

MARYLAND COLONIAL ERA HISTORY 1607-1776

5. Institution-building

The following largely verbatim excerpts are taken from Brugger, Robert J., *Maryland A Middle Temperament: 1634-1980* (Baltimore: Johns Hopkins University Press, 1988) and cited as Brugger [page #]. Reprinted with permission of Johns Hopkins University Press.

What was the evidence of democratic institution-building during the colonial era, such as through representative assemblies?

Questions of governance posed serious problems of a different sort [than conflict with William Claiborne]. The benevolent intentions of Lord Baltimore – still in England – and the interest of settlers still on the Potomac frontier almost certainly had to clash, and even during the Claiborne controversy differences arose over the fundamental issue of lawmaking. In the beginning Baltimore's view was that he would make all needful statutes for the settlement, submitting them to the advice and counsel of freemen (males not bound in service) assembled as the charter contemplated. Before long, many constituents, probably most of the Protestants, concluded that fairness would be better served by reversing the order. They wished to frame laws that the proprietor would then seal with his approval. Records of the first assembly session in January 1635 do not survive, but during that meeting members apparently tried to take the first step in legislating. Governor Leonard Calvert, who sat as head of the one-house body, objected to the "acts;" their content aside, he said, they represented an unjustified assumption of authority. Baltimore's own reply arrived in April 1637, when he directed his brother to call another assembly for the following January "and then and there to signify to them, that we do dissent to all their laws, by them heretofore . . . made within our said province, and do hereby declare them to be void." He enclosed his own statutes and ordered the governor to have them confirmed. When the assembly met it formally rejected Baltimore's statutes and formed a committee to write its own. The committee drafted twenty-six bills covering "enormous" criminal offenses and protecting property rights; it also adopted seventeen of the proposals Baltimore had made – which included procedures for obtaining land and the enforcement of military discipline.

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Maryland was a proprietary colony.

[In] establishing proprietary offices, Baltimore claimed every privilege of the Maryland charter. In his 1637 letter of commission to Leonard Calvert, Baltimore named his brother chancellor and chief judge as well as governor, entrusting him with all judicial powers, civil and criminal – although the governor was to share with the council jurisdiction over offenses involving penalty of life or limb. Calvert was empowered to issue grants, writs, and pardons, and was to establish public ports and markets. Baltimore made [Catholic gentlemen Jerome] Hawley and [Thomas] Cornwallis councillors; as the proprietor's trusted advisors, they received a personal writ of summons to the assembly sessions. A third councillor, John Lewger, conveyed the commission itself. Lewger, Baltimore's old Oxford friend and a recent convert to Catholicism, was also to act as provincial secretary – the source of many more proprietary officials later in the century – and head of the land office.

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Swiftly growing, religiously diverse, the province faced serious economic, military, and legal problems in [the mid-seventeenth century]. Further developments in the structure of government served to sharpen political differences. Before the troubles between the proprietary regime and Puritans, assembly members had successfully petitioned the governor and his councillors to meet in separate session. During [Josias] Fendall's governorship [1657-1660] that division into upper and lower houses survived, as did the claim of the lower house that proprietary measures like new duties and taxes required its consent before becoming law. An informal system of representation – by which freemen attended personally, gave their assembly votes to others by proxy, or selected burgesses – gave way after 1658 to elections for four delegates per county. Though as a rule heads of households sat on juries and held minor offices, all freemen were entitled to vote. The “people” and the proprietor each had a house adhering to its interests. So earnest were delegates in pressing against the limits of their political power that in 1660, with the collusion of Fendall, who evidently agreed to exchange Baltimore's commission for one from the delegates, they briefly challenged the council and the Lord Proprietor for supreme control in the province.

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At the local level, the growing responsibilities of county courts drew an ever-larger number of men, mostly Protestants, into places of public trust in the last decades of the seventeenth century. Justices of the peace by 1660 heard and decided all civil actions involving three thousand pounds of tobacco or less and all criminal cases except those for which penalties extended to loss of life or limb.

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Most of the men assuming political prominence in the early eighteenth century *** reflected the later success of merchant planters and lawyers. *** As in Virginia, they saw their sons appointed to posts of ascending responsibility. *** An act the assembly passed in 1704 illustrated the territorial sensibility that worried [Governor John] Seymour [1704-09]. Intended “for the Incouragement [sic] of Learning and Advancement of the Natives of this Province,” it aimed at absentee officeholding and – excepting direct commissions from the Crown – required three years' residence in Maryland before appointment to posts of trust and profit.[fn omitted]

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Besides supplying Baltimore's personal income and supporting the Anglican church, Marylanders through assorted payments contributed to a governmental structure that burdened them considerably and left most of them on the “outside.” Allowances for sitting legislators, judges and their clerks represented reasonable public costs. But a complex system of fees made any official transaction in Maryland expensive and inconvenient. The provincial chancellor collected fees for 32 duties that included sealing an original writ (five pounds of tobacco) to sealing a land patent (ninety pounds). The secretary of the province earned from five to more than two hundred pounds of tobacco for 127 listed services. Sheriffs were due nine pounds of tobacco for swearing a witness in county court. The number of their paid functions exceeded 60. The commissary general or judge of probate listed 43 fees, the county clerks 61.

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Currency

Among provincial complaints [in 1728] was the lack of paper currency that would promote economic growth and offer an alternative to tobacco payments of some fees; unless the house wrote a law making the paper system conditional on Lord Baltimore's approval, the council refused its assent. Exploring the record of earlier assemblies with his provincial history in mind, [Governor] Benedict Calvert in October 1729 wrote his lordship a long letter offering perspective on all the issues that excited the lower house and the "proud, petulant and Ignorant planters" who tried to "keep the Common necessary support of Government so much under their Thumb." [fn omitted]

Lord Baltimore took matters into his own hands. After sending Samuel Ogle to replace his brother, who died returning to England, he himself sailed to Maryland, landing in November 1732. Greeting him and Lady Baltimore at Annapolis were bonfires, cannon salutes, a poem in the *Maryland Gazette*, and the cheers of townsmen warmed by free rum punch. Not for almost a half-century, since 1684, had a Lord Proprietor sat in the province. The social swirl in the capital that winter reached new heights of elegance, but all the while Baltimore attended to business – the controversy with the Penns, settlement of Western Maryland, and above all the spring meeting of the assembly. He inspected revenue books, consulted with lawyers, and saw firsthand the need for currency in the colony. He sent for Daniel Dulany, before whom he dangled three choice places in the proprietary establishment – agent and receiver general, judge of the vice-admiralty court, and attorney general.

Then, in March, Baltimore presided over a watershed session of the assembly. He consented to an act floating ninety-thousand pounds in one-to-twenty-shilling notes, to be backed by tobacco export revenues invested in Bank of England stock. Surprising members of the lower house, Baltimore rejected a bill continuing the equivalency - of - quitrents scheme. Instead his lordship revived the system of collecting rents and ordered Dulany, the former house leader now crossed over to the proprietor's side, to arrange for gathering them. Removing another form of leverage that the lower house had employed in recent years, Baltimore next announced that his governor in the colony would be paid by the 1704 duty rather than by periodic appropriation. Refusing to bargain over officers' fees, the proprietor in April 1733 simply published a new list setting them forth, as his brother Benedict had advised, and left for England that summer.

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In several respects the political structure of the colony stood open to criticism. Representation in the assembly increasingly favored the Eastern Shore counties, where white population growth failed to keep up with that on the other side. After the creation of Frederick County in 1748, both shores contained seven counties and therefore sent an equal number of delegates, four from each county, to Annapolis. That town succeeding to a privilege earlier allowed St. Mary's City (and a center of court party strength), elected two burgesses. By 1760 neither the Eastern shore as a whole nor the lower Western shore any longer registered gains in numbers. Elsewhere in the following decade population increase averaged 20 percent. After the French abandoned Fort Duquesne late in 1758 and the threat of Indian attack subsided, Frederick County – all of old Prince George's west of Rock Creek – grew rapidly, by 54 percent between 1765 and 1775. Both Eastern Shore sensibility and the caution of the proprietary regime prevented a political adjustment to reflect population trends. In 1760 Lord Frederick [Calvert, 6th Lord

Baltimore]'s principal secretary advised against creating new counties, pointing out that every new division "by increasing the number of Delegates, increases the number of opponents to the Government.." [fn omitted] Thirteen years later, when another proprietor [Henry Harford] answered the pleas of northern Baltimore County citizens by allowing the creation of Harford County, Eastern Shore legislators successfully sustained the balance between shores by obtaining Caroline.

Maryland's electoral requirements in those years, besides prescribing oaths that Catholics could not take in good conscience, conformed to an act of 1715. Seeking to follow English precedents "as near as the Constitution of this province will Admitt," that statute limited house membership and voting for delegates to freemen who had patented fifty acres of land or (hereby including well-off tenants) held a "visible estate worth [40#] sterling. By British tradition, electors also had to be natives of the realm, at least twenty-one years old, and have paid taxes within twelve months of the election. While requirements for Annapolitans were slightly more relaxed, Maryland law excluded a sizable body of freemen. Virginia at the same time required that white freeholders own only twenty-five acres or hold a long-term lease on that much land. In Prince George's and Talbot counties in the mid-eighteenth-century 57 percent of private landholdings smaller than fifty acres were freeholds that would have earned one the right to vote in Virginia. The "visible estate" provision introduced a subjective element, but [40#] sterling represented no small sum. The native-born citizenship requirement hindered voting among the Germans in western Maryland. A parliamentary naturalization of 1740 supposedly invited non-British Protestants in the American colonies to enter the political fold, at least so far as to vote (it did not extend to officeholding), but its complexities prompted Daniel Dulany, Jr., in 1758 to seek a simplified act for Maryland. That measure, important to property titles as well as to political participation, passed the lower house but failed in the council. While Maryland law did not specifically exclude free blacks (as did Virginia) otherwise qualified from voting, custom generally did not encourage them. About one in three white adult males in Maryland could not meet property or religious stipulations. [fn omitted]

Brugger 97-98

Were there political parties or organized factions that contested local elections?

Few men able to vote found the political process simple or office accessible. County justices established the time of elections, usually no more than a few weeks hence, and the sheriff saw to publicizing the event in church and tavern. On election day the sheriff presided, opening, and closing the polls, verifying qualifications, and directing the county court clerk to record each elector's choice – voiced for all to hear – between the gentlemen who "stood" before the public. Candidates presented themselves, as a rule, only after waiting their turn and securing the approval of their peers. Though these office seekers might have complained of the inconvenience of the canvass, their bid largely meant writing letters, soliciting friends, and – until the lower house in 1749 detected abuses among victorious court party candidates – setting out the wine punch and cookie "treats" or pork barbeques that rewarded a journey to the polls. Given the distance between Frederick, for example, and the Conococheague valley or the Georgetown region down the Potomac, justices in some counties established a second polling place or extended the election period over several days. Sheriffs did not enforce the compulsory voting law stiffly; usually about half the eligible voters turned out. While an occasional person of meager property may have hoodwinked the sheriff and voted, Maryland requirements successfully kept the polls and doors of office closed except to the men whose property ensured their political responsibility, their stake in society.

Except in Annapolis, small property owners were spectators, and delegates ... were “generally persons of the greatest consequence in their different counties.” [fn omitted]

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Proprietary system dismantled.

Conservative influences also showed in the [November 1776] Maryland Declaration of Rights, a listing of forty-two individual guarantees and limits of government. The convention voted down a proposal to forbid enslavement of Black newcomers to the state; one clause respected the duty of “every man” to “worship God in such manner as he thinks most acceptable to him” but protected only “persons professing the Christian religion.” Even so, the declaration represented the full flowering of Whiggish political thought, beginning with the principle that “all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole.” The following articles established as inviolable the rights to free speech and press, petition, trial by jury, and frequent elections; they promised freedom from unwarranted searches and seizures, excessive bail, and self-incrimination. Reflecting the Whigs’ fear of military rule and American colonial experience with resident British forces, the declaration placed military power beneath civil authority and prohibited standing armies and the quartering of soldiers in private homes without permission. It provided for a separation of executive, legislative, and judicial powers. By forbidding plural officeholding, disestablishing the Anglican Church, and condemning the poll tax that had gone toward Anglican ministers, the convention pointedly rid Maryland of proprietary establishment and colonial rule.

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