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THE ESTABLISHMENT OF LEGISLATIVE POWER IN MARYLAND

By CARL N. EVERSTINE*

The General Assembly of Maryland first convened in 1635, less than a year after the settlement at St. Mary's. It began then a notable record of self-government for the colony and State of Maryland, making over the succeeding centuries a solid contribution to the prestige of the legislative process.

There would have been no compelling reason in the early seventeenth century to suppose that the Maryland General Assembly would be a successful venture in representative government. The art of popular government had been evolving slowly for a number of centuries in England, yet by 1634 its development was only rudimentary. Legislative power was still a negative force; the drive and initiative in government remained with the executive, as vested in the monarchy.

It was just in 1603 that King James I of England had declared that "As it is atheism and blasphemy to dispute what God can do; so it is presumption and high contempt in a subject to dispute what a king can do, or say that a king cannot do this or that." Another glorification of the monarchy came at the middle of the seventeenth century in *The Leviathan* of Thomas Hobbes, in the doctrine that "where the public and private interest are most closely united, there is the public most advanced".

Yet it was the same century which produced John Locke, whose *Two Treatises on Civil Government* perhaps did as much as any other book in giving a philosophical basis for

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modern democracy. The English Parliament was ready for the challenge. It had developed some control over the purse strings, forcing both the Tudor and Stuart monarchs to call Parliament into session in order to raise tax monies. In the late sixteenth and early seventeenth centuries it had improved its procedures, notably as to the committee system. More than ever before, the House of Commons was forging its own ideas and policies; working through its committees, and especially through the device of the Committee of the Whole House, its members in the decades immediately prior to 1634 were making rapid strides in the technique of government. Only a few years later, at the time of the Long Parliament, the balance of power shifted toward the legislative branch, and the English Revolution of 1688 gave final confirmation to the fact.

The colony of Maryland was settled while the prestige of legislative power was in the ascendancy. The transition was eased in Maryland by the forbearance of its Proprietary, and by the striking role of the English common law in governing the day-to-day life of its residents while the lines of legislative and executive power were being drawn.

Maryland was a proprietary government, as distinguished from the two other forms of colonial government, the charter and the royal governments. Charter governments, such as Rhode Island and Connecticut, had powers of self-government granted by charter. Royal governments, on the other hand, were directly under the King, subject to whatever power and authority were vested in the monarch. In the proprietary form, the sovereign power of the King was given to either one or a number of proprietaries. Some of the colonies which started off under this arrangement ran into trouble and later became royal governments. Virginia made such a change in 1624. Of the several proprietary governments, only Maryland and Pennsylvania remained as such at the time of the American Revolution.

The Charter of Maryland was confirmed on June 20, 1632. It was granted to Cecil Calvert, eldest son of the late George Calvert, in whose mind the colony was first conceived and planned. Cecil Calvert inherited his father's

title also, as the second Lord Baltimore. The Charter constituted "the now Baron of Baltimore, and his heirs, the true and absolute lords and proprietaries" of the new colony,

to have, hold, possess and enjoy the aforesaid region, islands, islets, and other the premises, unto the aforesaid now Baron of Baltimore, and to his heirs and assigns, to the sole and proper behoof and use of him, the now Baron of Baltimore, his heirs and assigns, for ever. To hold of us, our heirs and successors, kings of England, as of our castle of Windsor, in our county of Berks, in free and common socage, by fealty only for all services, and not *in capite*, nor by knight's service, yielding therefore unto us, our heirs and successors, two Indian arrows of those parts, to be delivered at the said castle of Windsor, every year, on Tuesday in Easterweek; and also the fifth part of all gold and silver ore, which shall happen from time to time, to be found within the aforesaid limits.

The grant of the colony was made in feudal terms, with the land to be held "in free and common socage". This type of feudal obligation was based upon a fixed and determinate service, it being here two Indian arrowheads annually and one fifth of all gold and silver found in the colony; it was distinguished from military tenure or villenage, requiring respectively indefinite amounts of military service or work and labor. Elsewhere in the Charter the Proprietary was given the powers of a palatinate, which in the usage of the time carried with it virtually all powers which the King himself might have exercised.

In spelling out the practically unlimited authority given to the Proprietary, the Charter gave him power to establish courts and appoint judges and magistrates, to enforce all laws, to confer titles, to erect towns, to pardon all offenses, to found churches, to call out the fighting population and wage war, to impose martial law, to convey or lease the land, and to levy duties and tolls. The legislative powers of the colony also were specified, with two main provisions. First, the Proprietary was given the right to make all laws, public and private, with the assent of the freemen of the province. Secondly, he was given the right to promulgate

ordinances (not impairing life, limb or property) without their consent. The exact division of the legislative power was set out in some detail, in sections 7 and 8 of the Charter:

VII. And forasmuch as we have above made and ordained the aforesaid now Baron of Baltimore, the true Lord and Proprietary of the whole province aforesaid, know ye therefore further, that we, for us, our heirs and successors, do grant unto the said now Baron, (in whose fidelity, prudence, justice, and provident circumspection of mind, we repose the greatest confidence) and to his heirs, for the good and happy government of the said province, free, full, and absolute power, by the tenor of these presents, to ordain, make and enact laws, of what kind soever, according to their sound discretions, whether relating to the public state of the said province, or the private utility of individuals, of and with the advice, assent, and approbation of the free men of the same province, or of the greater part of them, or of their delegates or deputies, whom we will shall be called together for the framing of laws, when, and as often as need shall require, by the aforesaid now Baron of Baltimore, and his heirs, and in the form that shall seem best to him or them, and the same to publish under the seal of the aforesaid now Baron of Baltimore and his heirs. . . . Which said laws, so to be published as abovesaid, we will, enjoin, charge, and command, to be most absolute and firm in law, and to be kept in those parts by all the subjects and liege-men of us, our heirs and successors, so far as they concern them, and to be inviolably observed under the penalties therein expressed, or to be expressed. So nevertheless that the laws aforesaid be consonant to reason, and be not repugnant or contrary, but (so far as conveniently may be) agreeable to the laws, statutes, customs and rights of this our kingdom of England.

VIII. And forasmuch as, in the government of so great a province, sudden accidents may frequently happen, to which it will be necessary to apply a remedy, before the freeholders of the said province, their delegates, or deputies, can be called together for the framing of laws; neither will it be fit that so great a number of people should immediately on such emergent occasion, be called together. We, therefore, for the better government of so great a province, do will and ordain, and by these presents, for us, our heirs and successors,

do grant unto the said now Baron of Baltimore; and his heirs, by themselves, or by their magistrates and officers, thereunto duly to be constituted as aforesaid, may, and can make and constitute fit and wholesome ordinances from time to time, to be kept and observed within the province aforesaid, as well for the conservation of the peace, as for the better government of the people inhabiting therein, and publicly to notify the same to all persons whom the same in any wise do or may affect. Which ordinances, we will to be inviolably observed within the said province, under the pains to be expressed in the same. So that the said ordinances be consonant to reason, and be not repugnant nor contrary, but (so far as conveniently may be done) agreeable to the laws, statutes, or rights of our kingdom of England; and so that the same ordinances do not, in any sort, extend to oblige, bind, charge, or take away the right or interest of any person or persons, of, or in member, life, freehold, goods or chattels.

These sections of the Charter, then, established two forms of legislative power. The first was the law-making power, which was vested in the Proprietary subject to the advice, assent and approbation of the freemen of the province. The second was an ordinance-making power, to supplement the laws and to meet emergencies; it was vested in the Proprietary alone, but was limited in that it could not affect adversely the life, limb or property of any person. It was with these Charter provisions as a sort of basic constitution that the little colony settled at St. Mary's in the latter part of March, 1634.

About eleven months later, on February 26, 1635, the colonists first assembled for legislative action. If any records were made and preserved, they have never been recovered, so that very little is known of this early session of the General Assembly. It is supposed that all the freemen of the colony attended, giving a town-meeting atmosphere to the proceedings. A later Maryland Act provides the information that "among other wholesome laws" they enacted that "the offenders in all murders and felonies should suffer such pains, losses, and forfeitures as they should or ought to have suffered in the like crimes in England".

The fragments of information concerning the meeting of the General Assembly in 1635 do furnish a clue to what must have been its most significant feature: it was the Legislature, and not the Proprietary, which proposed the laws. The Charter clearly provided that the initiative in proposing and propounding legislation should come from the executive, yet eleven months after landing in Maryland the freemen sought this as a legislative function. Lord Baltimore accordingly disapproved the entire set of enactments, when they were presented for his sanction.

For three years more, then, the colony remained under the governing genius of the English common law. That great body of case law provided a ready control of the day-to-day relationships among the settlers. A frame of mind as well as a body of law, the common law had the stabilizing influence necessary to keep the colony on an even keel while its Charter powers were being determined.

Cecil Calvert, second Lord Baltimore, did not accompany the colonists who landed in Maryland in 1634. He sent his brother, Leonard Calvert, in active charge of the expedition, as the Lieutenant General or Governor of the settlement.

The first organized and detailed plan of government for the new colony dates from April 15, 1637. On that day Lord Baltimore executed a commission to his brother Leonard, defining his powers, stating his functions, and specifying the offices he was to fill. Lord Baltimore also announced officially his dissent to the laws proposed by the assembly of the freemen in 1635, and added that he intended to submit a further set of laws and ordinances to the next meeting of the General Assembly.

The commission executed by Lord Baltimore in 1637 enjoined all the inhabitants of the colony to acknowledge Leonard Calvert as "our lieutenant general, admiral, chief captain and commander of all our said province . . ." He was further constituted as "our chancellor, chief justice and chief magistrate within our said province". Continuing, the commission gave to Leonard Calvert

full and absolute power and authority to assemble the freemen or their deputies at Saint Mary's within our said province upon the five and twentieth day of January next ensuing the date hereof, and then and there to signify to them, that we do disassent to all the laws by them heretofore or at any time made within our said province, as we do hereby declare them to be void; and further to show unto them the draft or copy of all such laws and ordinances for the good government of our said province, as we shall before that time transmit to him our said lieutenant under our hand and seal, with our assent for enacting of the same; and likewise, if the said freemen or their deputies so assembled shall approve and consent unto all the said drafts or copies of the said laws and ordinances in manner as we send them over, to publish the same as laws under the great seal of our province, that the people and inhabitants of our said province may take the better notice thereof. And we do further by these presents give and grant unto him our said lieutenant like absolute power and authority, after the said assembly so called as aforesaid shall be by him dissolved, at all or any other time or times, when and as often as he shall think fit, to call or summon one or more general assembly or assemblies of the freemen within our said province, and to propound and prepare other wholesome laws and ordinances for the government and well ordering of the said province and people within the same, to be by us assented to and confirmed, if upon view and mature consideration had of the same, we shall in our judgment approve thereof. And we do by these presents give and grant full power and authority unto our said lieutenant to adjourn and dissolve the said assembly so authorized to be called on the five and twentieth day of January next ensuing the date hereof as aforesaid, and all other assemblies by him hereafter to be called, at his pleasure. And forasmuch as the calling of a general assembly of the said freemen, and the consulting about and enacting of laws will require long time and much consultation, and many times sudden and other necessary occasions may happen or fall out, which require a speedy remedy, we do, therefore, give and grant unto our said lieutenant full power and authority to make, constitute, ordain and publish in our name such reasonable and proper ordinances, edicts, and proclamations, with reasonable pains and penalties therein

to be expressed to be duly inflicted on all such offenders against the same as he our said lieutenant in his discretion shall think fit, provided that such penalties do not extend to the taking away the right or interest of any person or persons of or in their life, members, or freeholds, goods or chattels. All which ordinances, edicts, and proclamations shall stand in force only and until we or our heirs shall signify the contrary to him our said lieutenant general and the people there, or that he our said lieutenant shall in his discretion think fit to repeal the same.

Lord Baltimore went on in his commission to vest all executive and judicial power generally in the Lieutenant Governor. He named "our well beloved Jerome Hawley, esqr., Thomas Cornwaleys, esqr., and John Lewger, gent." to be a Council to advise Leonard Calvert. Finally, he gave the Lieutenant Governor power to appoint a deputy in case of his own absence from the colony, and gave the Council power to appoint a successor to the Lieutenant Governor, if such should be necessary.

Lord Baltimore referred to this commission issued in 1637 as an "ordinance", and presumably he considered he was promulgating it under the ordinance-making power given to him in the charter. So far as concerned the legislative lines of power, it contained several main provisions: First, the Proprietary summoned a meeting of the General Assembly, to be composed either of all the freemen or of their deputies; secondly, he announced his dissent from the laws proposed by the General Assembly of 1635 and declared his intention of submitting another set of proposals to the second meeting of the General Assembly; thirdly, he gave to his Lieutenant Governor a blanket authority to convene other meetings of the General Assembly at his discretion, and to adjourn and dissolve any meeting of the Assembly; finally, the Proprietary delegated to the Lieutenant Governor his power to promulgate ordinances, so long as they did not carry with them penalties affecting life, limb or property.

The executive authority in the colony thus was primarily vested in the Lieutenant General, who was appointed

by the Proprietary and held office at his pleasure. He was assisted by the Council, appointed in the same manner. Members of the Council occasionally in the future would be sent out from England, but more frequently they were influential colonists. Together with the Lieutenant General or Governor, the Council cared for the Proprietary's interests, and it acted as an advisory group to assist the governor in his executive and administrative duties, including the promulgation of ordinances. At the same time, the members of the Council sat in the General Assembly. Ultimately they were the nucleus of a separate Upper House, but even from the first their capacity and conservatism gave them an influence beyond their comparative numbers. The Council also constituted the Provincial Court, which during the early years was the chief judicial body in the entire province, and in which the Governor during these early years served as presiding judge and chancellor.

Pursuant to the Commission issued by Lord Baltimore to his brother, Leonard Calvert, Governor of the province, the latter issued warrants directing the attendance of the freemen of the province at the forthcoming meeting of the General Assembly. The warrant sent to Captain George Evelyn, Commander of the Isle of Kent, was as follows:

After my hearty Commendāons &c whereas my deare brother the Lord Propriet^r of this Province, hath by his Commission to me directed in that behalf bearing date at London in the Realme of England, the 15th day of Aprill 1637, appointed a grāll assembly of all the freemen of this Province to be held at his town of St maries on the five and twentieth day of January next. These are therefore in his Lo^{ps} name to will and require you (all excuses sett apart) to make your psonall repaire to the ffort of St maries on the said five and twentieth day of January, then and there to consult and advise of the affaires of this Province. And further to will and require you at some convenient time when you shall thinke fitt within 6 daies after the receipt hereof at the furthest, to assemble all the freemen inhabiting within any part of yo^r iurisdiction: and then and there to publish and proclaime the said generall Assembly; and to endeavour to perswade such and so

many of the said freemen as you shall thinke fitt to repair psonally to the said assembly at the time & place prefixed; and to give free power & liberty to all the rest of the said freemen either to be pūt at the said assembly if they so please; or otherwise to elect and nominate such and so many persons as they or the maior part of them so assembled shall agree vpon to be the deputies or burgesses for the said freemen, in their name and steed to advise and consult of such things as shalbe brought into deliberation in the said assembly; and to enter all the severall votes or suffrages vpon record; and the record thereof and of whatsoever you shall doe in any the premises to bring along with you; and exhibite it at the day and time prefixed to the Secretary of the Province for the time being. And for so doing this shalbe yo^r warr^t Given at St maries this 30th day of January 1637 [1638]

The warrant issued to Captain Evelyn left uncertain whether the General Assembly was to be a meeting of all the freemen in the province or of a few deputies or burgesses representing the freemen. The warrant made it optional whether individual freemen attended in person or by deputy.

The word "freeman" subsequently was defined during discussions over the membership of the General Assembly. This came in 1642, when a freeman was determined to be a citizen of the province above the age of twenty-one years, if not held to personal service. Needless to say, there was never any thought as to the term including the women of the colony.

One item in the warrant was the forerunner of what was to become an established piece of constitutional practice in Maryland. It specified that the General Assembly was "to enter all the several votes and suffrages upon record", whence came the custom and the requirement of roll call votes for the passage of laws.

This second meeting of the General Assembly of Maryland convened on January 25, 1638. Leonard Calvert, the Lieutenant General, "taking his place, came and appeared personally". His "place", of course, was as presiding officer. The three members of the Council appeared and took seats

as ordinary members, despite the fact that they were also to act as a sort of advisory group for the Governor of the province. One of the members of the Council was John Lewger, who acted as Secretary for the session.

The journal of the Assembly proceedings lists all the men who appeared either in person or by proxie at this first day's session. In addition to the Lieutenant General and the three members of the Council, there were listed as present eight gentlemen ("gent"), thirteen planters, a constable, a sheriff, a carpenter, and a marshal, for a total of twenty-nine present. Three gentlemen were summoned to appear "by vertue of writts to them directed", but their absence was excused by reason of their sickness.

About the same number as those present were represented by proxies. Twenty-five planters, a cooper, a brickmason and a carpenter sent proxies, which were exhibited by the holders. "The freemen of the Ile of Kent" also were represented by proxy. Seven planters were listed by name as not having appeared, either in person or by proxy. "Then was proclaymed", the journal continues, "that all freemen omitted in the writts of summons, that would clayme a voyce in this gräll assembly, should come & make their clayme. Wherevpon clayme was made by John Robinson, carpent^r & was admitted."

It was not specified in the journal from what part of the province the several "gentlemen" came, except that two were listed as from the Isle of Kent. Among the names of the others, however, it is evident that the province already had been formed into the old English civil divisions called "hundreds". Of those who appeared either in person or by proxy, twenty-three were from St. Mary's hundred, twelve were from St. George's hundred, and eight were from Mat-tapanient. James Baldrige, who was present for the meeting of the General Assembly, was listed as sheriff of St. Mary's County. It is thought that the county was formed just about that time. It was in the same month that John Lewger was appointed a conservator of the peace for St. Mary's County. St. Mary's hundred was on the site of the original settlement, and St. George's hundred was on the

west bank of St. George's River, which by 1638 was planted "by several inhabitants". It is uncertain whether at that time the Isle of Kent was considered as a separate county or simply as a hundred within St. Mary's County.

"Then were certaine orders established by generall consent, to be observed during the Assembly. viz.

Orders. Imp^rmis, the Lieutent^t gräll (as President of the Assembly, shall appoint and direct all things that concerne forme and decency to be observed in the same; and shall command the observance thereof as he shall see cause vpon paine of imprisonm^t or fine as the house shall adiudge.

Item every one that is to speake to every matter, shall stand vp, and be vncovered and direct his speech to the Lieutent^t gräll as President of the Assembly. And if two or more stand vp to speake together, the Lieutent^t gräll shall appoint wh^c shall speake.

Item no man shall stand vp to speake to any matter vntill the partie that spake last before, have sate downe, nor shall any one speake above once to any bill or matter at one reading nor shall refute the speech of any other with any vncivil or contentious termes, nor shall name him but by some circumloquution. And if any one offend to the contrary, the Lieutent^t gräll shall command him to silence.

Item the house shall sitt every day at eight of the clock in the morning, and at two of the clock in the afternoone.

Item the freemen assembled at any time to any number above ten persons, at the houres aforesaid, or within one houre after, shalbe a house to all purposes.

Item every one propounding any matter to the house shall digest it first into writing and deliver it to the Secretary to be read vnto the house.

And it was ordered by the house that these Orders shall be sett vp in some publique place of the house, to the end all men might take notice of them.

Here was the first recorded set of rules adopted by the General Assembly of Maryland. It makes convincing evidence of the continuity of the legislative process in Mary-

land, for a number of its provisions remained in the twentieth century as familiar requirements of legislative decorum. The presiding officer was given charge of the House chamber; the House was given a power to punish its offending members; members desiring to speak were to rise and be "uncovered", and were to direct their remarks through the presiding officer; personal or derogatory references to other members were prohibited; the member having the floor was not to be interrupted, but he could not obtain the floor a second time on the same reading of a bill; a quorum of the House was established. The one provision in these rules of 1638 which was to sound distant and outmoded three centuries later was that "the House shall sitt every day at eight of the clock in the morning."

With the adoption of the rules, the House ended its first day's session in January, 1638. It met the following day, "betweene the houres of eight and nine in the morning." Twenty-one persons assembled, including the Lieutenant General and the three members of the Council. A number of absentees were "summoned". Some sent proxies, which were exhibited. In the case of three of those summoned, "Rob^t Clerke made answere for them that they desired to be excused fro^m giving voices in this Assembly, and was admitted." Then the journal listed ten names, with the notation that they were "amerced for not appearance". Just a few lines below, however, there was this further record:

Then it was ordered that any member of the house not appearing at the houres appointed, should be amerced 20 lbs. of tobacco for every default. But for this present meeting, such as did appeare though tardie should be pardoned the amercement, but for the rest w^{ch} appeared not it should stand.

At the afternoon session on January 26, 1638, some of the absences of the morning were explained. For three of those missing earlier, "it was answered for them, that they could not come, for want of passage over St. George's river. & was admitted". For a fourth, "it was answered for him that he was absent out of the Province in Virginia. and his amercement was remitted.

"Likewise the amercent was remitted to William Bretton, Thomas Nabbs, John Davis; for the same reason; as the first.

"Likewise vpon petition made by Thomas Stente, and Thomas Baldrige, alledging the necessity of important businesse, the amercent was remitted for non appearance in the morning." Only one person was fined for not appearing at this afternoon session.

The important work of this meeting of the General Assembly was begun at the morning session on the second day, with the set of bills proposed by Lord Baltimore being submitted to the House. In the words of the journal, "then was read out of the draught of Lawes transmitted by the Lord Proprietor, the first twelve Acts of the said draught: and were severally debated by the House". This discussion continued in the afternoon — "then were the Acts read throughe, & severally debated in the reading. And the Lieutenant gräll adiornd the house vntil Monday morning at 8 of the clock."

When the House met on this third day of the session, it being January 29, 1638, the proceedings were between one and two hours late in commencing; already the House was indulging a penchant for tardiness. "Then was proposed", it is recorded in the journal, "whether the Lawes formerly read should be read againe in the house; or putt to the vote without further reading." These "laws", of course, were the twelve bills proposed by Lord Baltimore. Here there was a sharp split of opinion. Captain Cornwaleys, a member of the Council, and five others, representing with their proxies a total of eighteen voices, voted to have them read again. There were thirty-three votes, including proxies, for voting immediately on the bills without any further reading of them; included in this group were Leonard Calvert, as the presiding officer; Captain Evelyn, commander of the Isle of Kent; and John Lewger, secretary of the province and a member of the Council. It having been determined not to read the bills again, the House could proceed to a vote on the bills themselves.

"Then were the Lawes putt to the question, whether they should be received as Lawes or no." On this vote, only the President and Mr. Lewger were recorded in the affirmative, although with their proxies they represented fourteen votes. The question was "denied" by all the rest of the Assembly, with a total of thirty-seven votes.

Thus, with quiet drama, on the third day of its session of 1638, the General Assembly rejected the entire program of bills proposed by the Proprietary. Here was again an unexpected twist to the exercise of legislative power. The Charter gave to the Proprietary "free, full and absolute power . . . to ordain, make and enact laws . . . of and with the advice, assent and approbation of the free men" of the province; but from the fact that the Charter was silent as to what should happen if the Assembly refused to grant its consent to the bills proposed, it can easily be inferred that this contingency had not been expected to arise.

Once the Assembly had rejected the bills proposed by Lord Baltimore, the first thought was to consider by what system of laws they could be governed. As the discussion was described in the journal:

Then question being moved what Lawes the Province should be governed by it was said by some that they might doe well to agree vpon some lawes till we could heare from England againe. The President denying any such power to be in the house, Capt: Cornwaleys propounded the lawes of England. The President acknowledged that the Commission gave him power in civill causes to proceed by the lawes of England; and in crimall causes likewise not extending to life or member. but in those he was limited to the lawes of the Province, there could be no punishmt^t inflicted on any enormous offenders, by the refusall of these lawes.

wherevpon the Commission was produced and examined, & vpon the reading of it it appeared that there was no power in the province to punish any offence deserving losse of life or member, for want of lawes. To this they answered, that such enormous offences could hardly be committed without mutinie & then it might be punished by martiall law.

By an ingenious application of the provisions of the Charter, they were able to contrive a set of laws to cover their elementary needs. The Charter gave to the Lieutenant General power to proceed by the laws of England in ordinary civil affairs; it also gave him power to mete out criminal punishments, so long as they did not affect life, limb or property. To fill this apparent gap in the power of the Province to govern itself, it was agreed that any offense deserving such a drastic penalty would amount to mutiny, with which the Lieutenant General also was empowered by the Charter to deal. If the reasoning was a little strained there was at least a will for orderly government.

Although Leonard Calvert had denied there was any power in the General Assembly to propose laws for the approval of the Lord Proprietor — the Charter clearly gave to Lord Baltimore the right to initiate the passage of laws — the House went ahead to formulate a program of legislation. "Then was propounded that the house would consider of some lawes to be sent up to the Lord Proprietr;," it was reported in the journal. "And the President advised that they would chuse some Committees to prepare the draft of them, and then the house might meete for confirming of them; & in the mean time every one might follow their other occasions." It was agreed that they should elect five persons to comprise the legislative drafting committee. Every person present then voted for five members of the committee. Ten persons in all received votes, but those who were elected on the committee were Leonard Calvert, the President of the Assembly, Captain Cornwalleys and Captain Wintour, both members of the Council, Captain Evelyn, commander of the Isle of Kent, and Mr. Snow.¹ The House then adjourned until the tenth day following, on February 8, 1638.

A fundamental question of legislative immunity arose during these first three days of the session of 1638. The

¹ This was probably Mr. Justinian Snow, a planter of St. Mary's hundred. A Mr. Marmaduke Snow, likewise a planter of St. Mary's hundred, also was a member of the Assembly and probably was a brother of Justinian. On this particular day the journal records that Marmaduke was absent and among those summoned to appear, with the note "essoined by his brother, & admitted."

question was whether freemen who either were or had a right to be in the Assembly should have immunity from arrest, during the time the Assembly was in session. It was decided that they should have such immunity, until enough time had elapsed after the meeting for them to return home. As described in the journal:

Vpon occasion of some warrants granted out against some freemen that had made proxies; a question was, moved in the house whether freemen having made proxies during the assembly might be arrested before the Assembly were dissolved. And Captain Cornwaleys and James Baldrige were of opinion that they might: but the rest of the house generally concurred that after the writts issued for summoning the Assembly, no man having right to reparaire vnto the Assembly, might be arrested, until a convenient space of time after the dissolution of the said Assembly, for his reparaire home.

The question came up again on January 29, just before the House adjourned to February 8 in order to give its committee time to draft a series of bills. The Assembly then decided that "because the Court was to be held in the meane time that is to say, on the 3d of february; that therefore the privilege of parlamt should be void vntil the Court were past; & all freemen might be arrested as if no assembly were." Here the privilege of legislative immunity was construed strictly, so as not to interfere with the administration of justice.

When the House met again on February 8, 1638, the committee appointed to submit a draft of laws to the General Assembly reported that "they thought fitt to read the former draft of lawes again, and to putt them to the vote the second time, in regard there was found a great deale of misvnderstanding of them among the freemen w^{ch} made them to refuse them." The reference evidently was to the set of bills proposed by Lord Baltimore, which, in the view of the committee, was rejected by the Assembly through misunderstanding. It was accordingly put up to the House whether these bills would be read a second time, with the vote being 48 to 21 in favor of the reading.

The bills submitted by Lord Baltimore then were read the second time, and immediately afterwards twenty bills proposed by the committee were read the first time. Some of the committee's bills were not completed, however, so the President of the Assembly suggested that it adjourn again, "till the lawes w^{ch} they would propound to the Lord Propriet^r were made ready, w^{ch} some would take care of, & in the meanetime the company might attend their other businesses &c."

Captain Cornwaleys replied to this suggestion "that they could not spend their time in any businesse better than in this for the countries good; and one of the planters demanded the reason why it should be adjoined, & said they were willing to leave their other businesse to attend it." To this the President stated firmly that he was accountable to no man in his right to declare the General Assembly adjourned. Captain Cornwaleys then moved that another committee be chosen to take charge of preparing the bills. This motion was carried, with the committee to be elective and to have three persons on it; of the three highest, Captain Cornwaleys received 56 votes; the President, 46 votes; and Captain Evelyn, 44 votes. The President then adjourned the House until February 26, 1638.

Again during this interval, it was decided, the privilege of parliament should be suspended. It was at this session on February 8, also, that the assembly adopted two basic and time-honored pieces of Anglo-American legislative procedure. The first was a requirement that no bill should become a law unless read on three separate days. "There was an order made by generall consent of the house," said the journal, "that all bills propounded to the house for lawes, should be read 3 times on 3 several daies afore they should be putt to the vote." Soon afterwards, "Cap^t Cornwaleys desired it might be putt to the vote of the house, whether these Lawes at the third reading should be voted severally, or the whole body of them altogether. And that they should be voted altogether was affirmed by thirty two voices, denied by 37." Here was the beginning of the

familiar three readings for the passage of every bill, and of the separate vote on every bill for its final passage.

Between the meetings of the Assembly on February 8 and February 26, Leonard Calvert, Lieutenant General of the Province and President of the House, made a trip from St. Mary's to the Isle of Kent. Before leaving, he executed an instrument against the contingency that some accident might hinder his return to St. Mary's, declaring that in such event power to hold and continue the Assembly, and to adjourn it, should vest in John Lewger, Secretary of the Province. The Lieutenant General seems in fact to have been delayed, for he was not present when the Assembly reconvened on February 26. The House transacted no business and adjourned to March 5. Again on that day the Lieutenant General was not present, and the House adjourned until March 12. On both these occasions the House formally ordered that the "privilege of Parliament" should be suspended until the next meeting.

The President was back for the meeting on March 12, at which time the twenty bills first read on February 8 were read the second time. These were the bills which probably were drafted by the legislative committee of five, between January 29 and February 8. Then, on March 13, fourteen other bills were read the first time, and these bills evidently were drafted by the committee of three selected on February 8. The fourteen titles were listed in the journal, and here for the first time is evidence of the subjects of primary interest to the new colony in Maryland. As recorded simply and succinctly in the journal for March 13, 1639, "Then were read the first time fourteen bills, that is to say

- 1 ordering the paymt of tobaccos
- 2 for services to be p^{formed} for manors and freeholds
- 3 for assurance of titles
- 4 for the liberties of the people
- 5 for swearing allegiance to our Sovereigne Lord
the King
- 6 for descending of land
- 7 for succession to the goods of the deceased intestate
- 8 for publique ports

- 9 touching grāll Assemblies
- 10 for the probate of wills
- 11 for civill causes
- 12 for payment of debts contracted out of the Province
- 13 for limiting the times of service
- 14 for punishmt of ill servants.

Every one of these fourteen bills touched upon the elementary needs of a new community. Those for services to be performed for manors and freeholds, for limiting the times of service and for the punishment of ill servants (the "ill" meaning undoubtedly ill-tempered or unruly), all concerned work and labor within the Province; one was for the assurance of titles to land; and those for the descent of land, for the succession to the goods of a deceased intestate and for the probate of wills all related to testamentary affairs. There was another concerning debts contracted out of the Province, and one for civil actions in the Courts. The bills for swearing allegiance to the King and "for the liberties of the people" symbolized both the ties with the past and the stirrings for freedom in a new land. The bill for the payment of tobaccos could have been either a tax bill or one controlling contracts, as that commodity was fast becoming the medium of exchange.

On the following day, March 14, these fourteen bills were read the second time; and three new bills were introduced and read the first time. They were for criminal causes, for the attainder of William Clayborne, and for corn measures.

On the afternoon of March 14, 1638, the House participated briefly in what was clearly judicial work, in considering two indictments for piracy. The colony was hampered in its enforcement of laws, as has been said, because both the Assembly and the Lord Proprietor had refused to give assent to laws proposed by the other which among other things would have set up a system of courts. Yet they were specially empowered by the Charter to deal with barbarians, other enemies, pirates and ravagers, and also to quell rebellion, sudden tumult, and sedition. Also, despite

the fact that no laws had been agreed upon, and evidently upon the premise that in the absence of other laws those of England were in effect, two courts met at St. Mary's during February of 1638. One was a court of testamentary causes, composed of the governor and council, in which letters of administration were granted on the estates of several deceased persons. The other was called a county court; a grand jury was impanelled and sworn, and it considered two bills of indictment for piracy and murder. Both were found to be true bills.

These were the two matters brought before the House on March 14. One concerned the deaths of four persons who "feloniously and as pirates and robbers" assaulted Captain Cornwalleys and his company; they had been slain by the defenders, and the House determined that Captain Cornwalleys and his company caused the deaths "lawfully & in their owne necessary defence." The other indictment was against one Thomas Smith, for piracy. He was found guilty by the House, eighteen votes to one, with three members abstaining because of not having been present at the presentation of all the evidence. The President then pronounced a sentence of death by hanging. Then, on the three succeeding days, a bill confirming the sentence against Thomas Smith was given three readings in the House.

Another affair of possibly criminal import is recorded in the journal for March 15, 1638, when Thomas Baldridge was fined forty pounds of tobacco for striking Isaac Edwards; whether this was for an infraction committed on the floor of the House or elsewhere is not specified.

The journal for March 15, 16, and 17, contains references to a number of bills as they received their successive readings. At one place, more than a dozen bills are listed by title as having passed "by gräll consent not one vote dissenting". The roll calls are not given for this group of bills, so it must remain conjecture whether they were passed by a seventeenth-century "fast roll call". Any negative votes on the bills considered during these days were recorded, but the affirmative votes are never listed by name.

A little incident recorded briefly in the journal of March 17, 1638, deserves particular mention as another "first" in the history of the General Assembly of Maryland. "Then vpon a question moved", one reads, "touching the resting of servants on Satturdaies in the afternoone, it was declared by the house that no such custome was to be allowed." Here was the first "House Resolution", that popular device for expressing the sentiments of the members on all and sundry questions.

This notable session of the General Assembly of Maryland ended on March 24, 1638. The bills which had been passed were engrossed and then signed by the presiding officer and all the members of the House. As the event was described by the journal, "In the morning one part, and in the afternoone the residue of the Lawes as they were fair engrossed were read in the house; and after the reading of them, the Governor signed them, & so did the rest of the house: and so the house dissolved."

Forty-two bills were passed at this session of the General Assembly in 1638, but the text of only one is available. This was "An act for the attander of William Clayborne, gent," declaring his possessions and goods to be forfeited to the province. Clayborne had led armed resistance to the Lord Proprietary, from Kent Island, but by 1638 he had fled from Maryland.

Despite the passage of these forty-two bills, one large question remained unanswered. The Charter of Maryland specifically vested in the Proprietary the initiative in the legislative process, giving him the right to make all laws, with the assent of the freemen of the province. Already at its session of 1635 the General Assembly had sought this initiative, only to have Lord Baltimore veto the bills it passed. Then, in 1638, the Assembly itself declared its right to refuse to pass the program of bills proposed by the Lord Proprietary. An impasse was developing between the executive and legislative branches of the province, but it was broken during the summer of 1638 by an act of rare statesmanship on the part of Lord Baltimore.

Writing from London on August 21, 1638, the Proprietary gave to his brother, Leonard Calvert, as Lieutenant General of the province, power "to give assent unto such laws as you shall think fit and necessary" for the good government of Maryland. The full statement was as follows:

I do hereby give you full Power and Authority from time to time in every General Assembly Summoned by you in the Province of Maryland in my name to give assent unto such Laws as you shall think fit and necessary for the Good Government of the said Province of Maryland and which shall be Consented unto and approved of by the Freemen of that Province or the Major Part of them or their deputies assembled by you there from time to time for the enacting of Laws within that Province. Provided, that the said Laws so to be assented unto be as near as conveniently may be Agreeable & not Contrary to the Laws of England; every which Law so to be assented unto by you in my name, & consented unto and approved of by the Freemen as aforesaid I do hereby declare shall be in force within the said Province till I or my heirs shall signify in me or their disassent thereunto, under the Great Seal of the said Province and no Longer unless after the transmission thereof unto us and due Consideration had thereupon I or my heirs shall think fitt to Confirm the same. Given under my hand & Seal at London in the Realm of England the 21st of August 1638.

By 1638, then, the lines of legislative power were staked out. There was a General Assembly, with the power to initiate legislation. It had only one House, but the presence of the members of the Council and the other delegates in the same body foreshadowed the development of a bicameral legislature. All freemen in the province were members of this early Assembly, yet again the representation of some by proxy gave a basis for the development of representative government. There was a veto power in the executive. There were rules of legislative decorum, there was a journal, and the familiar rule that a bill must be read on three separate days was already observed. The General Assembly had become established as the legislative power in Maryland.