After a few days, it was continued, the 19 electors had left Annapolis. "Whether they are to return or not," continued the appeal to the people,

depends upon you. It becomes you to act promptly and decidedly. Be not deceived by the cry of reform Revolution is not reform. The history of the world reads us awful lessons of the former. . . . Can these things be predicated of Maryland, of a constitution adopted by men as pure, free and patriotic as ever lived? Time may have rendered some of its provisions unsuitable to the present condition of the state. Some changes are proper and necessary, but who can say that liberty is manifestly endangered, and that all other means of redress are ineffectual, but revolution.

The action of the 19 electors "involves a subversion of the very constitution we have sworn to support by the virtual substitution of numerical for constitutional majorities." The 19 electors

are not elected to subserve the views of any political division of the people of any county or city from which they may respectively come, but bound by the most solemn obligations to their country and their God, to be

faithful and true allegiance bear to the state of Maryland. . . . If any nineteen of them refuse to elect a senate because the majority will not violate their own plain and palpable duties, by permitting them to select a majority of the senate, they may, with like reason, hereafter, deny to the Eastern Shore her constitutional right to six members of the body. . . . If the nineteen had no other object in view, and as yet they have avowed none other, than the election of a senate favorable to a reform of the constitution, why did they not come into the college, take the oaths of office and vote for such a senate? Who can say that a senate of that description would not have been elected?

It was concluded:

PEOPLE OF MARYLAND, the crisis is an awful one — the times are big with the fate of freedom — If the revolutionary spirit, now stalking abroad among us, is not promptly subdued by the majesty of your power, upon you will rest the awful responsibility of being the first in the country of Washington, to give to liberty a mortal wound. . . . We are determined that, if confusion, anarchy and ruin are to come upon us, if all the bright hopes of the people of Maryland are to be forever blasted, and our once fair and happy land is to become a scene of desolation and terror, we will have the consolation of reflecting, in the midst of our afflictions, that we have faithfully performed our duty.

A "great public meeting" was called in Baltimore on September 26. It issued a long statement on the crisis, attacking "this bold proposition to overthrow the whole government at one blow, and to leave us in a state of nature and to the chances of the future for the establishment of a new one . . ." As for the 19 electors, "this is the office which these individuals sought under this constitution; the office of the people's agent under it, selected for the single purpose of electing a senate to continue the government under it." Their effort to secure an advance commitment of election of

senators favorable to their cause "was a proposition which required the twenty-one electors to commit wilful and deliberate perjury . . . to elect for a majority of that body such senators as the nineteen might be pleased to select for them." Continuing:

Fellow citizens of all parties — friends of law, order and religion, to you we appeal to mark the crisis at which this revolutionary attempt has uplifted its head amongst us — *The beginning of the end now is* — The enemy of all republican government is amongst us — It comes, as it ever has come in all such governments, under the guise of jacobinism — with great affected respect for the rights of the people, it strikes at the very root of their security by inculcating insubordination to our laws and institutions, and substituting the lawless and licentious impulse of the moment for the well regulated liberty of the freeman

What is the right of revolution? Is it a plaything to be wielded in every moment of excitement? Is it an instrument to be used whenever party expediency may require it . . . ? Is it not on the other hand, the last fearful resort of a free people . . . ? In a word, it is like the thunder of Jupiter, only to be wielded on these great occasions of elemental strife between society and government

The Baltimore meeting concluded with a series of resolutions: that the 19 electors have disobeyed the express command of the Constitution "and merit the severest reprobation of the people of Maryland"; they have attempted to introduce anarchy and revolution; they have forfeited "all claim to the support of the virtuous and patriotic of all parties." The 21 electors, on the other hand, "are entitled to the confidence and affections of the people of Maryland" and "have acted the part of honorable men and faithful public servants We are for reform, and against revolution," the meeting said as it ended its long statement. All this was reported in *Niles' Register* for

October 1, 1836,²⁸ which also carried accounts of similar meetings in Frederick and Cumberland.

Three days after the "great public meeting" held in Baltimore to support the 21 electors, another was held, on September 29, staunchly supporting the 19 electors. It was described as being the largest meeting ever of "mechanics and workingmen" in Baltimore. Its resolutions were that

the power to amend, change, or abolish the constitution is inherent in the people. . . . The existing constitution of Maryland is a blot upon the principles of republicanism and unworthy the respect of any American citizen. . . . The present is a propitious time for annulling or abolishing the existing constitution. . . . A reform of the constitution is a peaceable revolution to be deprecated only by a *power-loving aristocracy and grasping monopolists*.

The course adopted by the 19 electors was highly approved; and the address adopted by the meeting three days earlier was declared to be "a gross libel upon the workingmen of Baltimore." Concluding:

Our demand for just political rights, is neither jacobinism nor Robespierreism. The constitution of Maryland is no security for these rights; — as men, therefore — as freemen — as American citizens, we now make a claim of these rights, and believing in the sovereignty of the people, and conceding nothing to a mere delegates power, when that power, as it has been unwisely exercised by faithless agents, we of right may, and do recall it into our own hands — choosing a convention, rather than a legislature, to give us a pure and republican constitution.²⁹

By late September, the balance of public opinion and the prerogatives of the political establishment began to

28. Emphasis in original.

29. *Niles' Register*, October 8, 1836. Emphasis in original.

undermine the position of the 19 electors. Elections for the House of Delegates were held in early October; 60 Whigs were elected and only 19 of the "Van Buren party," or Democrats. That result, commented *Niles' Register*, "is an expression of the opinion of the people of Maryland in reference to the conduct of the nineteen recusant members."³⁰ In the national election, although Van Buren won the presidency, his party lost in Maryland.

As another expression of conservative editorial opinion, the Baltimore *American* commented that

Our State Government has reached a fearful crisis. It is openly threatened with dissolution. Nineteen agents of the people . . . refuse to discharge their trust. . . . The consequences are appalling. If total anarchy shall not reign over us, our national character will be destroyed, — our credit prostrated, — our internal improvements arrested, — the growing and cheering prospects of our city blasted, and all confidence in our institutions lost.³¹

Perhaps the "most unkindest cut of all" directed toward the "recusant" electors was a presentment brought in against them by the grand jury of Allegany County:

The grand inquest for the body of Allegany County being about to return to their homes, deem it their duty, before they separate, to take some notice of the causes which have led to the present momentous and alarming crisis in the public affairs of our state. Certain individuals, entrusted by the people with the duty of appointing a senate for the state, have refused to execute their trust, and have left the state without a senate. The conduct of those men is without excuse or

30. *Id.*

31. *American & Commercial Advertiser* (Baltimore), September 26, 1836. Hereinafter cited as the *Baltimore American*. This paper's columns had much space devoted to general commercial news, legal and court notices, and advertisements.

palliation — they intended to secure the triumph of a party, and, failing in that, to subvert the government and endanger the public tranquility.

The grand jury accordingly presented 18 of the 19 electors as "unfaithful public agents and disturbers of the public peace."³²

Allegany County and Cumberland were noted for their strong criticism of the 19 electors. At a meeting there on October 14, an attempt was made to adjourn the meeting by blowing out the lights. Earlier, a committee of vigilance had been appointed to seek information on "revolutionary" movements in the State.³³ Even the four Democratic candidates for the House of Delegates had announced prior to the election that they were "decidedly opposed to any measure tending to revolution by any party."³⁴

Given the decided trend of public opinion and the one-sided election for the House of Delegates, favoring the Whigs by a strong majority, it was natural that some of the 19 electors would begin to weaken in their resolve. By early October, there were recurring rumors that several of them were about to attend the electoral college.

John S. Sellman of Anne Arundel County was the first to go. He began negotiations with the Whig electors by inquiring of them, "most respectfully," whether any compromise would be offered; "and if any, what is its character and the principles on which it is based." Some of the Whigs responded to him with an assurance that a Senate would be

32. *Niles' Register*, October 22, 1836. Eleven of the 18 grand jurors were identified in the newspaper account as "Van Buren men," *i.e.*, Democrats. The other member of "the nineteen," unnamed in the presentment, was John S. Sellman. He had already announced that he would meet with the 21 electors and seek for a compromise with them in the choice of a new Senate.

33. *Niles' Register*, October 1, 1836; Hagensick, *supra* note 1, at 352.

34. *Niles' Register*, October 1, 1836.

elected favorable to constitutional reform. Indeed, they continued, "such would have been the case at any time since the period fixed by the constitution to form a senate."³⁵

There were early rumors also that Dr. Washington Duvall of Montgomery County and Wesley Linthicum of Anne Arundel County would soon decide to attend the electoral college. They at first denied the rumors and insisted that "it is now pretty certain that a senate will not be elected." However, by November 19, Linthicum and several others attended the electoral college, giving it two more than the quorum of 24. Linthicum announced that since the majority of the voters in Maryland had not supported the 19 Democrats, he "was determined to obey this will."³⁶ By that time the Democrats had lost the State for Van Buren and also the House of Delegates in the legislative election. It was the sort of response that elected officials could respect.

Meanwhile, the electoral college had been holding frequent "skeleton" sessions, perhaps with only three persons in attendance, in the hope that some of the Democrats would decide to attend their meeting.³⁷ When they finally reached and then exceeded the number required, they proceeded at once to elect the new Senate.³⁸ They chose 15 Whigs, with the Democrats casting blank ballots.³⁹

Governor Thomas W. Veazey already had declared that the Senate elected five years earlier, in 1831, would continue to be the Senate of Maryland "until superseded by the election of successors, as constitutionally and lawfully pro-

35. *Id.*, November 19, 1836; *Baltimore American*, October 5, 1836.

36. *Niles' Register*, October 15, November 19, 1836; *Baltimore American*, October 12, 1836.

37. *Niles' Register*, October 22, 1836.

38. ANDREWS, *supra* note 1, at 771; *Niles' Register*, November 26, 1836.

39. DOZER, *supra* note 1, at 356.

vided for." His power to continue indefinitely the tenure of the current Senate certainly was open to some constitutional question, yet the boldness of his action must have cast some doubts in the minds of the 19 dissidents. The successful election of a new Senate could have avoided any further question about the Governor's action.

The Governor spoke to this question some weeks later, however; and he admitted to no doubt about his power to continue the term of the existing Senate and thus to have a functioning Legislature to end the impasse. He pointed out that while the Constitution set times for the periodic elections to both the Senate and the House of Delegates, the terms of service of the members of both houses were not limited, except by the election of successors. This, he concluded, was a decision showing the "wisdom" of the "patriotic and eminent statesmen" who had framed the Constitution.

Furthermore, cited the Governor, there were both English and American cases to support his action. One had declared that a requirement for annual elections for a municipal corporation was directory only, and not mandatory. The Governor quoted Chancellor James Kent, also, to the effect that the power of filling vacancies in office is "necessarily implied" for every "aggregate corporation, from the principle of self preservation."

Accordingly, concluded the Governor, even if a new Senate had not been elected, he would "at once have called the general assembly together, with a view of their making provision for the election of other electors in the place of those who had refused and neglected to attend the college and perform their duty."⁴⁰ As events were to prove, the

40. *Niles' Register*, December 3, 1836; *Baltimore American*, November 10, 1836.

Governor had not made clear whether his special session was to involve the new senate or the old senate, and some of the criticism he received was based upon the understanding that it was the old senate which was called into session.

A SPECIAL SESSION ABORTED

Fortified with an "old" Senate, the good possibility that there soon would be a newly-elected Senate, and a House of Delegates that had been regularly elected early in October, Governor Veazey issued a proclamation calling the General Assembly into special session on November 21. The Legislature was due to go into its usual regular session on the last Monday in December, but the Governor determined that "in the present crisis of our affairs" it was "proper and necessary" to have the General Assembly convened earlier.

At the special session, he continued, he would "exert to the utmost, all the powers which have been, or may be vested in me by the constitution and laws, and which it may become necessary to employ, to curb the spirit of anarchy, disorder and revolution" manifested in the State. Also: "I do hereby require and enjoin all civil officers of the state, to be vigilant in the performance of their several and respective duties, at this important crisis." All military officers and citizens were to "hold themselves in readiness . . . to maintain the public peace, repress disorder, uphold the constitution, or enforce the laws." Finally, "I do solemnly DECLARE and PROCLAIM that the constitution of the state MUST BE PRESERVED and the government maintained, *as they now are*, until 'altered, changed or abolished,' in the manner constitutionally provided for."⁴¹

41. *Niles' Register*, November 12, 1836. Emphasis in original.

There was some protest over the strong language in the Governor's proclamation. One critic charged that the Governor, "instead of being a dispenser of conciliation and peace, is the very first that would bring civil war."⁴²

The *Baltimore Republican*, a paper devoted to the cause of the reformers, was scornful of the Governor's proclamation. "We lay before our readers this morning," it declared, "a proclamation issue by *king* Veazey, by the advice of their high *mightynesses*, the executive council." Speaking of the Governor's claim that members of the Senate of 1831 might continue indefinitely in office: "It would have been as well for him to have referred to the article in the constitution on which he founds his declaration . . . , for we can assure him his royal word will not pass current on such subjects . . ." Continuing:

If the members of the old senate can constitutionally retain their seats until others be elected to supply their places, there could have been no possible necessity for an earlier meeting of the legislature than usual. . . . There is no authority by which the members of the old senate can be called upon to act, nor is there any authority for them to act as senators, after the time fixed for the election of others in their places.

Well, it seems, then, that we are to have an *extraordinary* session of the legislature, composed of persons who constituted the senate, whose term of office expired in September last, and persons elected to the house of delegates in October last. . . . This hodge podge legislature will not be recognized, and they might as well be now informed of the fact. . . . Those who live by their offices will, most probably, be very willing to obey the call

The proclaimer would not have dared, before the late election, to insult the people by issuing such an incendiary production; but, as his party has succeeded in that

42. *Id.*

election, he now displays the rancour of his heart, and has become a very giant. — We live under a government of laws, to which those in authority are as much bound as those who are ruled⁴³

Pursuant to the call of the Governor, the delegates-elect met in Annapolis on Monday, November 21, 1836. They organized on the following day. For the moment, nothing else occurred. "The members of the new senate had not all arrived at Annapolis; and the governor will delay his message until it is organized. Nothing of interest had transpired in the house."⁴⁴

After meeting on the call of the Governor on Monday, November 21, the House of Delegates adjourned *sine die* on Saturday, November 26. The assertion that "nothing of interest had transpired in the House" was misleading, to say the least. The five days had been consumed with a variety of serious questions of procedural and constitutional import; and the device of adjourning *sine die* evidently was chosen as the easiest and most available answer to the unprecedented dilemma. The problems were described in some detail in the *Annapolis Republican*.⁴⁵

As a starter, there was the question whether or not the Governor by proclamation could extend the tenure of the Senate elected in 1831. From the absence of any provision in the Constitution limiting the duration of terms in the Senate, even while requiring an election every five years, majority opinion generally assumed that the Governor

43. Quoted in *Niles' Register*, November 12, 1836. Emphasis in original.

44. *Niles' Register*, November 26, 1836; *Baltimore American*, November 22, 1836.

45. Quoted in *Niles' Register*, December 3, 1836; *Baltimore American*, November 28, 1836.

indeed had acted within a proper scope of authority in declaring the tenure extended.

The second problem flowed from the first but was more difficult. In his proclamation convening the General Assembly in extraordinary session, the Governor had intimated in the preamble that the Senate elected in 1831 continued to be the Senate of Maryland; his implication was that the earlier Senate was the one required by the proclamation to come into session. Just before the special session was to begin, however, a new Senate was chosen by the electoral college; and the evident effect of the election was to end the tenure of the Senate of 1831. Query: what group actually composed the Senate of Maryland on the day the special session was to begin?

The third question stemmed from the first two. The Constitution (Article 29) required not less than ten days' notice by the Governor for calling a special session. However, the newly-elected Senate had not had any such extended notice, and there was nothing in the proclamation that the new senators "could recognize as embracing them." Query: if the new Senate participated in the session, could the legality of the entire session be challenged on the ground that the Senators had not received proper notice?

Fourthly, the Constitution (Article 29) required the two houses to agree upon a date for adjournment. If the House attempted to adjourn before the Senate had a quorum and had organized, would this provision be violated?

A number of other puzzling questions helped to confound the whole situation. Two members of the electoral college for the presidential election were also members of the newly-elected Senate. Would these dual offices be prohibited under the Constitutional mandate (Article 37) that a person holding an office under the United States could not also have a seat in the General Assembly?

Next, constitutional amendments had been proposed at the prior session to create Carroll County and to increase the representation of Baltimore City in the House of Delegates. Because the amending requirements in the Constitution (Article 59) required that a constitutional amendment be proposed in one session and confirmed in the following session (with an election intervening), would it be necessary to consider these two amendments during the special session? If they were not then considered, could they be on the agenda for the regular session?

With all this mishmash of problems, the simplest solution was that the House of Delegates should adjourn *sine die* before "one" of the Senates could find a quorum and be organized. The introductory order for adjournment was short and succinct, with no mention of the circumstances under which the Legislature was convened. However, a more wordy order was proposed and adopted. It cited the "firm, dignified and energetic stand" taken by the Governor in convoking the extraordinary session "to defeat the revolutionary designs and proceedings entertained and carried on by the recusant electors, with the view of overthrowing the constitution and form of government." Since a sufficient number of the "recusant electors" had been induced to perform their duty, further legislative action was said not to be "indispensably requisite." Finally, since it was felt uncertain "whether a quorum of the senate can be assembled without considerable delay and consequent expense to the state," it was ordered that the House of Delegates should adjourn immediately, *sine die*.

ANOTHER REFORM CONVENTION

Twelve counties and Baltimore City sent delegates to another large Reform Convention, meeting in Baltimore on November 16, 1836. The reformers by this time had lost the

election for members of the House of Delegates and also the presidential election, and they were about to lose their attempt to prevent the meeting of the electoral college for the Senate. They met for four days, however, with no lack of spirit and enthusiasm; and they adopted a series of resolutions and drafted a list of the constitutional amendments they wanted.

One resolution assailed Governor Veazey for his "extraordinary procedure" in calling a special session of the Legislature. In another, "the convention repels proudly and indignantly the aspersions cast upon its members" by the Governor. "The friends of conventional reform have neither done nor designed any thing inconsistent with their duties as peaceable citizens, or in violation of the laws of the state." Continuing, "the people of Maryland, like those of every republican community, have the right to change the form of government which they have voluntarily adopted," and "this right should be exercised cautiously, temperately and with great deliberation . . ."

They desired, they said, that a new constitution be submitted to the people for adoption or rejection, containing among others the following provisions:

1st. The election of the governor by the people, and the abolition of the council.

2d. The election of one senator from each county and the city of Baltimore, directly by the people.

3d. The reapportionment of the house of delegates so as to do justice to the populous districts, and at the same time give to the small counties, and the city of Annapolis, ample power to protect their interest.

4th. The abolition of all officers for life, the appointment of judges for a limited time, by the joint action of the governor and senate.

5th. The election of clerks and registers by the people.

6th. Limitation and restraint on the powers of the legislature in the future grant of charters.

7th. The whole constitution to be so arranged and digested as to be free from uncertainty and obscurity.

The Reform Convention resolved finally that it would meet again in Annapolis on the first Monday in January, 1837, unless otherwise notified by the president of the convention.⁴⁶ This meeting was cancelled; the General Assembly had met in regular session by that time, and prospects seemed favorable for a measure of constitutional reform through the prescribed channels of legislative proposal and confirmation.

Members of the Reform Convention were gratified at the accomplishments of the legislative session which began in the last week of December, 1836, but after the session was ended, they were by no means completely satisfied. They had particularly wanted a constitutional convention to consider changes in the entire Constitution, and this they had not achieved. Both parties were "bound" to support the idea of a constitutional convention, one member of the reform group wrote, "and solemnly pledged to each other. . . . But the obligation has not been regarded. The pledge has not been redeemed. . . . The faithful friends of constitutional reform, who steadfastly adhered to the convention, have been deserted" ⁴⁷

Writing several weeks after the Legislature adjourned, the president of the Reform Convention acknowledged the changes proposed during the session as approaching "something nearer republican principles than the old system." However, he continued, nothing had been done about the judiciary, "although perhaps no feature in our govern-

46. *Niles' Register*, December 3, 1836; SCHARF, *supra* note 1, at 194-95; ANDREWS, *supra* note 1, at 771-72.

47. *Niles' Register*, April 22, 1837.

ment is more defective. No state in the union has so cumbrous, expensive, and ill-arranged a judiciary." Also, "the election of the clerks and registers by the people for a limited term, is a reform extensively desired in order to produce a salutary responsibility in these functionaries" Finally, he stressed, the constitutional amendments proposed by the General Assembly would remain inoperative until confirmed by the next session; "and when we reflect that these reforms have been reluctantly extorted by the public excitement on that subject, it is obvious that supineness on our part would enable those hostile to change, to defeat the confirmation of what has been done." ⁴⁸

THE SESSION OF 1836

The Legislature met for a regular annual session, beginning on December 26, 1836. The members proceeded to enact measures for many of the reforms sought by the Reform Convention. Considering the two decisive victories won by the Whigs during the fall of 1836, the members of that party accomplished more for the reform movement than perhaps might have been expected from a conservative party in a time of partisan division.⁴⁹

The Governor in his message to the legislators congratulated them "upon the restoration of peace and quiet within our borders." Despite the air of surface calm, however, there remained an undercurrent of criticism and suspicion against the 19 "recusant electors." One non-legislator, an attorney, held that their conduct was "cognizable by the criminal law," on the ground that it was a crime "to refuse to put the supreme law in operation." ⁵⁰

48. *Id.*, May 27, 1837.

49. *Cf.* Hagensick, *supra* note 1, at 356, 365.

50. STEINER, *supra* note 1, at 164.

Some legislators, on the other hand, inquired whether existing laws needed to be bolstered; a select committee was appointed to investigate "into the expediency of reporting a bill making it a high crime and misdemeanor for citizens to conspire against the constitution of the State." Nothing was done by the General Assembly on this subject, but some of the proposals called for harsh treatment of "seditious" behavior.⁵¹ Another by-product of the unrest during the preceding year was long and serious discussion of the possible secession of the counties on the Eastern Shore and in Southern Maryland.⁵²

In the main, however the General Assembly during its session of 1836 worked diligently on the general problem of constitutional reform. There were disagreements on many matters of detail, to be sure; but if one may judge from the results achieved, the session was remarkably productive.

Two days after the session opened, on December 28, the House appointed a select committee "to take into consideration what alterations and amendments, if any, of the Constitution may be necessary and expedient." The committee was to comprise one member from each county and one each from Baltimore City and Annapolis.

Some ten days later, on January 17, the select committee submitted a partial report of the subjects which should be considered. They included a change in the basis of representation in the House, one on the basis of representation and in the election of the Senate, and one on the manner of electing the Governor and of making civil appointments. A bill was submitted on these items, and the select committee said its future decisions would rest upon the legislative reaction to these first proposals.

51. See the heading "Subversion" *infra*.

52. See the heading "Voluntary Secession" in Chapter 7 *supra*.

The task imposed upon the select committee was literally gigantic. All manner of political, geographic, and philosophical differences had to be faced and resolved. When the committee reported on January 17, in a presentation covering nine pages in the *Senate Journal*, it devoted one full page to an analysis of its problems and of its approach to its recommendations:

REPORT

Your committee entered upon the performance of the highly responsible and interesting duties of their appointment, with a becoming sense of the magnitude of their task, and of its intrinsic difficulty. They fully realized that they were invested with an important and a very delicate commission: — important, because it concerned the fundamental law, and delicate, because it would bring them into conflict with local prejudices, with sectional interests, and preconceived opinions. Whatever their conclusions might be, they readily foresaw that many would condemn, and few approve. For although many are agreed that Reform is necessary and proper, very few concur in any specific proposition, or in any general plan. Some are for limited, others for general reform. Of the former class, some look, exclusively, to one thing; others, exclusively, to another. One desires some alterations in regard to the Judiciary, and in nothing else; another, in respect of the Executive; and a third, in relation to the Legislative Department. Of those who desire a general reform, as it is called, some desire that they shall be made through the medium of amendments to the Constitution; whilst others insist, that they shall be made by a convention, and by a convention alone. These last do not desire reform merely; but reform *by a convention*; and assume the ground, that however the constitution may be altered by legislative action, the majority of our people will not live under its authority. Another class assert, that the constitution and form of government requires no further amendment; and that it is well adapted to the wants, situation and exigencies of our people.

Turning next to substance, the select committee said that "the primary question" submitted to its decision was that of having a constitutional convention. Here the committee spoke decisively. Its members agreed unanimously, it reported, "that the General Assembly has no such power. They believe that the passage of a law for that purpose, without a previous alteration of the constitution, would not merely be the usurpation of a power not entrusted, but a plain violation of an express article of the constitution." Here the committee referred to Article 59 of the Constitution of 1776, which specifically enjoined that no part of the Constitution could be altered, changed, or abolished, unless so determined by act passed in two successive sessions of the Legislature. It was very clear, the committee concluded, that the power of constitutional amendment "is reposed by the constitution in the General Assembly, *and in the General Assembly alone.*" If, therefore, the Legislature should call a constitutional convention, and the convention proposed a new constitution, that document then would be "*altered and amended . . . in a manner unknown to the constitution.*" The Constitution then would have been superseded, "not by the General Assembly, the only constitutional legislature; but by a convention, a power not known to the constitution, nor consistent with it. Those who have solemnly promised to support the constitution, cannot disregard its plain provisions."⁵³

Continuing its political dissertation, the select committee spoke further of its philosophical limitations:

Your committee do not mean to question the great political apothegms, announced and asserted in the Declaration of Rights. The rights there declared are above the constitution, and not derived from it. The constitution itself, sprang from the exercise of the great

⁵³. Emphasis in original.

power, which is claimed in the first article. It is the social compact, there intended; and in the provisions of that compact, the General Assembly had its origin, and therein will be found the limits to its powers. The question submitted to the committee, concerned the power of the Legislature — not the power of the People. Unquestionably, the legislature can so alter and amend the constitution by two successive enactments, as to make it lawful to call a convention, and to provide, by law, for the election of its members. But as the constitution now stands, this cannot be done; and it only remains for your committee to suggest such alterations in its provisions, as, in their opinion, are proper to be made.

Your committee may be allowed, they hope, without impropriety to remark, that they took up, with great respect, for consideration and revision "The Constitution and Form of Government," under which the citizens of Maryland, for two generations, have lived in happiness and peace. Under the broad shield of its protection, the weak found a refuge from oppression, and the stranger, an asylum. All were safe in their persons, secure in their property, and protected in their characters. It was the work of patriots, who had put their all in peril for the rights of man. It was framed and adopted at a period, when every tongue was eloquent in favor of liberty, and in condemnation of arbitrary power. It was the compact of the Freemen, and the Delegates of the Freemen of '76; solemnly formed and adopted, as a law for themselves, their children and successors. Your committee *felt* that it was not rashly to be changed, nor for light and trivial causes.

At the same time, if the action would be within the existing constitutional framework controlling the mode of making amendments, the select committee "readily concluded" that changes were desirable in the basis of representation in the House of Delegates, the representation for Baltimore Town, and the membership and election of the Senate. The direct election of the Governor also was proposed.

The committee had difficulties with its recommendation for the Senate. Its members could agree to having one senator for each county, but some still wanted the senators elected by some mode other than the popular election used for the House of Delegates. A bare majority of the committee agreed to popular elections, but other members wanted to retain the system of electors in making the actual choice.

There were difficulties also with respect to the election of a Governor. The committee agreed that he should be chosen by popular election, but it was disturbed at the implications of this system in Maryland. "The city of Baltimore, from her great population and her central position, would, in such a contest, very greatly influence, if not control, the result. Her popular vote is nearly one-fourth of the aggregate vote of the whole state . . ." A citizen of Baltimore could not be deprived of an equal vote in a general election, however. The committee suggested, therefore, that the State be divided into four gubernatorial districts, with a governor to be chosen in succession from these several districts.

Also for the executive branch of government, the committee proposed the abolition of the Council and the creation of a new office of Secretary of State.

Finally, the select committee made no recommendations for change in the judiciary. "Any inroad upon a well established system," it said, "is fraught with danger, and should not rashly be attempted."

It was upon this closely reasoned and rational approach from its select committee that the two houses of the General Assembly considered and then adopted an omnibus bill proposing a wide series of amendments to the Constitution of Maryland. This was accomplished by a bill passed during the session of 1836 and confirmed in 1837.

THE OMNIBUS CONSTITUTIONAL AMENDMENT

The long-debated reform amendments to the Constitution of Maryland were proposed in omnibus form in Chapter 197 of the Acts of 1836. They were confirmed by Chapter 84 of the Acts of 1837.⁵⁴ The amendments were in the same form as had become traditional during the sixty years since 1776; they appeared as "new language," that is, with no reference to the articles of the existing Constitution which were being amended or changed. The procedure compounded the difficulty of knowing and determining the content of the Constitution after 1836. Even before that time, the provisions in the original Constitution might or might not still be in effect, depending upon the amendments during the intervening years. It required an informed student of the law to work through the maze of amendments, and the long omnibus amendment in 1836 and 1837 made public use of the document almost hopeless. There were to be many complaints on this score after 1837, not ceasing until the Constitution of 1851 was adopted and in force.

The first block of eight sections concerned the Senate of Maryland. Beginning at the December session of 1838, it was to have 21 members; and this number was to prevail

54. Immediately after the vote was taken to pass the confirmatory bill in the House, on February 13, 1838, Delegates Augustus R. Sollers and Nathaniel Duke of Calvert County journalized a "protest" against the bill:

We regard the proposed reform . . . as an experiment, the good results of which are at least doubtful. We believe that experiments in forms of government are dangerous alike to the happiness, prosperity and liberties of the people, and productive of a restless spirit that spurns any form of government, however mild, and however safely it may guard the best interests of the people. . . . We, therefore, protest against the passage of this Bill, which seeks to remodel an instrument consecrated by the wisdom and patriotism of our ancestors, and which has secured to every citizen of this State every right which freemen should ask, or ought to enjoy.

"forever thereafter." They were to be chosen by popular election, with one for each of the 20 counties and one for the city of Baltimore. Elections were to be held along with those for the House of Delegates. The term of office was set at six years; except that after the first election the senators were to be divided into three classes, with terms of two, four, and six years. Thereafter, an election would be held every two years, affecting only those Senate seats for which the term then was ending. Qualifications for office were to be the same as for the House of Delegates, except that senators were to be over 25 years of age and to have a residence qualification of three years in the county or city. Vacancies were to be filled by popular election. Finally (and this applied also to members of the House of Delegates), the two-office restrictions in Article 37 of the existing Constitution were declared repealed. In their place, all members of the General Assembly, while acting as such, were declared not eligible for any civil office; and during the time for which elected, they could not be appointed to any civil office which had been created or had its emoluments increased during that period. Another section below (No. 12) gave to the General Assembly general power by law to regulate all matters concerning elections for both houses.

A second block of several sections concerned the House of Delegates alone. From 1838 through 1840, the House was to have a sliding scale of representation. Baltimore City, Baltimore County, and Frederick County were to have five delegates each. Four delegates were assigned to each of the counties of Anne Arundel, Carroll, Dorchester, Harford, Montgomery, Prince George's, Somerset, Washington, and Worcester. Three delegates were designated for each of the counties of Allegany, Calvert, Caroline, Cecil, Charles, Kent, Queen Anne's, St. Mary's, and Talbot. Annapolis was to retain one delegate (in addition to the Anne Arundel County delegates) for these three years, but after 1840

Annapolis would not have any special representation in addition to that of the county. After the census of 1840, the whole basis of representation in the House was to be changed, by adopting the type of arithmetic formula to be familiar for more than a century thereafter. A county with less than 15,000 inhabitants was to have three delegates; from 15,000 and up to 25,000, four delegates; from 25,000 and up to 35,000, five delegates; and above 35,000, six delegates. This formula applied also to Baltimore City. All the numbers were described as "federal numbers," meaning that all whites, all free Negroes, and $\frac{3}{5}$ of the slaves were to be included. One exception to the formula for 1841 and thereafter was that a county should never have fewer delegates than awarded to it for the election of 1838.

Section 13 of the Act of 1836 abolished the office of Council to the Governor and vested the whole power of the executive branch in the Governor. Section 17 created a new office of Secretary of State, to be appointed by the Governor with the advice and consent of the Senate and to discharge such duties and receive such compensation as prescribed by law.

The next block of sections, continuing after No. 13, concerned the office of Governor. He was given general power, with the advice and consent of the Senate, to appoint all officers whose offices were created by law and for whom there was no other power of appointment. The Governor was given power to fill vacancies occurring while the Senate was in recess, but these appointees could have only temporary commissions expiring after the Senate came into session. The Governor could not twice nominate the same person to the same office during the same session; and a person once rejected by the Senate could not be appointed to the same post while the Senate was in recess.

Governors were to be elected from three districts, in rotation. The eight counties of the Eastern Shore comprised

the eastern district; the five counties of Southern Maryland, plus Montgomery County and Baltimore City, were the southern district; and Baltimore and Harford counties, together with the four counties to the west, were to compose the western district. Beginning with the year 1838, governors were to be chosen by popular election, although also subject to the rotation. The term of office was to be three years. The Governor was required to be at least 30 years old and to have been for three years a resident of the district from which chosen. In case of a vacancy in the office, the General Assembly by joint ballot was to choose a successor from the same gubernatorial district as the recent Governor. Pending this election, the office was to devolve successively upon the Secretary of State, the President of the Senate, and the Speaker of the House of Delegates. A person once elected and then serving as governor was declared not eligible for the next succeeding term. The General Assembly was given power by law to regulate all matters of election for the Governor. Questions about his qualifications and the votes he received were to be determined by the Senate.

Finally, appended to the list of provisions concerning elective offices, there was a separate section declaring that the city of Annapolis would continue to be the seat of government. This was added by amendment to the original bill.

One other section was added to the bill, by amendment, and its content was completely foreign to the purpose and scope of the other portions of the Act. It was declared in section 26 that: "The relation of master and slave, in this State, shall not be abolished, unless a bill so to abolish the same shall be passed by a unanimous vote of the members of each branch of the general assembly;" and also be confirmed by a unanimous vote at the next regular constitutional session. In such an event, the master was to receive full compensation.

In addition to proposing the omnibus bill, the 1836 session of the General Assembly passed Chapter 19 to confirm the creation of Carroll County; and by Chapter 76 it increased from two to four the number of delegates allotted to Baltimore City (and the omnibus bill was further to increase this number to five). In sum, many of the complaints of the reformist groups were met. The constitutional unrest was quieted for a number of years, but, as would be seen, it was not completely stilled.

SUBVERSION

The success of the 1836 session in proposing the series of amendments to the Constitution did not at all allay the underlying feeling of resentment against the furore of the preceding months and the near success of the 19 electors in their attempt to block an election for the Senate.

Late in the session, on March 2, 1837, an order was introduced into the House to establish a select committee to consider the subject:

Ordered, that a select committee to consist of five, be appointed to enquire into the expediency of reporting a bill to make it a high crime and misdemeanor for any citizen or citizens of this State, to plan, combine, or conspire together to subvert the constitution and form of government, otherwise than is established by that instrument and the law of the land, and to affix such penalty as they may deem proper and commensurate with the offense.

Two amendments were offered to the order. They were combined into a motion to insert after the word "government," the following: "and to forbid any part of the citizens of this State from calling in question the acts of the present dominant party of the State and of the General Government."

A motion to reject both the order and the amendments was defeated. Another motion was rejected to strike out from the amendment the words "and of the General Government." The vote here was 23 to 44. Next, however, the entire amendment was defeated; and the word "subvert" in the original order was changed to "alter or change." In that weakened form, the order was adopted, 49 to 20. The attempt failed at that point, and no legislation was passed at that session for the punishment of "subversion."

The possibility that some of the protests and tactics of the reformist movement in 1836 did, in fact, constitute subversion raised knotty questions of historical cause and effect; but they were not to be answered. What would have happened if the 19 electors had succeeded in thwarting all efforts to elect a Senate, and in so doing had brought the entire State government crashing into impotence? Would that, indeed, have been subversion; or would it have come within the compact theory of government stated in Article 1 of the Declaration of Rights; and would it have come within the right claimed in Article 4 of the Declaration of Rights, that "whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought, to reform the old or establish a new government"? Article 4 continued with the assertion that "the doctrine of non-resistance against arbitrary power and oppression, is absurd, slavish, and destructive of the good and happiness of mankind."

What also might the Federal government have done? The Federal Constitution (Article IV, section 4) said that "the United States shall guarantee to every State in this Union a Republican Form of Government." A few years later, in 1841 and 1842, Dorr's Rebellion in Rhode Island was to lead

to a call for the militia to support the established government.⁵⁵

The constitutional crisis of 1836 had a potential for being perhaps the most serious one in Maryland's history. During the two earlier crises, the formative years of the 1630s and the revolutionary years of the middle 1770s, there was a basic and general sense of union through adversity. The later problems of federalism during the 1860s were to be settled in large part in Maryland by the supervening military power of the Federal government. In 1836 there was no strong evidence of a general sense of union and no reason to suppose that Federal military power would impose a solution. Whatever the dangers and the potential, however, the crisis of 1836 was successfully resolved.

55. See JOHN MABRY MATHEWS, *THE AMERICAN CONSTITUTIONAL SYSTEM* 56-60 (New York, 1932). See also Hagensick, *supra* note 1.