BY WHAT LAW: THE ESTABLISHMENT OF CRIMINAL JURISDICTION IN COLONIAL MARYLAND UNDER THE FIRST PROPRIETARY

A Thesis
Presented in Partial Fulfillment of the Requirements for the Degree Master of Arts

by
Victor Ralph Petrosino, B.S.
The Ohio State University
1971

Approved by
Bradley Chapin
Adviser
Department of History
ACKNOWLEDGEMENTS

I wish to express my appreciation to Dr. Bradley Chapin for his patience, guidance, and constructive criticism; to Dr. Paul Bowers for his inspiration and encouragement; and most especially to my wife, whose constant support made this paper possible.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Acknowledgements</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Chapter</td>
<td></td>
</tr>
<tr>
<td>I. THE HUMAN ELEMENT: GEORGE CALVERT,</td>
<td>2</td>
</tr>
<tr>
<td>FIRST LORD BALTIMORE</td>
<td></td>
</tr>
<tr>
<td>II. THE HUMAN ELEMENT: CECIL CALVERT,</td>
<td>14</td>
</tr>
<tr>
<td>SECOND LORD BALTIMORE</td>
<td></td>
</tr>
<tr>
<td>III. THE CHARTER OF MARYLAND: THE BROADEST BASIS FOR</td>
<td>23</td>
</tr>
<tr>
<td>LAW AND AUTHORITY</td>
<td></td>
</tr>
<tr>
<td>IV. THE PROPRIETARY AND ASSEMBLIES: THE DEVELOPMENT</td>
<td>45</td>
</tr>
<tr>
<td>OF RULES OF JUDICATURE</td>
<td></td>
</tr>
<tr>
<td>V. CONCLUSIONS AND SUMMARY</td>
<td>64</td>
</tr>
<tr>
<td>APPENDIX</td>
<td></td>
</tr>
<tr>
<td>A.</td>
<td>68</td>
</tr>
<tr>
<td>B.</td>
<td>70</td>
</tr>
<tr>
<td>C.</td>
<td>74</td>
</tr>
<tr>
<td>D.</td>
<td>87</td>
</tr>
<tr>
<td>Bibliography</td>
<td>90</td>
</tr>
</tbody>
</table>

iii
INTRODUCTION

In examining the somewhat limited topic of the foundations of criminal law in early colonial Maryland, one is immediately confronted with the need for the examination of the foundations of Maryland law in general. In both cases the concept and reality of sovereignty, its locus and execution, in conjunction with the intentions of the founders of Maryland provide the theme for this study. The criminal law may be seen as exemplifying the judicial principles common to Maryland law during the period of the first Proprietary.

Joseph H. Smith in his essay "The Foundations of Law in Maryland: 1634-1715" suggested that there were nine major sources of law and authority during this time span. In order of importance they are: (1) the Charter, (2) acts of the provincial assembly, (3) various acts of Parliament, (4) English common law, (5) local customs and usage, (6) judicial commissions and instructions and commissions to administrative officials, (7) judicial practice in procedural matters, (8) the decisions of the various courts of the Province, and (9) proclamations and counciliar orders.¹

The present work will concern itself with a more detailed account of the first four of these elements plus the all important human element as it operates with these through the proprietary institution. In seeking the answer to the question: "...what Lawes the Province should be governed by..."² one seeks the theoretical and practical constitutional basis for the foundations of criminal law in early colonial Maryland,
CHAPTER I

THE HUMAN ELEMENT: GEORGE CALVERT
FIRST LORD BALTIMORE

The title of Founder of Maryland can rightfully be given to two men, George Calvert and his son, Cecil. The original idea and design, including the charter itself, was the work of the elder Calvert. Only his death prevented him from carrying out his plans and becoming the First Proprietor of Maryland. But he was ably succeeded by his son, Cecil Calvert, who was both the spiritual and temporal heir to the projected enterprise of his father. Cecil Calvert, Second Lord Baltimore and First Proprietor of Maryland, in whose name the charter was drawn, sent out the first colonists under the leadership of his brother Leonard, and guided the early political development of the infant colony, as well as securing its material well-being.

The character of George and Cecil Calvert appear to be very much alike. In both are to be found qualities of wisdom, compassion, a high degree of human understanding, and a steadfastness of purpose, all of which were essential to anyone who would establish and direct a successful overseas plantation. Yet there is a significant difference between father and son with regard to their historic accessibility. George Calvert lived most of his active life in public office and under the public eye. He was close to, and often involved with, the great persons and events of his day. One can easily find his name among the histories, both public and private, of the time. Cecil, in contrast, seems to have
made a positive effort to keep himself from public notice. His biography is to be found in his connection with his colony. 4

The intent of the founders of Maryland governs the form and substance of the entire Maryland colonial venture. The rule of right and reason in causes criminal within the Province are a direct result of the motives and methods of George and Cecil Calvert.

George Calvert was born of a respectable Yorkshire family whose exact origins are lost in obscurity. It is said that the Calverts of England were descended from a Flemish family of ancient and noble lineage. This genealogical connection with an old and honorable continental family has never been proven beyond all doubt, although it is strongly intimated heraldically in the family coat of arms issued to Sir George Calvert in 1622, which shows the addition of the crest of the Flemish Calverts to that of the English Calverts. 5

According to William H. Browne, "Our earliest certain knowledge of the family begins with Leonard, the father of George, who was living in the time of Elizabeth in or near the town of Danby Wiske, in the valley of the Swale, Yorkshire. 6 Leonard Calvert married Alicia Crossland, and lived with her on the estate of Kiplin in the Swale which he acquired toward the end of the reign of the last Tudor. It was on this estate, or perhaps in the surrounding village of the same name, that George Calvert was born about the year 1580. 7

Very little is known about the childhood of George Calvert. He was educated at Trinity College, Oxford, which he entered at the
age of fourteen. In 1597 George received his Bachelor of Arts degree, after which he travelled extensively on the continent as was the custom at that time. It is likely that while on his European tour he first became acquainted with Sir Robert Cecil who was then in France on an important diplomatic mission for Elizabeth in the capacity of his office as Secretary of State. Cecil became not only the patron of George Calvert, but also the founder of his fortunes which led to advancement in both royal office and royal favor. Robert Cecil was retained in office by James I upon his accession to the throne of England in 1603 upon the death of Queen Elizabeth. Even at this time George Calvert is to be found among the friends of Cecil. George took his first major step into public service in the same year by being elected to Parliament from the Cornish borough of Bossiney.8

In 1604 he married his first wife, Anne Mynne, and two years later in 1606 their first son, Cecil, was born, being named in honor of Sir Robert Cecil. Just the year before, 1605, George had received his Masters of Arts degree at Oxford.9

Not long after leaving the university, George became the private secretary of Cecil, and was appointed by the king himself to the positions of clerk of the crown and assize in County Clare, England. The death of Robert Cecil in 1612 deprived Calvert of a close and personal friend, but did not in any way lessen the favor he had gained with the king. In the very next year, he was appointed as clerk to the Privy Council and was sent on an important mission to Ireland, the purpose of which was to ascertain the success of the king's new policy aimed at forcing the Irish to conform to the laws
James I liked and trusted George Calvert, and employed him in business of the realm of the greatest importance. It was in recognition of his many public services, that Calvert was knighted in 1617. In 1619, he was appointed one of the principal Secretaries of State, a position which drew him into the vortex of both domestic and European politics. He was a prominent leader and spokesman for the monarchical party in Parliament, and was an active supporter of the Spanish policy of James which included the proposed marriage of Prince Charles to the Spanish infanta. While Charles and the king's favorite, the Duke of Buckingham, were off in Spain trying to woo the princess, James relied entirely upon Calvert. The king was so pleased with his diligence and devotion that he made Calvert a member of the Council of York. In 1621 the king granted him an estate in County Longford, Ireland.

When the romantic-diplomatic mission of Charles and Buckingham ended in utter failure, the popular joy was overwhelming. Buckingham was quick to change to the popular side, and to renounce his former position on the Spanish match. The feeble king was now pulled by his favorite, the Duke, to the French side. Calvert, who still strongly believed that England's security lay with a Spanish alliance could not change his convictions even to please the king. With Buckingham now his adversary, Calvert knew his political career was in grave danger. Buckingham, however, was not vindictive in a cold and calculating way. As his plans and schemes began to prosper, his feelings, and with them, those of the king once again became favorable to Calvert. Taking advantage
of this perhaps temporary period of good grace, Calvert told the
king that he had become a convert to the Roman Catholic faith.
He asked that he be allowed to resign his position as secretary
and to retire to private life. James urged him to stay on, but
Calvert declined, and his request was granted. The king, however,
announced that he would keep Calvert on the Privy Council, dis-
pensing with the oath of ecclesiastical supremacy in the case of
Sir George; and on the 16th of February, 1625, James raised Sir
George Calvert to the Irish peerage by bestowing upon him and his
heirs the title and prerogatives of Baron Baltimore, of Baltimore,
in County Longford, Ireland, thus making George Calvert the First
Lord Baltimore.\textsuperscript{12} The reasons for the king doing so are set forth
in the original patent as follows:

\textbf{We therefore, nearly considering in the person of Our
well-beloved and entirely faithful Councillor, George Calvert,
Knight, gravity of manners, singular gifts of mind, candour,
integrity, and prudence, as well as benignity and urbanity
toward all men, and also reflecting in Our mind with how
great fidelity, diligence, and alacrity he has served Us,
both in Our Kingdom of Ireland, whither, not long ago, he
was specially sent upon Our very weighty and most important
business there, as also in this Our Kingdom of England,
throughout many years, but especially since he was advanced
near Our person to the place and honour of a Councillor and
Our principal Secretary; and willing that some singular mark
of Our royal favour may remain unto the aforesaid George and
unto his posterity forever, by which not only he, but others
also may perceive how highly We prize the fidelity and
obedience of the said George, and how much We desire to
reward his virtues and merits, We have decreed him to be in-
scribed among the number of the peers of Our said Kingdom of
Ireland: KNOW YE THEREFORE that We, of Our especial grace,
and of Our sure knowledge and mere motion, have exalted,
preferred, and created the aforesaid George Calvert, Knight,
unto the estate, degree, dignity, and honour of Baron Bal-
timore of Baltimore, within Our Kingdom of Ireland.}\textsuperscript{13}

It was but a matter of weeks after the issue of the patent
that James I died, and was succeeded by his son, Charles. Charles I
continued to show favor to Lord Baltimore just as his late father had done. He, too, asked Baltimore to remain on the Council, and also offered to dispense with the oath of supremacy in his particular case. But Baltimore was determined to retire once and for all from public life and devote his attention to plans for colonization in the New World.¹⁴

Baltimore had long been interested in colonial enterprises. This interest seems to have become even more intense after his appointment as Secretary of State. He had been at one time or another an actively participating member of every administrative committee or council in charge of colonial affairs. Ten years before his appointment as Secretary of State he became a member of the second Virginia Company, and after that company's charter had been revoked, he served as a member of the provincial council charged with the management of that colony.¹⁵

In 1620, Calvert purchased a plantation located in the southern portion of Newfoundland from Sir William Vaughan. The following year he sent out a number of well-equipped colonists to establish what was hoped would be a permanent settlement. At first the reports from the little colony were encouraging.¹⁶

It is probable that Calvert felt that his colonial venture would prosper to the greatest extent possible if he had greater power and authority over it. In 1622, he applied for a royal patent and was granted all of Newfoundland. Perhaps there was a mistake in this original grant, or it could have been that Calvert was not interested in the whole island, since in the following year a new grant was issued giving him the southeastern peninsula of
Newfoundland which was constituted as the Province of Avalon by royal charter to be held in capite, by knight's service. In Avalon he was to have palatinate jurisdiction. All available evidences confirm the assertion that this charter was the work of George Calvert himself; there is no evidence thus far to the contrary. 17

Calvert had been kept extremely busy with affairs of state prior to his retirement, and thus did not have the time to devote a great deal of attention to his new plantation. Even after he resigned his position as secretary, he was occupied with his affairs in Ireland. Finally in June of 1627 he made a personal visit to Avalon. He returned again the following year with his wife and family, with the exception of Cecil who was left in charge of the family estates back home. The personal experience of the hardships in Avalon, which included fighting the French, a hostile Puritan minister, and most formidable of all, the severities of Nature, convinced him that conditions were too unfavorable for a permanent and prosperous settlement. In a letter to Charles I, Calvert spoke of his desire to leave his inhospitable plantation and acquire more favorable territory in Virginia. 18

He spoke of the difficulties which could no longer be endured. The climate was exceedingly hostile to man, beast, and vegetation. Sickness and even death had become too much a part of the daily lives of the colonists. Having personally experienced the hardships and disappointment of Avalon, Calvert admitted that he was greatly tempted to give up "all proceedings in plantations . . . but my inclination carrying me naturally to these kinds of works." 19
Then he requested a grant of land in Virginia "with such privileges as the king your father, my gracious master, was pleased to grant me here." He closed with the promise that he would do all within his power to be worthy of such a grant.

Charles, in reply, said how much he held in esteem all those who for king and country committed their lives and fortunes to the planting of colonies on distant shores, but how in much greater esteem he held "a person of your quality, who have been so near a servant to our late dear father, of blessed memory." The king then expressed a real concern for Calvert's misfortune and attempted to discourage Sir George from any further attempts at colonization, saying that "men of your condition and breeding are fitter for other employments than the framing of new plantations, which commonly require much greater means in managing them than usually the power of one private subject can reach unto..." Calvert was advised to return home at his earliest convenience where he was promised that he would "enjoy both the liberty of a subject, and such respect from us as your services and late endeavours do so justly deserve."

The high degree of warmth and affection held by Charles toward Calvert and a genuine interest in the personal welfare of this most faithful subject undoubtedly prompted the regal request for Baltimore's return to a position of comfort and security befitting a lord of the realm. Had Calvert received this letter sooner, he might have paused a moment for some serious reflection, since a "request" from a monarch is tantamount to a command. But Calvert had already left for Virginia with his family and about forty
colonists before the king's letter had been written. His purpose was to seek out a suitable site for his new colony should his request be granted. Obviously Calvert had no intention of giving up his "proceedings in plantations."²⁵

In 1623 the Virginia charter had been annulled by a quo warranto in the King's Bench. All rights thus reverted to the king who was then free to grant territorial jurisdiction and possession of all lands not privately held to whom he wished.²⁶

Calvert received a cool reception in Jamestown by those fearful of his plans. After exploring the coastal area, he returned to England and requested a territorial grant south of the James River. The request was granted and the charter of Carolana was drawn. In order to avoid certain difficulty arising from opposition by some in Virginia, Baltimore surrendered his grant and requested instead territory north of the Potomac. The request was granted. The charter was a modified version of that of Avalon. The new land was named Terra Mariae, or Maryland, in honor of Queen Henrietta Maria.²⁷

George Calvert did not live to see his dream become a reality. His health, which had long been in a state of decline, was fatally broken by the rigors of Newfoundland. On April 15, 1632, before the charter had passed the great seal, George Calvert, First Lord Baltimore, and designer of the colony of Maryland, died. It was left to his son and heir, Cecil Calvert, Second Lord Baltimore, to carry on the project thus far advanced.²⁸

Both character and circumstances conspired to make George Calvert a true professional in the field of law and that of
colonization. His formal education and successful public career made him a man well versed in the law and the free institutions of England. His governmental positions brought him daily into intimate contact with the theory and application of the law and the results achieved. Living at a time when divine right and royal prerogative seemed to be mounting a serious threat to English liberty, Calvert finally determined to establish in the New World a place in which all that was good in English institutions could be preserved and perpetuated. For him the law would be applied political doctrine; it was through the law that he would translate his ideas of justice into reality.

His experience in connection with the colonies of Virginia and New England showed him the disasters awaiting a plantation founded solely for profit and managed by a policy that was divided and selfish. When he established his colony of Avalon, which at first was undeniably a commercial venture, as well as an exercise in freedom, Calvert introduced the palatinate form of government through his charter. This form of government vested all power within his hands, subject only to minor limitations. This power was to be used to protect both political and religious freedom, the latter taking on even greater importance after Calvert's conversion. This power was to be used for the welfare of the Proprietor and the colonists. Because of circumstances beyond his control, the Avalon venture proved unsuccessful. But the charter of Avalon became the model for that of Maryland, and that plantation was to be "the first English colony that was successful from the start."
FOOTNOTES

CHAPTER I


4 Ibid., vi.


6 Browne, George and Cecilius Calvert, 2-3.


8 Browne, George and Cecilius Calvert, 3-4; Andrews, History of Maryland, 2-3; Morris, Lords Baltimore, 7.

9 Browne, George and Cecilius Calvert, 4; Andrews, History of Maryland, 2.

10 Browne, George and Cecilius Calvert, 4-5; Morris, Lords Baltimore, 6-9.

11 Browne, George and Cecilius Calvert, 6-12. 12 Ibid., 12-13.

13 Browne, George and Cecilius Calvert, 13-14; Andrews, History of Maryland, 5.

14 Browne, George and Cecilius Calvert, 14; Andrews, History of Maryland, 7.

15 Browne, George and Cecilius Calvert, 15; Andrews, History of Maryland, 5.


19 Browne, George and Cecilius Calvert, 25; Andrews, Founding of Maryland, 28.

20 Ibid. 21 Ibid.

22 Browne, George and Cecilius Calvert, 26.

23 Ibid. 24 Ibid.

25 Browne, George and Cecilius Calvert, 26-27; Andrews, History of Maryland, 10-11.

26 Browne, George and Cecilius Calvert, 27.

27 Browne, George and Cecilius Calvert, 28, 30; Johnson, Foundations of Maryland, 18; Andrews, Founding of Maryland, 32; Morris, Lords Baltimore, 23.

28 Browne, George and Cecilius Calvert, 31; Johnson, Foundations of Maryland, 21; Andrews, Founding of Maryland, 36-37; Clayton C. Hall, The Lords Baltimore and the Maryland Palatinate. (Baltimore: John Murphy Co., 1902), 22.

29 Browne, George and Cecilius Calvert, 32-33.
CHAPTER II

THE HUMAN ELEMENT: 'CECIL CALVERT
SECOND LORD BALTIMORE

Cecil Calvert, heir to his father's title, colonial possess-
sions, and purpose was, indeed, in the words of his charter,
"treading in the steps of his father."¹ Unlike the first Lord
Baltimore, however, Cecil presents a more difficult problem with
regard to available biographical material. Whereas George Calvert
was an important and conspicuous figure in both the political and
public life of the realm, Cecil was not; he seemed purposely to
avoid rather than seek notoriety. Most of his life was spent in
the direction of the affairs and well-being of his Province in
America; and it is in his actions and correspondence with his
colony that one is able to find the essence of the man.²

His over-all purpose and intent in establishing the colony of
Maryland was basically the same as that of his father.³ Since the
elder Calvert did not live to carry out his plans for his new
plantation, it can never be known exactly how he would have pro-
ceeded. Considering the historical background and the character
of George Calvert, and those same factors with regard to Cecil,
plus the subsequent actions of the first Proprietary of Maryland,
one might reasonably conjecture that Cecil carried out the primary
intent of establishing a free English state in the New World in a
more liberal and generous spirit than would have his father.

Perhaps the clearest statement of the intentions of Cecil
Calvert, second Lord Baltimore and first Proprietary of Maryland,
is to be found in the work of Bradley T. Johnson. He believed (and the author concurs) that the available facts demonstrate beyond what he considered a reasonable doubt that Cecil Calvert was determined to found "... a State in America ... based upon the institutions of English liberty, and where all the guarantees and safeguards by which it had been secured and protected, from before Magna Charta until his time, should be enjoyed, and where they should be forever preserved." Here, then, was a state to be founded upon the principles of civic and religious freedom—both of which were and would be in grave jeopardy in the Mother Country. At the very heart of the foundation of the colony of Maryland was the principle that man must be free in both mind and person: "... he [Cecil Calvert] was wise enough, to see and declare that those rights [The traditional rights and privileges of Englishmen] were worthless without Liberty of Conscience." He intended, and, in fact, did secure for his Province and its people—-not just Catholics, not just Christians, but all free men—all the rights, privileges, and franchises of Englishmen. To the goal of liberty and freedom he dedicated his fortune, his talent, and his life.

On June 20, 1632, the Charter of Maryland was officially granted to Cecil Calvert. At the age of twenty-six he became the first "True and Absolute" Lord Proprietary of Maryland. The extraordinary grant of power given to Cecil Calvert by the Charter of Maryland (which will be discussed at greater length in a later chapter) allowed him to fashion the state he envisioned. Yet during his entire proprietary, there was never any abuse of the
sovereign powers thus granted; in fact, he imposed limitations upon himself and his heirs by divesting himself and them of some of the absolute power granted by the charter. For the good of the Province he shared voluntarily important rights and powers with the freemen of the colony. He used his power not only to transplant to Maryland the best of the then existing English institutions, but also to improve and strengthen the best of all English institutions from all of English history.7

Having received the charter, Cecil began immediately to take the necessary measures to send a colonizing expedition to his new possession. He had fully intended on personally leading this expedition, but opposition to his grant from various sources, namely the old Virginia Company which was attempting to have its charter renewed with the original boundaries which, of course, would include Maryland; and William Claiborne, one of the members of that company who had established a trading post on Kent Island in the northern part of the Chesapeake Bay which became by virtue of the Maryland Charter the property of Lord Baltimore, necessitated Calvert's remaining in England to guard his charter and privileges from the troubles of the time and of those yet to come. Claiborne was upset (to put it mildly) not only because "his" island now belonged to Baltimore but also because, and perhaps of greater importance, it was now the Maryland Proprietary who had full authority to regulate trade within the region where Claiborne was accustomed to doing so himself, with the consequent benefits involved. William Claiborne lived a long life, the better part of which he devoted to causing both minor and serious problems for
Lord Baltimore. 8

It is rather interesting to note that the actual settlers of Virginia were not in favor of the restoration of the old company and its unsuitable charter. It was the company membership per se, particularly in London, that took every opportunity to throw all sorts of obstacles in the way of Cecil Calvert. No "charge" was too fantastic or frivolous to be used in their attacks. In one of their more obviously self-contradicting accusations they claimed that the generous grant of powers bestowed upon Baltimore by his charter would be extremely detrimental to the liberties of the Maryland colonists (fellow Englishmen), yet in the very next breath they protested in an even louder voice that the liberties secured to the inhabitants of Maryland were so great that they would make the people of Virginia jealous and dissatisfied with their own conditions. 9

Remaining at home, then, Cecil Calvert entrusted the leadership of the colonial venture to his brother Leonard Calvert, the first Governor of Maryland. The little band of colonists composed of both Catholics and Protestants departed from England on November 22, 1633, in two vessels, the Ark and the Dove. 10

After a long and hazardous voyage the band of adventurers reached Point Comfort on the 27th day of February, 1634. From this point they proceeded up the Chesapeake Bay to the mouth of the Potomac River, which they entered. Sailing up the river, they disembarked on an island which they named St. Clement's. It was here on March 25, 1634, that they erected a cross and celebrated mass in joyful thanksgiving to God. After considering all things,
Governor Calvert, feeling that the island's location provided neither real convenience nor safety, moved the settlement further up the Bay to a river which they named St. George's River, now called St. Mary's. After negotiating and trading for possession of the land on the west bank which belonged to Chief Yoacomico and his tribe, the Marylanders took official possession of the soil on March 27, 1634, with all the usual ceremonies. 

From the very beginning of the venture the colony was supplied with all the necessities and many conveniences of a colonial plantation by the Proprietary himself! Even though a number of the emigrants were gentlemen of means, Lord Baltimore did not simply throw the colony on its own resources and hope that somehow all would take care of itself. The colonists stepped ashore in the new Province provided at Baltimore's expense with provisions and clothing, agricultural implements and those necessary for the construction of homes and fortifications. The Lord Proprietary spared no expense in the promotion of the interests and welfare of his possession and of its people.

During the first several years of the infant plantation, Cecil Calvert spent close to £40,000 sterling to help insure its success. He wisely used his powers and prerogatives in such a way as to give confidence and strength to the colony and liberty, justice, and happiness to its people. Land was made available on easy terms. The freemen shared in the legislative process, thus being members of and dwelling under a government in which they had a genuine share and vested interest. They enjoyed full exercise of their religion subject only to the restraints of conscience. Under the direction
of the Proprietary a judicial system was established incorporating Provincial law, common law, and those statutes of the Mother Country suitable to Maryland's colonial conditions, which were dispensed with equal and humane justice to all, both colonist and native. During the first seven years, the colony grew and prospered without interruption. When interruption did come, it came from causes which no man nor policy could have averted.¹³

The Proprietaryship of Cecil Calvert spanned a period of forty-three years. During that time he witnessed momentous events in England: the conflict between king and Parliament which culminated in civil war; the execution of Charles I; England as a Commonwealth and Protectorate under Cromwell; and the Restoration of the monarchy in the person of Charles II. The same period also found him expending his energies and fortune in behalf of the development of his American Province. He was faced with difficulties from the very beginning which continued almost to the end. There was the persistent trouble-making of Claiborne and those of the Virginia Company that supported this "evil genius," who missed no opportunity for seeking Calvert's undoing. There was the early conflict with the Jesuits of the matter of land tenure and the question of jurisdiction. Baltimore's authority and control was interrupted temporarily on several occasions: by Ingle's Rebellion, the Commissioners of Parliament, the Puritan Party, and Fendall's Rebellion.¹⁴

In many ways his life had been one of trial and anxiety. Yet through all the dangers and difficulties he never lost courage. Under all circumstances he conducted himself, his affairs, and those
of his Province with wisdom, patience, tact, prudence, and forebearance. He carefully guarded his own interests and authority; at the same time he guarded the welfare of his Province and its colonists just as carefully. He knew how to hold firm when that was necessary, but he also knew how to yield when the good of all concerned would be advanced.

Under the guidance of Cecil Calvert, the little settlement of about three hundred colonists clustered on the banks of the St. Mary’s River grew into a community numbering between sixteen and twenty thousand inhabitants divided into ten counties. The Province as a whole plus each subdivision had a complete civil and military organization. Commerce, industry, and agriculture flourished. Religious freedom and toleration were never violated except when the Proprietary's rule was interrupted.¹⁵

On November 30, 1675, just shortly after the forty-second anniversary of the sailing of the Ark and the Dove, Cecil Calvert, the Founder of Maryland died.¹⁶ He was a trained administrator, well-versed in English law. His purpose and intent wisely conceived and maturely carried out was a prime factor in determining by what law Maryland would be governed, for "...Cecil Calvert, being vested with extra-ordinary power over a great territory, determined to found ... a free English State, where all the rights of free Englishmen ... might be enjoyed and secured to the remotest posterity forever."¹⁷
CHAPTER II


2 Hall, Lords Baltimore, 28.


4 Johnson, Foundations of Maryland, 9.

5 Ibid., 159. 6 Ibid.

7 Md. Charter, Section XXIII; Hall, Lords Baltimore, 29; Johnson, Foundations of Maryland, 145-147; Browne, George and Cecilius Calvert, 45; Md. Archives, I, 31.


10 Steiner, Beginnings of Maryland, 16; Hall, Lords Baltimore, 37-38; McMahon, Government of Maryland, 194.


12 Ibid., 196-197.

13 McMahon, Government of Maryland, 198; Browne, George and Cecilius Calvert, 171-175.

14 Johnson, Foundations of Maryland, 151, 156; Hall, Lords Baltimore, 61.

15 Browne, George and Cecilius Calvert, 171-175.

17. Johnson, Foundations of Maryland, 158.
CHAPTER III

THE CHARTER OF MARYLAND: THE BROADEST BASIS
FOR LAW AND AUTHORITY

On the 20th of June, 1632, Cecil Calvert, the second Lord Baltimore was officially granted by royal charter the Province of Maryland.\(^1\) It is this charter which forms the broadest basis for law and authority in Maryland; it is the constitutional structure within which all other elements pertaining to law and the sovereign power of the Proprietary operate. Being the ultimate source of authority from which the laws of the colony flow, the charter requires careful consideration.

The charter of Maryland is in many ways a unique and remarkable document; yet at the same time it is a genuine product of its time and of those personalities involved in its creation. It was modeled on the charter of Avalon which had been granted to George Calvert by James I, incorporating the appropriate modifications to make it suitable to the new province.\(^2\) All indications and logic point to the conclusion that both charters were the work of Sir George Calvert. Among the sources consulted one is able to find that such was "probably" the case, while others state that such was definitely so; for example, one finds the statement, "... the charter was a modification of his George Calvert's earlier charter of Avalon, and was, no doubt, drawn up in conformity with his suggestions..."\(^3\) and, "... the charter... was probably framed by the first Lord Baltimore...",\(^4\) or more definitely, "when he came to draw the charter of Maryland..."\(^5\)
"George Calvert's intention in so wording the charter...",6 and "... the first Lord Baltimore drew the charter and traced the plan of government."7 Considering George Calvert's position in the royal administration, his personal relationship with the king, his interest and experience in colonial affairs, his legal knowledge and experience, one is naturally led to the conclusion that the charter was indeed the work of the first Lord Baltimore. In the words of McMahon, "It [the charter] was a grant to a favorite, by a monarch whose partialities were as unbounded as they were capricious: and there is reason to believe that it was framed under the dictation of that favorite."8 As a royal favorite and one intimately familiar with the intricacies of chancery procedure, George Calvert was able to obtain exactly the type of patent he wanted and to incorporate within it the most favorable terms possible, that is to say, the maximum amount of rights and powers with the minimum amount of obligations and restrictions.

By way of a general overview it can be stated that the charter invested the Proprietary with the following rights: All land and water contained within the specified boundaries of the Province, and all islands within ten marine leagues of the shore, with fisheries and mines, to be the perpetual possessions of himself and his heirs; the right to make laws, both public and private, with the assent of the freemen of the Province, and to make ordinances (not impairing life, limb, or property) without the assent; to establish various kinds of courts of justice, and to appoint all judges, magistrates and civil officials, and to execute the law even to the extent of taking life; to pardon all offenses;
to confer titles and dignities; to erect towns, boroughs, and cities; to make ports of entry and departure; to erect and found churches and chapels and cause them to be consecrated according to the ecclesiastical laws of England; to have the patronage and advowsons of these churches and chapels; to summon and arm the population, wage war, and exercise martial law in case of rebellion; to levy duties and tolls on ships and merchandise; and to alienate, sell, or rent the land.

If it be true that the powers given to the Proprietary were greater than those ever conferred on any other Proprietary, it is equally true that the rights secured to the inhabitants were greater than in any other charter that had thus far been granted. The colonists retained all the privileges as well as the name of English subjects; they retained the right to hold, inherit, or otherwise acquire land in England; they were free to trade with England or any other friendly ports; they participated in the making of their laws; and they, with their land and goods, were exempted from taxation by the crown. The privileges which the charter conferred upon the colonists and its ample provisions for the security of their rights and liberties account at once for its continuance until the Revolution, for the high esteem in which it was held by the people, and the tenacious way in which they clung to it when its existence was in danger.

A closer look at specific sections of the charter readily reveals the extraordinary and liberal grant of powers to the Proprietary. Section four is of special significance. It closes with the important grant of palatinate powers based upon those of the
Bishops of Durham by investing Baltimore

... with all and singular such, and as ample rights, jurisdictions, privileges, prerogatives, royalties, liberties, immunities and royal rights, and temporal franchises whatsoever, as well by sea as by land, within the region, islands, islets and limits aforesaid, to be had exercised, used and enjoyed, as any bishop of Durham, within the bishoprick or county palatine of Durham, in our kingdom of England, ever heretofore hath had, held, used or enjoyed.

Thus the colony of Maryland was made a county palatine, and the Proprietary a count palatine, invested with all the royal rights, privileges, and prerogatives which had ever been enjoyed at any time by any Bishop of Durham within his palatinate. Baltimore's palatinate rank is explicitly set forth in the Maryland coat-of-arms. This insignia of the colony, and later the state of Maryland, is composed of a shield of checkered bars and crosses representing the families from whom Lord Baltimore was descended. Beneath the shield is the Calvert motto: "Fatti Maschi Parole Femine," and on either side stands a human figure, one a farmer, the other a fisherman, both representing the major industries of the Province. At the very top of the coat-of-arms is a helmet with a coronet, indicating Baltimore's rank of baron; and between the shield and the helmet is a cap surrounded by a coronet. This is the palatine's cap which denotes his rank as a count palatine, and as such, his peculiar relation (and that of his colony) to the English crown.

George Calvert, the first Lord Baltimore, "adopted as his general model for his proprietaryship the palatinate jurisdictions in their original form and extent, which approached more nearly to sovereignty than any other of the subordinate governments known.
to the laws of England. As a further discussion of the charter will show, he received all the benefits of the Durham palatinate jurisdiction plus much more. The charter contains special grants of power and privileges, which not only cover those of the Palatinate of Durham, but extend considerably beyond it; the Maryland grant was "the most ample and sovereign in its character that emanated from the English crown."

The powers of the Palatinate of Durham were intimately known by George Calvert for their value and extent. The Palatinate itself was a near neighbor to Calvert, adjoining his Yorkshire home on the north. Young George was a school-mate and good friend of Bishop Matthew's son, Toby. George had often visited Toby's home, that towering edifice on the precipice above the River Weare. He must have indeed been impressed with Durham Castle, "Half Church of God, Half fortress 'gainst the Scot."

During the middle ages the county of Durham was set apart from the ordinary administration of the English kingdom. It was governed by its Bishop with almost complete local autonomy. The Palatinate of Durham, like the other two English palatinates of Chester and Lancaster, were in effect great fiefs of the realm, similar in most respects to the duchy or county of medieval France, and as such, constituted a striking exception to all generalizations about English feudalism.

The origin of the title of Count Palatine (comes palatinus or comes palatii—count of the palace) may be traced back at least as far as the late Roman Empire. The office was to be found among the invading Germanic tribes which overthrew the Empire in the west,
and there is no doubt that the title was borrowed from the conquered by the conquerors. It is important to note that the *comes palatinus* did not appear among the Saxons. The term did not come into use in the British Isles until much later. 17

During the Merovingian period the title *comes palatinus* was used to denote a court official who assisted or represented the king in judicial matters. Although the count, like other officers of the court, had various functions, his chief duties were definitely concerned with royal law and justice. The earliest mention of such an official is found during the reign of King Sigibert, 561-575. 18

The office of *comes palatinus* undergoes considerable development under the Carolingian line of kings as a result of the strengthening of royal power and justice. He gained in power and responsibilities. The office itself multiplied, with the probability that every important section of the Carolingian Empire was represented at court by its own *comes palatinus*. With the collapse of the Empire, the counts of the palace in many instances became sovereign rulers. 19

From the Carolingian Empire the office can be seen in its various forms and stages of development in France and the areas of Italy and Germany. By the thirteenth century the term *comes palatinus* is part of the legal and historical vocabulary of England, though the office and jurisdictions that go with it had already existed prior to this time. Apparently by the thirteenth century the great franchises of Durham and Chester had grown to such an extent as to include the exercise of local sovereignty in a kind
of quasi-royal way, and scholars, in order to describe such a state of affairs, borrowed the continental term, *comes palatinus*, which denoted very much the same local independence they were trying to describe. 20

The exact origin of the Palatinate of Durham is still quite obscure. Several theories have been put forth; two ascribe its creation to a deliberate act on the part of a king, either Alfred the Great or William the Conqueror, while a third, which seems to be the most correct, attributes it to a slow evolutionary growth, not complete until the thirteenth century based upon the survival of local independence in the ancient kingdom of Northumbria. 21

Three palatinates developed through evolutionary processes in the Kingdom of England: the counties of Durham and Chester, and the duchy of Lancaster. These palatinates were border counties, and as such were charged with the primary defense of the frontiers. There was always the danger of attack from Scotland and Wales. Such attacks could, and often did come without warning. It must be remembered that during the feudal period of English history there was no such thing as a regular standing national army, therefore, an invading enemy could strike, plunder, and withdraw before the royal feudal levies could be mustered and reach the scene. Such being the case, the king was forced to rely on these border districts themselves for the protection of the frontiers. For that purpose he granted the rulers of the palatinates quasi-royal power and authority. Although the evolution of palatinate jurisdiction involved many other complexities, the geographic position of the palatinates and the military exigencies of the
times certainly contributed heavily to such an evolution. 22

The earldom of Chester was incorporated into the crown by Henry III, and the duchy of Lancaster by Henry VII. Durham alone retained its ancient privileges and powers for a somewhat longer period of time. Perhaps this fact was due to the elective nature of the office, and that the ruler of Durham, being a Catholic bishop (until the English Reformation) could not found a feudal dynasty which might excite the jealousy of the crown. The Bishop of Durham, then, possessed the most ample of the powers deriving from the office of count palatine, which is another reason for Baltimore's selection of the Durham model. 23

The Bishops of Durham, from the thirteenth century on, possessed within the limits of their palatinate rights and privileges closely approaching those of the king: "Quicquid rex habet extra episcopus habet intra." 24 As head of the civil government the Bishop appointed all civil officials, and could, like the king, delegate certain of his governmental functions. It was his duty to maintain the peace and to punish and/or pardon all wrong-doers. The courts of justice were his courts, and all process issued ran in his name, not the kings; all offenses committed within the palatinate were offenses against the bishop, not the king. It was entirely correct, within the Palatinate of Durham, to speak of the Bishop's, not the king's peace. 24

All land was held directly from the Bishop, not the king. He had the right to all lands forfeited within his province by reason of treason or from other causes. The Bishop seemed to have possessed all mines in the palatinate. He possessed the right to royal fish,
whales, and sturgeons cast ashore or taken near the coast, along with the right to all wrecks which was closely related to the later development of his admiralty jurisdiction. The Bishop was entitled to treasure trove, to waif, to estray, and to deodand. He could erect fairs and markets, and might alienate many of his privileges on behalf of his subjects.26

The Bishop was supreme in jurisdictione within his palatinate. The English king was said to be under the law, although its machinery might not be set in motion against him. Yet in another sense the king was also outside of the law since he could prevent its consequences, and by his prerogative suspend certain of its conditions altogether. So it was with the Bishop of Durham. No action could be brought against him in his own courts. Anyone seeking remedy against him had to proceed by way of petition to the Bishop and his council. The Bishop could prevent the consequences of the law by means of a pardon and could, like the king, stay procedure. His prerogative was not confined to checking the operation of the law; he could also, under certain circumstances, suspend its application. 27

All judicial officials received their power and the right to exercise it from the Bishop. No officer of the king could come into the palatinate in the execution of his duty. Except in two specific instances, all appeals and writs of error reached their highest level in the Bishop. By and through his judicial supremacy the Bishop supplemented and corrected the common law, and determined and regulated relations between the common law courts and those of the Church. 26
It has been said that the Bishop had full royal powers within his province. Theoretically this may have been largely true, but in practice it was not completely so. He did possess powers that approached those of the king to the extent that he was enabled to carry out the functions of the border palatinate, but he did not possess absolute sovereignty nor its peculiar prerogatives. He could repulse and pursue invaders, but the over-all conduct and control of the rights of war and peace remained in the king with regard to this province as it did for the rest of the realm of England. The Bishop had no independent right to make war or peace; nor could he enter into direct communication with foreign powers, though many times this was in fact done with Scotland. He was, of course, brought into direct relations with foreign governments by way of the exercise of his admiralty jurisdiction. 29

Theoretically, then, the Bishop, within the limits of his province, enjoyed the rights and privileges of royalty. In practice, however, the king, for various motives, infringed upon and restricted his freedom of action. He placed checks and limitations upon the supremacy of the Bishop both through the regular legal channels and by the exercise of the royal prerogative. The fact that the Bishop's position was an elective one further limited his authority in as much as the king exercised considerable influence in the election. Nevertheless, even taking into consideration the royal encroachments upon the palatinate rights which did occur, the Bishops of Durham enjoyed a unique position far above any of the greatest English feudal lords. 30 The relation between the king and the Bishop was always a complex one. "Rash generalization
must be avoided, but it may be said that at almost any time between 1066 and 1485 the Bishops of Durham desired to be as kings in their palatinates, and that during most of this period they in varying degrees approximated their ideal. 31

The king was the ultimate source of all palatinate powers. He could not, however, grant to a subordinate within the realm rights and powers he himself did not possess. So if the king was bound by law, custom, and tradition to govern a specific territory by certain laws, so too was the count palatine. In the case of a newly discovered land such as English America, there were no such limitations on the crown. The land was the king's, and he possessed absolute sovereignty over the land and its original inhabitants, so a palatinate established in America could approach more nearly absolute sovereignty than could any palatinate in Europe. 32

By his charter, Lord Baltimore obtained from his sovereign all that was best of the palatinate jurisdiction of Durham without any of the drawbacks. He enjoyed all the rights, powers, privileges, and prerogatives that any Bishop of Durham had enjoyed at any time throughout the entire history of the palatinate. But this was only the nucleus around which much more was added.

The colony of Maryland, in order that it might "be eminently distinguished above all other regions . . . ," 33 was expressly erected into a Province of the Empire. Lord Baltimore and his heirs were made, created, and constituted "TRUE and ABSOLUTE LORDS and PROPRIETARIES," 34 holding the Province directly from the king in free and common socage, by fealty only, rendering
to the king two Indian arrows from the region to be delivered at
Windsor Castle each year on the Tuesday of Easter week, and one
fifth of all gold and silver that might be found within the limits
of the colony. 35

The seventh section of the charter is most critical to the
discussion of the source and development of Maryland colonial law,
and will, therefore, be allowed to speak for itself:

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 gov-
ernment 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 dis-
cretions, 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 which 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, and duly to
execute the same upon all persons, for the time being,
within the aforesaid PROVINCE, and the limits thereof, or
under his or their government and power, in sailing towards
MARYLAND, or thence returning, outward-bound, either to
England, or elsewhere, whether to any other part of our,
or of any foreign dominions, wheresoever established, by
the imposition of fines, imprisonment, and other punish-
ment whatsoever; even if it be necessary, and the guilty
of the offense require it, by privation of member, or life,
by him the aforesaid now Baron of BALTIMORE, and his
heirs, or by his or their deputy, lieutenant, judges,
justices, magistrates, officers, and ministers, to be
constituted and appointed according to the tenor and true
intent of these presents, and to constitute and ordain
judges, justices, magistrates and officers, of what kind,
for what cause, and with what power soever, within that
land, and the sea of those parts, and in such form as to
the said now Baron of BALTIMORE, or his heirs, shall seem
most fitting: and also to remit, release, pardon, and
abolish, all crimes and offences whatsoever against such laws, whether before or after judgment passed; and to do all and singular other things belonging to the completion of justice, and to courts, praetorian judicatures, and tribunals, judicial forms and modes of proceeding, although express mention thereof in these presents be not made; and, by judges by them delegated, to award process, hold pleas, and determine in those courts, praetorian judicatures, and tribunals, in all actions, suits, causes, and matters whatsoever, as well criminal as personal, real and mixed, and praetorian: Which said laws, so to be published as aforesaid, 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 invincibly 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.36

Section VIII empowered the Proprietary, in cases of emergency where the need for immediate action would preclude going through the ordinary legislative process, to "make and constitute fit and wholesome ordinances from time to time, to be kept and observed within the PROVINCE aforesaid . . ."37 so long as "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."38

It is obvious that this power, when viewed in the total context of the charter, was only one of an ad interim nature with regard to legislation, and that the restrictions placed upon it rendered it harmless and extremely limited in operation.

Throughout the charter are to be found again and again
explicit phrases declaratory of the plenitude of Proprietary powers. He is given "... free, full, and absolute power ..."); \textsuperscript{39} "... full and unrestrained power ... "; \textsuperscript{40} "... the fullest power and authority ... "; \textsuperscript{41} "... full and absolute power and authority ... "; \textsuperscript{42} "... full and absolute license, power and authority ... ". \textsuperscript{43} Baltimore is empowered to "... do all ... which ... shall seem fitting and convenient ... ". \textsuperscript{44} His grants of powers and privileges were not restricted by the laws of the Mother Country. \textsuperscript{45} Concerning the transport of colonists to Maryland, all Englishmen, except those whose expressly forbidden by the king, were free to emigrate from England, "... the statute of fugitives, or any other whatsoever to the contrary of the premises in any wise notwithstanding." \textsuperscript{46} That section of the charter confirming the rights and privileges of the Maryland colonists who remained English subjects concludes with the words, "... any statute, act, ordinance, or provision to the contrary thereof notwithstanding." \textsuperscript{47} Land was held directly of Lord Baltimore and not of the king; the statute of \textit{Quia Emptores Terrarum} and similar legislation or custom did not apply to the Province of Maryland. \textsuperscript{48}

The charter rendered the colony of Maryland less dependent upon the king than any other colony. "Not one of the other colonies was so independent of the mother-country; indeed no other grant so liberal (except the charter of Avalon) was ever made by an English sovereign. ... " \textsuperscript{49} The rights of the Proprietary were distinct from those of the crown. The king, by the terms of the charter, divested himself of all share in legislation and of all
interference in the internal administration of the government of the Province. It should be especially noted that there is no provision whatever in the charter requiring the laws of the Province to be submitted to the crown for approval; none of the laws of Maryland were subject to royal review. The government of Maryland "was removed from the oppressions of the crown, which had excited discontent in England. . . . "\(^5\) For nearly two generations the heavy hand of royal government was unfelt.

Lord Baltimore, by the terms of the charter of Maryland, was created hereditary sovereign over his New World palatinate Province, differing only from an independent ruler in that the inhabitants of his Province were subjects of the crown as well as of the Proprietary, and that the Proprietary acknowledged allegiance and fealty to the king, his over-lord, by the yearly tribute of two Indian arrows and one-fifth of any gold and silver that might be found. The charter invested Baltimore with full rights of government and full possession of the soil. There was practically no limit to the Proprietary's authority; he was little less than a king within his own Province. Lord Baltimore "was more truly a lord palatine, an absolute lord, a seigneur, and a lord paramount than any other proprietor or group of proprietors that built up a colony during the colonial period."\(^5\) The entire administrative, financial, and judicial structure and operations of the Province of Maryland lay ultimately in Baltimore's hands and were under his complete control. He was, indeed, absolute Lord and Proprietary.

The charter of Maryland created a proprietary government in its most favorable form. It was one of the earliest colonial
charters, surviving the general wreck of other proprietary gov-
ernments. Although it was suspended on two occasions, it con-
tinued to be the constitutional framework of the first successful
proprietary government until the American Revolution. 52

It is highly significant that the colony of Maryland was
granted to a single Proprietary, acting on his own initiative and
responsibility, and guided by definite plans already formed. With
the ownership and government in one hand, there existed a unity of
purpose and action which was free from those dissensions that
always arise when the administration of a proprietary colony is in
the hands of a number of proprietors. Baltimore, in truth, occu-
pied the position of pater familias; he could not help being in-
terested in the growth and prosperity of the colony and its inhab-
itants since their prosperity and well-being were identical with
his. 53

The government of Maryland was exceedingly free and mild in
operation, providing for the rights and privileges of both the
Proprietary and the inhabitants. Much of this was due to the
liberal views and benevolent purpose of the founder and to the
safeguards against oppression which were embodied in the charter,
but some of it, too, is directly attributable to the fact that the
colony was in the hands and under the direct and absolute control
of a single Proprietary of one family. 54

The privileges granted by the charter were in tune with both
the Stuart idea of power and prerogative, and the colonial policy
of the English government of that day. Under the Stuart doctrine
of the divine right of kingship, the sovereign was an absolute
ruler, accountable only to God. As the king derived his power from God alone, so Baltimore derived his powers directly from the king and was responsible only to him. The English policy on colonization was to leave the conduct and settlement of colonies to private enterprise and individual resources. The role of the crown was passive rather than active. It granted charters, conveyed lands, permitted migration, conferred trade monopolies; leaving the enterprising individuals or corporations on their own to carry out the actual establishment, operation, and management of the overseas plantations. If the colonial venture succeeded, the crown had its revenue producing dominions increased; if the venture failed, the crown lost nothing in the way of power or revenue.55

The proprietary form of government was created expressly to relieve the crown of the cares and responsibilities associated with administration of far-flung colonial possessions.56

As the discussion has attempted to show, even though in one sense the charter was a product of its time, it was at the same time a document unique. Baltimore's favored position allowed him to create a charter which gave to him "greater independence and opportunity for putting into operation his proprietary prerogative than was the case with any other head of a seignory in the whole history of the British colonies in America."57 Baltimore's charter contained "the most extra-ordinary delegation of power granted to any English subject since the creation of the border palatinate of previous centuries."58

Great effort has been made to stress the extra ordinary grants
of rights, powers, privileges, and prerogatives granted to the Lords Baltimore by James I and then by Charles I in a charter created by the first Lord Baltimore himself. The charter left nothing to chance; after the enumerating of the vast powers and privileges granted to Baltimore, the charter concludes with the statement that if at any future time any doubt should arise as to the true meaning of any point or article of the charter, the interpretation adopted should be the one most favorable to the Proprietary. 59

Why did Baltimore want all this power, and how was it used in practice? Some have unduly emphasized the autocratic features of the charter while neglecting those parts which guaranteed the rights, privileges, and liberties of the inhabitants of the colony. The charter was created in a day when language was used to conceal thought, and if the Maryland charter appears as a masterpiece of ambiguity in some instances, it must be conceded that Baltimore had to secure what he could in the only ways the laws of England then permitted.

In considering the real meaning of the charter of Maryland to the origin and development of Provincial law, one must always keep in mind the overriding purpose and objective of Lord Baltimore: the establishment and perpetuation of a free English state in the New World where freedom of person and conscience was to be enjoyed by all forever.

Baltimore's intention in so wording his charter as to give him and his heirs such sweeping sovereignty was not for the purpose of self-aggrandizement and personal power, but rather to allow him and
his successors to carry out the wisely conceived and noble purpose without either royal or parliamentary interference.

In actual practice, it will be seen that the Proprietary powers were so modified as to lead to the almost immediate exercise of popular sovereignty by the freemen of the Province. "The powers granted to the freemen by the charter created by Baltimore were promptly expanded by the settlers, who immediately asserted those political rights and privileges which had been the outgrowth of slow and painful processes at Jamestown." Baltimore voluntarily renounced those attributes of arbitrary power which might have led to oppression while at the same time preserving the safeguards of popular liberty.

The charter of Maryland, from the manner of its grant, the liberality of its provisions, and its benevolent and wise employment by Lord Baltimore, tended to promote the proper administration of government, and the interest and prosperity of the colony.

The character of the people of colonial Maryland can be directly ascribed to a high degree to the "extraordinary liberties of the charter, and the singularly excellent administration of a government under which they felt themselves to be truly freemen." The charter of Maryland made no provision for the wholesale extension to the colony of the laws and customs of England. As the ultimate authority on Provincial law, the charter guaranteed that the laws of Maryland would be what the Proprietary and the freemen of the Province would cause them to be.
FOOTNOTES

CHAPTER III

1. Md. Charter, Section XXIII.
2. English translation of the Avalon Charter as found in Scharf, History of Maryland, 34-40.
10. Ibid., McMahon, Government of Maryland, 141.
11. Md. Charter, Section IV.
17. Ibid., 3. 18. Ibid., 3-4. 19. Ibid., 4-5.
22. Lapsley maintains that the palatinates were not deliberately set up as a buffer zone by any one monarch; but regardless of origin, the military importance of the palatinates cannot be denied.
Scharf, History of Maryland, 60; Bibbins, Beginnings of Maryland, 16-17; Constance Lippincott, Maryland As A Palatinate. (Philadelphia: J. B. Lippincott Company, 1902), 12-13.

23 Lippincott, Maryland As A Palatinate, 8.

24 Lapsley, County Palatine, 31, "what the king has without the bishop has within."

25 Ibid., 31-33.

26 Ibid., 34, 41, 54-55, 58, 61-62; Scharf, History of Maryland, 60.

27 Lapsley, County Palatine, 68-69, 71.

28 Ibid., 74-75. 29 Ibid., 36-37, 40. 30 Ibid., 75-76.

31 Ibid., 76.

32 Scharf, History of Maryland, 60.

33 Md. Charter, Section VI.

34 Ibid., Section V. 35 Ibid. 36 Ibid., Section VII.

37 Ibid., Section VIII. 38 Ibid. 39 Ibid., Section VII.

40 Ibid., Section XII. 41 Ibid., Section XIII.

42 Ibid., Section XVI. 43 Ibid., Section XVIII.

44 Ibid., Section XIV


46 Md. Charter, Section IX.

47 Ibid., Section X. 48 Ibid., Section XVIII.

49 Browne and Scharf, History of Maryland, 18.

50 McMahon, Government of Maryland, 203.

51 Andrews, Proprietary Element in Maryland, 7.
52 McMahon, Government of Maryland, 141-142.

53 Ibid., 143; Md. Charter, passim.

54 McMahon, Government of Maryland, 143.

55 Browne, George and Cecilius Calvert, 38; Andrews, Proprietary Element in Maryland, 9-10; Bibbins, Beginnings of Maryland, 2; McMahon, Government of Maryland, 153-154; Newton D. Hereness, Maryland as a Proprietary Province. (New York: Macmillan Company, 1901), 153, 228.

56 McMahon, Government of Maryland, 154.

57 Andrews, Proprietary Element in Maryland, 3.

58 Andrews, Founding of Maryland, 37.

59 Md. Charter, Section XXII.

60 Andrews, History of Maryland, 18.

61 Browne, George and Cecilius Calvert, 38; Johnson, Foundations of Maryland, 145.

62 Scharf, History of Maryland, 60.

63 Md. Charter, passim.
CHAPTER IV

THE PROPRIETARY AND ASSEMBLIES: THE DEVELOPMENT
OF RULES OF JUDICATURE

According to the terms of his charter, Baltimore had the
right and power "... to ordain, make, and enact LAWS, of what
kind soever ... of and with the advice, assent, and approba-
tion of the freemen of the same PROVINCE, or of the greater part
of them, or of their delegates or deputies ..."¹ who were to be
called together by him for the framing of laws, when and as often
as the need should require, and in the form which should seem the
best to him or them.²

For nearly a year after their arrival, the colonists devoted
their time and energy to the practical business of establishing a
successful plantation. During this period there was little time
to devote to the abstractions of the law, or to the formulation
and adoption of a provincial legal code.³ Evidently Baltimore did
not feel that the infant colony was yet ready for a legislature.
He deferred calling an Assembly until he had developed and matured,
in conjunction with his advisors, such laws and ordinances as
would be most suitable to the conditions of the Province.⁴ Just
as soon, however, as the colonists felt themselves to be adequately
established, they set about making laws. On the 26th of February,
1634/5, the first Assembly of Maryland met at St. Mary's under the
presidency of Leonard Calvert, and was apparently composed of all
the freemen of the Province.⁵ There is no regular record of the
proceedings of this Assembly extant,⁶ and were it not for a casual
reference to one of its acts contained in "An Act for the attainder of William Cleyborne gent." passed by the second Maryland Assembly, it would never have been known that such a session had been held. From the bill just referred to it is learned that "... by an Act of Generall Assemble held at 5th Maries on the six and twentieth day of Feb'y 1634 among other wholesome laws and ordinances then made and provided for the welfare of this Province, it was enacted, that the Offendors in all murthers and felonies should suffer such paines, losses, and forfeitures as they should or ought to have suffered in the like crimes in England." This is all that is known of the proceedings of Maryland's first Assembly.

There is no way now to ascertain whether or not Leonard Calvert had among the instructions undoubtedly given to him by his brother as a guide for the proper administration of government, the authority for assembling the colonists at a proper time for the purpose of considering laws suitable to their condition, since those instructions have been lost. Considering Lord Baltimore's reaction to this Assembly it is reasonable to conjecture that no such authority was given. Even though the proceedings apparently had the approval of Governor Calvert, they were somewhat constitutionally irregular in a much as the charter placed the initiation of legislation squarely in the hands of the Proprietary. Having framed their laws, the colonists duly transmitted them to the Proprietary in England for his consideration and approval, without which they could have no validity. Baltimore probably received these laws somewhere around the
middle of April. He, of course, refused his approval, not because of the substantive content of the laws, but because of the fact that the charter gave the Proprietary the power to make laws with the advice and assent of the freemen of the Province, and not the other way around. It appears that Baltimore allowed over two years to elapse before positively expressing his dissent to the laws proposed by his colonists, and providing them with a code of his fashioning. During the intervening time, the Province was without statutory law but most certainly it adopted the common law of England so far as it was applicable. It is most probable that the inhabitants used their own proposed code as a legal guide until they received a definite reply in the negative from the Proprietary.  

Baltimore was busy during this time reorganizing the government of the Province and preparing a legal code for its use. By April, 1637, all was in readiness. He sent a new commission to his brother which explicitly defined his powers and fully stated his official functions. The commission also authorized Governor Calvert to call an Assembly on the 25th of January, 1638, at which time he was to announce the Proprietary's dissent to the laws passed by the freemen in 1635, and propose for their adoption the body of laws Baltimore had prepared.  

The second Maryland Assembly began its sessions as scheduled on January 25, 1638. The draft of laws sent over by the Proprietary was read, debated, and then rejected by the freemen. The Proprietary would not agree to laws of their making, nor would they agree to those of his. Thus began the basic constitutional
struggle between the freemen and the Proprietary over the right of the initiation of legislation. The immediate result of the contest was to leave the colony without any laws under which criminal jurisdiction could be exercised.¹²

Then question being moved what Lawes the Province should be governed by it was said by some that they might doe well to agree upon some lawes till we could heare from England againe. The President denying any such power to be in the house, Capt. Cornwalers propounded the lawes of England. The President acknowledg'd 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 punish't inflicted on any enormous offenders, by the refusall of these lawes.

Whereupon the Commission was produced and examined, & upon 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.¹³

A quick reading of Captain Cornwaleys' statement might lead one to conclude that the laws of England had not yet been put into practice by the colonists although it had been three years since their settlement. Yet a reading of the records show that both their legislative and judicial proceedings were predicated upon and conducted according to such laws.¹⁴ It is suggested that Cornwaleys' words should be construed to the effect that the laws of England, so far as applicable to the local circumstances were to be continued to be used and practiced by the colonists, and that a legislative declaration should be made to that purpose.

After due consideration, a small body of laws was drawn up by a committee of the Assembly and sent to the Lord Proprietary.¹⁵

Based upon an examination of the titles of those laws and that
they must have necessarily contained, for the body of them are
not extant, Bradley T. Johnson concludes that

it is clear that a committee could not have prepared them
in the time taken by it, and that they were the same laws
propounded by the Proprietary . . . for their adoption.
The Assembly then asserted its right to initiate legis-
lation, and at the same time agreed to the Code prepared
. . . in England, by the Proprietary with a deliberate
and enlightened purpose.\textsuperscript{16}

Johnson's assumption fits the logic of the circumstances and
is in keeping with the character and purpose of Lord Baltimore.
Among these forty-two laws "prepared" by the Assembly are those
providing for securing the liberties of the people, for a General
Assembly of all the freemen in which they would participate in
the making of laws for the general welfare, and for the adminis-
tration of justice in both civil and criminal causes. Considering
the Proprietary's over-all intent and his prior and subsequent actions, it seems safe to assume the correctness of Johnson's
opinion.

Since these laws never went into effect, it is apparent that
they were dissented to by Baltimore. The reason for his rejec-
tion was again not his objection to the content of the laws but
rather his insistence that he alone possessed the right of initi-
ation.

The uncertainty as to criminal jurisdiction within the Province
at this time can be seen in the fact that the Assembly proceeded
against William Claiborne by means of a bill of attainder and in
the character of the indictment and trial of Claiborne's associ-
ate in crime, Thomas Smith.\textsuperscript{17} Smith was a prisoner at this time
awaiting trial on the charges of piracy and murder. There was no

19
grand jury to indicted him, no court to try him, and no law to try him under. The Marylanders handled the matter in a simple but effective manner: the sheriff impaneled the whole Assembly as a grand inquest, and they brought an indictment; the Assembly then resolved itself into a high court of justice, gave the prisoner liberty of challenge, heard the evidence on both sides, and found him guilty; but whether under the law of England or a law passed during the previous session, does not clearly appear. The Governor, as president of the court, pronounced the sentence of death. A bill confirming the sentence was read three times and passed. Smith demanded benefit of clergy, but it was denied. It is not known for certain whether or not the sentence was carried out.

With the dead-lock between the Proprietary and the freemen over the initiation of laws, it appeared that the Province was in danger of being left without any certain law. But Baltimore thought it wisest to waive his chartered right than imperil the welfare of his colonists or appear to antagonize their interests. He seemed to have realized that the situation in the young colony necessarily demanded many local regulations peculiar to the circumstances of an overseas plantation in addition to the standard civil and criminal laws. It is to his lasting honor that, overlooking the indignity offered him by the rejection of the laws proposed by him, the following August he sent a letter to his brother giving him full authority to assent in his name to laws made by the freemen, reserving to himself only the veto power. And in order to avoid the inconvenience and danger of leaving the
Province without laws, they were to be operative until his final
assent or dissent was received. Thus the principle of free
self-government was firmly and peaceably established in Maryland,
four years after its initial settlement. Hoar sums up the
importance of this conditional modification when he states,
"... it will be acknowledged, that the right hereby acquired by
the freemen of the province of originating such laws for themselves,
as they should think fit, was a most important corner-stone in
their provincial liberties."20

The third Assembly, upon receiving Baltimore's letter yielding
legislative initiative, produced a number of bills designed to deal
in a distinct and separate manner with the various exigencies of
the Province;21 yet, for reasons unknown, "... these bills
were engrossed to be read the third time but were never read nor
passed the house."22

On the last day of the session, however, a law was finally
passed which comprehended the basic substance of the proposed bills.23
The title of the act was indeed sufficiently comprehensive, being:
"An Act ordaining Laws for the Government of the Province."24
A comparison of the terms of this act with those of the afore-
mentioned bills shows that it was a virtual abridgement of them.
The individual sections of this generally inclusive statute were
the first laws of the Province of Maryland. The act was a
temporary one, designed "... to endure till the end of the
next generall Assembly or (if such generall assembly be not
sooner called) for three years only."25 Thus from the first, be-
gan the practice of enacting temporary legislation, a feature
which became such a conspicuous and oftentimes troublesome characteristic of Maryland colonial legislation.

A section of this law provides the first legislative statement of a rule of judicature for the Province. In civil cases the governor, who was also the chief Justice, and his associates "... shall cause right and Justice to be done ... according to the laws or laudable usages of this province or otherwise according to the laws or laudable usages of England in the same or the like cases as near as he or they shall be able to Judge...." 26 while in criminal cases they were authorized to punish all offenders "... with any punishment as they shall think the offence to deserve except that in Crimes extending to taking away of life or member the offender shall be first indicted and afterward tried by twelve freemen at the least...." 27 This part of the afore-mentioned act concerning "Judicature in Civill & Criminal causes" 28 was revived and continued by an act of the Assembly of March 21-23, 1641/2 until the 12th of November following unless another Assembly should be called before that time. 29

In 1642 "An Act For Rule of Judicature" directed that:

Right & just sic in all civill Causes shall be determined according to the law or most Generall usage of the province since its plantacon or former presid of the same or the like nature to be determined by the Judge. And in defect of such law usage or presidet then right & just shall be determined according to equity & good conscience not neglecting (so far as the Judge or Judges shall be informed thereof & shall find no inconvenience in the applycation to this province) the rules by which right & just useth & ought to be determined in England in the same or the like cases. 30

52
With regard to criminal cases the same act directed that

... all crimes and offences shall be judged & determined according to the law of the Province or in defect of certain Law then they may be determined according to the best discretion of the Judge or Judges judging as near as Conveniently may be to the laudable law or usage of England in the same or the like offences Provided that no person be adjudged of life member or freehold without law certain of the Province. 32

This act was to endure till the end of the next Assembly. 33

The record of the Assembly of December 29, 1646, to January 1646/7 shows the passage of only one act, and that concerning judicature which stated:

All Justice as well Civill or Criminal shall bee administered by the Governor or other Chief Judge in Court according to the Lawes of the province and in defect of Lawe, then according to the sound discretion of the said Governor or other Chief Judge and such of the Counsell as shall bee present in Court or the Major parte of them. And if the Votes of the Counsell differ equally the vote of the Governor or other Chief Judge in Court shall cast it. 34

It should be noted that this act was not limited in its duration.

By the Proprietary Commission of April 15, 1637, the first Commission on record, Lord Baltimcre constituted his brother Leonard Calvert not only "... our Lieutenant Generall, Admirall, Chief Captain and Commander..." 35 of the Province on both land and sea, but also "... our Chancellor, Chief Justice, and Chief Magistrate..." 36 within the Province with the power "... to appoint and Constitute Officers and Ministers, for the preservation of the peace, Administracn and Execucon of Justice..." 37

Governor Calvert was authorized to make and issue ordinances, edicts, and proclamations "... with reasonable pains and penalties therein to be expressed..." 38 which were to be
inflicted on all offenders according to the governor's discretion so long as such penalties did not exceed "... to the taking away the Right or Interest of any person or persons of or in their life Members ffreeholds goods or, Chattells. ... "39

He was empowered to

... enquire hear determine and finally to Judge of ad
upon all Causes criminal all whatsoever of what nature and
good, degree or Condicon Soever the Same Shall be and
may or arise within our Said Province ... And to award
Execution upon every Such Sentence or Judgement And also
to and determine all Civill Causes actions Suits and de-
mands both in Law and Equity ... according to the several
Laws and Statutes of that our Said Province, already made
and established or hereafter to be made or Established.
And in default of Such Laws ... then according to the
Laws and Statutes of the Realm of England, as near as he
may or can Judge and determine thereof And where the said
time member or ffreehold or any person or persons Shall have
to come into question ... We Dow hereby Give and Grant
to him our Said Lieutenant or to Such persons as We shall
from time to time by our Letters or any other warrants
under our hand and Seal nominate and appoint to be of
our Councill within the Said Lieutenant always to be the
full power and authority to inquire and determine thereof
according, to the Laws of our Said Province, Established
or To be Established, And finally to give Sentence and
Judgement thereupon and to award Execution accordingly...10

Governor Calvert was thus created the sole judge of the Pro-
vincial supreme court in most cases either civil or criminal that
might arise in the Province. The exception was that in civil
cases involving the freehold of a person and in criminal cases
involving life and member as well as freehold, he was bound to
call in at least two members of the council for assistance.

By the new Commission of 1642 for the government of the Pro-
vince the governor was one again constituted sole judge of all
causes criminal, except where life, member, or freehold are con-
cerned and of all cases civil, except in cases where freehold is
involved, in which exceptional cases the governor with members of the Council were to be the judges.

The Commission of September 18, 1646, constituted the governor sole judge in all criminal cases, except in those involving life and member and in all civil cases, except those involving freehold and causes testimonial; the governor and two of the council were to be judges in cases where life, member or freehold were involved. Justice was to be done according to the laws of the Province or in default of such laws, then according to the governor's and/or the governor's and council's "... best discretion, as in ample means as we selves were we put could inquire heare & determine the same, & to award executation accordingly."

It is apparent from a consideration of these legislative acts and Proprietary commissions that the common law of England was adopted and operated in full force so far as it was applicable to the conditions of the young Province. Life, member or freehold could not be taken away, except by express law of the Province. In all other cases, the common law, when not superseded by the laws of the Province, was to be applied by the judges so far as they found no inconvenience in its application to the colony.

The summer of 1648 decided the fate of the royal cause. It was clear that the government would be in the hands of the victorious Puritan element dominated by Cromwell. "With the destruction of the monarchy accomplished, and the creation of a military government, imminent and inevitable, it would have been madness for Lord Baltimore, to have attempted to retain his Roman Catholic government, in the Province."
During this same summer Baltimore undertook a complete reorganization of the government of the Province. The measures proposed to carry out this reorganization consisted of commissions, official oaths, conditions of plantations, and a body of sixteen laws proposed to him and approved by him, which if adopted and enforced would have secured to the colonists and their posterity forever all the rights and privileges of Englishmen, many of which were lost in England.\textsuperscript{145}

The sixteen laws written on sheets of parchment were attached to the Commission to the Governor and Council in Maryland in which Baltimore explained that they were proposed to him \textsuperscript{146} "for the Good and quiet Settlement of our Colony and People... "\textsuperscript{147} and that he found them proper "to be enacted as Laws" with his assent beforehand on the condition that they be so enacted "without any alteration addition or diminution to them or any of them... "\textsuperscript{148} These laws were to be perpetual.\textsuperscript{150}

The General Assembly of April 2-21, 1649, under the direction of the new Protestant governor, William Stone, carefully considered the sixteen laws. The Assembly passed twelve acts of which the first nine received the Proprietary's assent. Two of these acts, one relating to the planting of corn, the other to the marking of hogs, were obviously the work of the local legislators and not of the Proprietary. The other seven acts were among the sixteen laws.\textsuperscript{51}

The Assembly of April 6-29, 1650, passed thirty-two acts of which chapters twenty-three to thirty-one inclusive were assented to by the Proprietary along with the nine acts passed by the
Assembly in 1649. The acts thus passed in 1649, and 1650, constitute the precise sixteen laws, proposed to, and accepted by the Proprietary, in August, 1648, as a basis of settlement.53

In this critical period Baltimore attempted to regain the initiation of legislation in order that his ideas for guiding the colony through these troubled times would be carried out as he wished, but the Assembly would not yield this important right which they had earlier won. Baltimore, however, had no cause for alarm since the Assembly, exercising its right of initiative, passed in substance the exact measures propounded by the Proprietary. It was obvious that he and the freemen were in accord as to what was in the best interest of the colony; they differed only on method. This was the last time that Baltimore tried to regain the initiative. The Proprietary was wise enough to see and trust in the wisdom and ability of the Assembly; and the Assembly in turn recognized and appreciated these same qualities in Baltimore. A singleness of purpose by both brought about a unity of action by both.54

In 1662 an act, entitled "An Act concerning Proceedings at Lawe," was passed which replaced the act of 1642, stating:

Whereas several differences do arise within this Province wherein there is not Rule or Lawe provided in the Province whereby to determine such differences And to leave to much discrecon is to open a Gapp to Corrup- con for the avoing such Inconveniencey Be it Enacted by the Lord Proprietary ... That in all cases where the Lawe of the Province is silent, Justice shall be administered according to the laws and Statutes of England, if pleaded and produced And all Courts to Judge of the Right pleading and inconsistency of the said Laws with the good of this Province according to the best of their Judgen.55 Skill and Cunning.56

The act was to endure for three years or to the end of the next
General Assembly. 57

By this act, in all cases where the laws of the Province were silent, the laws of England, whether existing prior to or after the settlement of the colony, were made the ultimate rule of right and reason in all cases whatsoever so far as they were consistent with the good of the Province. It should be noted that the judges were given a tremendous amount of discretion in determining which laws of England were consistent and which were not. It was through this act that this form of judicial legislation was introduced and sanctioned.

The next year, 1663, "An Act Concerning Proceedings at Law" was passed which simply stated: "... that in case where the Lawe of this Province is Silent Iustice shall be administered according to the Lawes of England." 59 This act was to endure for three years or to the end of the next General Assembly. 60

During this period and for some years thereafter a number of laws were passed which received neither the assent or dissent of the Proprietary. Even though under these circumstances the laws remained in force until the Proprietary's dissent was declared, the extremely cautious Assembly continued to re-enact them. The Proprietary finally dissented to the Act of 1663 in 1669, and it was formally repealed by the general repealing act of 1676 under the new Proprietary, Charles Calvert, the third Lord Baltimore. 61

An important act entitled "An Act for the Publicacon of all Lawes within this Province for the future---" 62 was passed in 1666 which provided that:
from henceforward all the acts that shall passe from this and all other succeeding Assemblies shall be from tyme to tyme fairely transcribed into parchment. And by Writt vnder the great seale of this Province from time to time to be passed by the Chancellor for the tyme then being to the Sherriffe of each respective County be transmitted and Comandment to them in the said writts shall be given as well the said Acts in their several and respective Countyes in what places to them shall seeme most Convenient to publish and Proclaime as the said Acts of Assembly to see firmly observed and kept and be itt further Enacted that every severall and Respective County shall from tyme to tyme pay vnto the Chancellor for the tyme then being for such Transcript of the Lawes and writt vnder the greate Seale as aforesaid the sume of two thousand pounds of Tobacco. 63

In 1674, an attempt was made to establish by law exactly what criminal statutes of England were in force within the Province. Accordingly a joint committee of the Assembly was appointed to draw up such a bill for that purpose. 64 After the bill had been prepared, the Lower House decided that such a bill was unnecessary since they conceived that: "... the Lawes of England ought to be esteemed & Adjudged of full force & Power within this Province ..." 65 and if the former act for proceedings at law was in any way deficient, the Lower House stated it would join with the Upper House to amend it to correct such deficiencies. 66

The Lower House wanted this act to extend to civil as well as criminal cases. 67 The Upper House replied that "... dangerous Consequences ..." 68 would "... of necessitie happen ..." 69 resulting from a general introduction of English statutes without a reservation of the power to judge of their consistency with the convenience of the Province. 70 The end result of this difference of opinion was that no such list was made into law.
On November 30, 1675, Cecil Calvert, second Lord Baltimore and Founder of Maryland, died. He was succeeded by his sons and heir, Charles Calvert, who was then governor of Maryland. Charles Calvert immediately called an Assembly and set about examining the laws of the Province. At this Assembly the legislation of the Province was rescued from the confusion and obscurity which had characterized it for some years due to the lack of regular Proprietary expression of assent or dissent to the acts which had been passed from time to time, and from the enactment during the same period of various acts or the same subject with the same ends in mind. A general revision of the laws took place under which laws no longer useful were repealed and those in existence and proper to continue were revived; in addition some new laws were passed.

Among the laws that were "Ratified and Confirmed to stand in full force and vertue till his Lordship by and with the advice & Consent of the Upper and lower houses of this or any future Assemblies shall think fit to alter amend revoke or Repeale the same or any one or more of them" were: "An Act touching Judicature An° 1646"; "An Act for the Punishment of Certain offences against the peace & safety of the Province An° 49 & 50"; "An Act for punishment of Certain offences as swearing Cursing Adultery & c. An° 1650"; "An Act for the Publicacon of all lawes within this Province for the future An° 66." At the same session of the Assembly by "An Act for Reviving of certain Lawes within the Province" the act concerning proceedings at law of 1662 was revived and continued for "three years, or to the
end of the next Session of the Assembly which shall first happen." 79

Here, for really the first time in the history of the colony of
Maryland, one had an exact answer to the question as to be
"... what Laws the Province should be governed. ... " 80

61
FOOTNOTES

CHAPTER IV

1 Md. Charter, Section VII. 2 Ibid.

3 Sebastian F. Streeter, Papers Relating to the Early History of Maryland. (Baltimore: John Murphy, 1876), 6-7; William H. Browne, Maryland, The History of a Palatinate. (Boston: Houghton, Mifflin and Company, 1887), 35; McSherry, History of Maryland, 121.

4 Johnson, Foundations of Maryland, 34.

5 Ibid.; Streeter, Early History of Maryland, 8; Md. Archives, I, 23; Browne, History of a Palatinate, 35; Steiner, Beginnings of Maryland, 35; McSherry, History of Maryland, 11; Scharf, History of Maryland, 121; John Leeds Bozman, The History of Maryland from Its First Settlement, in 1633, to the Restoration, in 1660, with A Copious Introduction, and Notes and Illustrations. Vol. II. (Baltimore: James Lucas & E. K. Beaver, 1837), 33-34.

6 Streeter, Early History of Maryland, 7; Bozman, History of Maryland, 33-34; Johnson, Foundations of Maryland, 34; McSherry, History of Maryland, 11; Scharf, History of Maryland, 121.

7 Md. Archives, I, 23. 8 Ibid.

9 Streeter, Early History of Maryland, 5-6, 8; Scharf, History of Maryland, 121; Md. Charter, Section VII.

10 Streeter, Early History of Maryland, 8; McSherry, History of Maryland, 10; Browne, History of a Palatinate, 36; Steiner, Beginnings of Maryland, 55; Scharf, History of Maryland, 121; Lippincott, Maryland As A Palatinate, 17.


13 Ibid., 9.

14 Md. Archives, I, 1-24; Bozman, History of Maryland, 94; Steiner, Beginnings of Maryland, 99; Andrews, Proprietary Element in Maryland, 23.


16 Johnson, Foundations of Maryland, 10.


18 Ibid., 16-17, 21. 19 Ibid., 31.

20 Bozman, History of Maryland, 96.

21 Md. Archives, I, 40-81. 22 Ibid., 39. 23 Ibid., 82-84.

62
Although there is no certain proof, it is likely that the sixteen laws were proposed to Baltimore by his close friend and adviser, Father Henry More, Provincial of the Jesuits in England, and the great-grandson of Sir Thomas More.


The act of 1663 is erroneously listed in the Md. Archives under the year 1664 in the list of laws repealed.
CHAPTER V

CONCLUSIONS AND SUMMARY

In considering the source and development of law under the first Proprietary in Maryland, one must always keep in mind that the law was the tool by which Lord Baltimore sought to carry out his purpose of establishing and perpetuating a state in the New World where all men should be free in both person and conscience.

The charter drawn up by the first Lord Baltimore was so constructed as to allow him and his heirs to cause the laws of Maryland to be what they in cooperation with the freemen of the Province wished them to be. The freemen shared in the legislative process, thus being members of and dwelling under a government in which they had a genuine share and vested interest. They enjoyed full exercise of their religion subject only to the restraints of conscience. Under the Proprietary a judicial system was established incorporating Provincial law, the common law, and those statutes of England suitable to Maryland's colonial conditions, which were dispensed with equal and humane justice to all.

Cecil Calvert realized that the freemen of the Province could be trusted with the important matter of the initiation of law. He early yielded this right and tried to regain it only when he felt that his life's work might be undone with the Parliamentary victory in the English Civil War. Then, for a second time he yielded, and was supported in his purpose when the freemen exercising their initiative passed laws which in substance were the same as those propounded by him in the first place.
The relationship between the Proprietary and the colonists was one of mutual respect and cooperation. The records are full of official expressions of gratitude to the Lord Proprietary "for his Lordships great charge & solicitude in maintaining the Govern. & protecting the Inhabitants in their persons rights and liberties. . . ."¹ The statements of gratitude and support were accompanied by what monetary gifts the colony could provide.²

During the early years of the Province whenever there was a lack of specific colonial precedent or law, and in cases not extending to the loss of life, member, or freehold, there was a tendency to refer to the laws of England so far as they were applicable. There then followed a period when more discretion was given to the courts, and only specific statutes or customs of England were introduced by legislation. Later matters took a more definite shape when the former distinctions as to crimes were waived and the rule of judicature provided for the use of the laws of England, if pleaded and produced, in cases where the laws of the Province were silent. Throughout the entire period cases involving the loss of life, member, or freehold could be tried only under the laws of the Province.

It should be noted that when the laws of England, either common or statutory, were used, they were used only in so far as they were applicable and convenient to the condition of the Province. The whole body of English law was never introduced in mass. It is obvious that many portions of the laws of England were wholly inapplicable to the conditions of the colonists. It
would have indeed been absurd for the colonists to have made a wholesale introduction of the laws of the Mother Country since some of these laws would certainly be destructive of their welfare.  

Because of the practice of temporary legislation and the lack of prompt Proprietary discussions on the acceptance or rejection of the laws proposed by the Assembly, there developed early an indefiniteness with regard to Maryland colonial law. Even though the Assembly succeeded in maintaining its right of initiative, and passed acts for the Province, such legislation never amounted to a complete and inclusive code. In order to determine exactly what the law was at any particular moment during the time of the first Proprietary one must examine the specific rule of judicature applicable at that specific time and the acts of Assembly passed and assented to under that rule. It is only with the general revision of the law upon the death of Cecil Calvert that one has, and only for that moment, an exact statement of what the laws of the Province were.

Perhaps the governmental system of Maryland under the first Proprietary did have its faults and shortcomings, yet it was a government of laws administered by the Proprietary in conjunction and cooperation with the freemen of the Province; it was the nursery of free principles and institutions. By what law should the Province be governed? By the law of free men!
FOOTNOTES

CHAPTER V

1 Md. Archives, I, 120.

2 See other expressions of gratitude and support, Md. Archives, I, 22, 123, 252, 452, 491; Md. Archives, II, 217, 284, 386, 515.

3 For an extensive report on English statutes in Maryland see William Kilty, A Report of All Such English Statutes As Existed at the Time of the First Emigration of the People of Maryland . . . (Annapolis: John Chandler, 1811). In this work Kilty classifies English statutes from Magna Charta to 1773 into (1) those not applicable, (2) those applicable but not proper to be incorporated into the statute law of the State, and (3) those both applicable and proper to be incorporated. He concluded that there were some two hundred twenty pre-settlement statutes and about seventy post-settlement but pre-1715 statutes (excluding those of merely a confirmatory nature) which were regarded as extending to the colony of Maryland.
APPENDIX A

CHRONOLOGY OF MARYLAND ASSEMBLIES: 1634/5 - 1676

Meeting of the Upper and Lower Houses of Assembly

February, 1634/5 - ?

January 25 to March 2h, 1637/8

February 25 to March 19, 1638/9

October 12-2h, 1640

August 2-12, 1641

March 21-23, 1641/2

July 18 to August 2, 1646

September 5-13, 1642

Proclamation: December 16, 1642; March 23, 1643; November 16, 1644

February 11, 1644/5

December 29, 1646 to January 2, 1646/7

January 7, 1647/8 to March 4, 1647/8

April 2-21, 1649

April 6-29, 1650

March 11, 1650/1

October 20, 1654

September 24, 1657

April 27, 1658

February 28 to March 1h, 1659/60

April 17 to May 2, 1661

April 1-12, 1662

1Md. Archives, I, II, passim.
September 15 to October 3, 1663.
September 13-21, 1664
April 10 to May 3, 1666
April 13 to May 8, 1669
March 27 to April 19, 1671
October 10-19, 1671
May 19 to June 6, 1674
February 12-24, 1674/5
May 15 to June 15, 1676
APPENDIX B

A LIST OF SOME SPECIFIC LAWS BY TITLE TOUCHING CRIMINAL MATTERS IN THE PROVINCE OF MARYLAND

Among those bills proposed at the Assembly of February 25 to March 19, 1638/9 but not enacted are:

An Act For treason
An Act For felonies
An Act allowing booke to certain Felonies
An Act Determining enormous offences

Assembly of August 2-12, 1641:

An Act against Fugitives

Assembly of March 21-23, 1641/2

An Act against Fugitives

Assembly of July 18 - August 2, 1642

An Act orderinging punishment for certain greater Capitall offences
An Act orderinging punishment for certain lesse Capitall Offences
An Act for punishment of some offences not Capitall
An Act for the punishment of Drunkennesse
An Act for the Punishment of Swearing

Assembly of September 5-13, 1642

An Act ordaining punishment for certaine greater Capitall offences
An Act for the punishment of certaine lesse capittall offences
An Act for punishment of some offences not Capitall
An Act for the punishment of drunkennesse
An Act for the punishment of swearing

1Md. Archives, I, II, passim.
Assembly of April 2-21, 1649

An Act concerning Religion
An Act for punishment of such as shall counterfeit the Lo: Prop. or his heirs Lords & Propr. of this Province great Seal of the Province
An Act for the punishment of certaine offences agt the peace & safety of the Province
An Act against fugitives
An Act touching Indians

Assembly of April 6-29, 1650

An Act for punishment of certaine offences as Swearing, cursing, Adultery, &c.
An Act for punishing of some other Offences
An Act prohibiting all Complanye with Capt. Wm. Cleyborne in opposition of his Lepp right & Domination over his Province
An Act of Oblivion

Assembly of October 20, 1651

An Act Concerning Religion
An Act concerning Drunkenness Concerning Swearing
Concerning fake Reports Slandering and Talebearing
Concerning Theft
Concerning Adultery & Fornication
Stealing of Indians
Selling of Gunns Powder or Shott to Indians
An Act against Fugitives
Delivering of Gunns to Indians
An Act Concerning Striking Officers and other offences
An Act prohibiting forreigners to trade in the Province

Assembly of April 27, 1658

An act Concerning Svants that have Bastards
An act concerning Drunkenness

Assembly of April 1-12, 1662

An Acte Concerning those Servts. that have Bastards
An Acte Concerning the paym't of fees due from criminal persons
An Acte touching Runaways
An additional act agt Hogs stealers
Assembly of September 15 to October 3, 1663

An Act Prohibiting Arrests upon the Sabbath dayes and dayes of Generall Musters & Trayning
An Act concerning English Servts tht Runn away in Company of Negroes or other Slaves.
An Act Imposing a Penalty on all such who shall dispose of Tobacco seized & read by the Sherriffe or oth.
An Act for a Prison at St. Mary's.
An Act for Erecting a Pillorye Stockes & Ducking Stoole in every County of This Province.
An Act for Providing Irons in each County for burning Malefacts.
An Act prohibiting Tradeing and Gaming w. Servants
An act Providing that shallbe good Evidence upon Hills Bonds and Specialtyes Coming out of England And other p'tes.

Assembly of September 13-21, 1664

An Additional Act to an Act entituled an Act concerninge the paym. of fees due from Criminall persons.

Assembly of April 10 to May 4, 1666

An act Concerning Outlawry
An act building a Prison at St. Maries.
An act ag. hogg Stealers
An Act giving Passege to persons that are to depart this Province.
An Act providing ag. Runnaway & all such as shall Enterterne them

Assembly of April 13 to May 3, 1669

An Act for Limitacion of Certain Actions for avoyding Suites at Lawe.
An Act for p'venting servants & Criminall persons from Running out of this Province
An Act for the Reviving & Amend't of an act Intituled an Addipōnal Act to an Act Concerning the paym. of fees due from Criminall Persons

Assembly of March 27 to April 19, 1671

An Act against divulgers of falsc news
An Act for the makeing voyd and Punishing of all fraudulent Practices tending to defrauding of Real Purchasers and Creditors
An Act against Hogstealers
An Act against Runawayes and Such Persons That shall give them Entertainm and others that shall Travell without Passes

Assembly of May 12 to June 6, 1674

An Act Concerning the Impanelling of the grand Inquest in the several Counties within this Province
An Act for the payment of fees due from Criminal persons
An Act Concerning those servants that have bastards
An Act against burners of fences
An Act prohibiting all masters of shippes or vessels or any other persons from Transporting or Conveying away any person or persons out of this Province without passes.
An Act for the building of a State house and Prison at St. Maryes
An Act to Reform the Attorneys Councellors & Solicitors at Law of this Province to ayde unnecessary Suits and Charges at Law.
An Act for Erecting a Court house and prison in every County within this Province.
An Act against the Profaning of the Sabbath day

Assembly of February 12-24, 1674/5

An Act Concerning what shall be allowed to the grand Juries That are Summoned twice yeare out of the body of the Province to attend Provinciall Courts

Assembly of May 15 to June 15, 1676

See Appendix C
An Act Relating to Servants and Slaves
An Act against the Importation of Convicted Persons into this Province
APPENDIX C

An Act for Repeale of certain laws and alse for ascertaining that Laws are in force within this Province.

The Burgesses & Delegates of this present Generall Assembly taking into their most Serious consideration the many great miscarriages Errors & inconveniences which have and may happen to many the good people of this Province by the many Errors that are Committed in the severall Courts & by the severall people within this Province in not knowing what Laws are in force & unrepealed & by the multiplicity of Laws to one and the same thing which many tythes interferr one with another & yett Judgment is given upon the same many tythes contrary to the true intent of the said Laws And whereas itt is found by Experience that many of the Laws in the body of the Laws as well perpetuall as temporall are become uselesse or Repealed in other private Acts not Sufficiently taken notice of & serve to noe other purpose but to swell the Laws to a great volume, & others are found not fitt to be Revived Therefore to prevent the like inconveniency for the future & to ascertaine that Laws are att the Expiracion of this present Sessions of Assembly in full force to be observed & Judged by They humbly pray that itt may be Enacted And bee itt Enacted by the Right Hon[ble] the Lord Proprietary by & with the advice & Consent of the Upper & lower houses of this present Generall Assembly & the Authority thereof

---

1 Ed. Archives, II, 542-553.
That these Laws following Entituled as in the Schedule hereunder written viz.

An Act made Anno 1610 touching Servants Cloathes
An Act made Anno 1617 touching Court dayes
An Act made Anno 1626 for the Extent of Attachments &
Execucons A. 17
An Act touching payment of debts Anno 17
An Act against fugitives made Anno 1619
An Act for support of the Lord Prerog A. 49
An Act Concerning the Secretary & Sherriffes fees made A. 1650
An Act for fees to the sherriffe A. 50
An Act prohibiting any Indians to come into Kent or Ann Arundell Counties without notice given A. 50
An Act Concerning the Secrety & Clerkes fees A. 50
An Act for the Surveyor Gene. fees A. 50
Alsoe An Act for the master master Gene. fees A. 50
An Act Concerning the gage of Tobacco hhus made An. 1658
An Act for the killing of wolves An. 58
An Act prohibiting ground leaves & seconds An. 58
An Act for the advancement of Childrens Estates An. 58
An Act for military discipline made Anno 1661
An Explanaco of that Clause of an act made by Capt. W.T
Stone the 29th. April An. 50 Concerning the Secrety & sher fees An. 61
An Act Concerning those servants that have bastards Anno 1662
An Act for the Publicaco of Marryages An. 62
An Explanation or Explanaco of that Act lymitting servants
tyres made the last Assembly An. 1661-62

An Explanation of that Clause in an Act made by Capt. W. Stone
Ap. 21th 1649 touching hogges and Marking of Cattle.

An Act Concerning payment for bullion brought in this Province An. 62

An Act for Encouragement of Sowing English graine An. 62

An Act concerning the payment of fees due from Criminal persons An. 62

An Act for the Reviving certain laws within this Province Anno 62

An Act for encouragement of Ordinary keepers An. 62

An Act declaring that shall be done by the Sherriff Ex-officio An. 62

An Act Concerning payment of debts due by bill An. 1662
An Act Concerning taxable persons An. 1662
An Act imposing a fee on them who shall be married An. 62
An Act appointing Sherriffes An. 62
An Act touching Runnaveyes An. 62
An Act of gratitude for the Levee Generall An. 62
An Act Lymitting Servants tymes An. 62
An Act Concerning the Secry & an addition to his fees An. 62
An Addiconall Act against hogstealers An. 62
An Act for the Burgesses Expenses An. 62

An Act for the quieting possessions of lands & Establishing the manner of Conveyances for land for the future made Anno 1664

An Act concerning English servants that Runaway in Company of Negroes or other Slaves An. 62

76
An Act for a Prison att 3d Maryes An. 64.

An Act for Erecting a pillory Stocks & Ducking Stoole in every County of this Province An. 64.

An Act for the Continuance of an Act Entituled an Act of gratitude for the Leiv.t. Generall An. 64.

An Act for providinge Irons in each County for burning malefactors An. 64.

An Act for Repeale of the Second Branch of an act made att 3d Johns the 4th of March 1657 by Thomas Green Esq. Governor Entituled An Act touching payment of Debts An. 64.

An Act enjoying Sheriffes to take bayle An. 64.

An Act to give Smiths Execucion for their debts An. 64.

An Act for the preservacion of Orphans Estates An. 64.

An Act against Exportacion of wool & old Iron An. 64.

An Act for Repeale of a Clause in an act made the 23th day of October 1640 by Leonard Calvert Esq. Leiv.t. Generall of this Province Entituled an Act for Servants Cicathos An. 64.

An Act for the Administracion of Justice An. 64.

An Act for the Leavying the surveyor Generalls fees An. 64.

An Act for the Rule of Arrest & summons for witnesses by all sherriffes & a Rule for Entring accôns & fileing accôns & Peticôns An. 64.

An Act for proceedings att Law An. 64.

An Act for appointing a Publick Notary An. 64.

An Act for Seating of land in Baltmore County An. 64.

An Act prohibiting tradeing and gameing with servants An. 64.

An Act for land five years in possession An. 64.
An Act providing what shall be good Evidence upon bills bonds & Specialtyes coming out of England & other parts An^o 64
An Act Concerning proceedings att Law An^o 64
An Act Concerning payment of Debts due by Bill An^o 64
An Act for the Burgesses Expences & other Publick debts An^o 64
An Act for Feryes An^o 64
An Act for providing a Magazine An^o 64
An Additionall Act to an Act Entituled Act concerning the payment of fees due from Criminall persons An^o 64
An Act for the Reviveing of Certain lavers within this Province An^o 64
An Act of Encouragement for W^m Smith in his undertakinge the Countryes worke at St Maryes An^o 64.
An Act for the preservation of Certain Articles made with the Susquahannah Indians An^o 64
An Act for the Burgesses Expences An^o 64
An Act for Recording the Journall of the lower house made Anno 1666
An Act for marking high wayes & makeing the heads of Rivers Creekes and Branches & swamps passable for horse and foot 66.
An Act concerning outlawries An^o 66
An Act Explaining the Act Entituled An Act for the muster master Gen^l^s fees An^o 66
An Act prohibiting forreigne Ingrossers An^o 66
An Act for the Clerkes fees & allowance of Iurors in civil causes An^o 66
An Act for the Repaire of an Act of Encouragement to W^m Smith in his undertakinge the worke att St Maryes 66.
An Act for building a prison att S t Naries An° 66.
An Act against Hogg stealers An° 66.
An Act for Repeale of part of a Branch of An Act Entituled An
Addicön to the Secrys fees An° 66
An Act touching payment of Debts An° 1667
An Act for the Encouragement of trade An° 67
An Act providing against Runnawayes & such as shall Enter-
tain them An° 67
An Act giving passes to those persons that are to Depart this
Province An° 67
An Act limitting servants times An° 67
An Addicönall act to the Law Entituled An Act for the Publicaçon
of Harryages An° 67
An Act Limiting Ordinary keepers An° 67
An Act providing for the payment of the 25 th tob p poll in the
cession yeare to the Leiv t Gen ll An° 67
An Act for the Reviveing of Certain laws within this Province
An° 67
An Act for the Burgesses Expences & other Publick debts An° 67
An Act Lymitting Ordinary keepers made Anno 1669
An Act for Reviveing certain Lawes within this Province An° 69
An Act of gratitude to the Leivtman General Charles Calvert
Esq r Anno 69
An Act to avoyd double payment of debts An° 69
An Act for marking high wayes & making the heads of Rivers
Creekes branches & stamps passable for horse and foote Anno 69
An Act for payment of money Debts in Tobacco An° 69
An Act for the Release of Prisoners taken in Execution An. 69
An Act appointing Court days in each respective County within this Province An. 69
An Act providing against sheriffs taking Excessive fees An. 69
An Act for preventing Servants & Criminal persons from Running out of this Province An. 69
An Act for the Reviving & amendment of an act Entitled an Additional Act Concerning the payment of fees due from Criminal persons An. 69
An Act for the payment of the Publick Charge of this Province An. 69
An Act for the advancement of Forreigne Gowns Anno 1671
An Act touching Coopers An. 71
An Act for Stay of Executions after April Court An. 71
An Act for Reviving Certain laws within this Province An. 71
An Act for the Coroners fees An. 71
An Explanation of two clauses in an act Entitled an act for the Clerkes fees & allowance for Jurors in civil causes with an addition of a fee to the Seal of each Respective County An. 71
An Act for the settling the rates & prices in money of all wines liquors & other Commodities Sold by Retail within this Province An. 71
An Act against Runawayes & all such persons as shall give them entertainment & others that shall travaile without passes An. 71
An Act for the Encouragement of the soving and making of hemp & flax An. 71
An Act for the payment of the Publick Charge of this Province An. 71
An Act for the enrollment of Conveyances & Securing the Estates of Purchasers An. 71

An Act Limiting servants times An. 71

An Act for the Reviveing of Certain Laws within this Province An. 71

An Act for the payment of the Publick Charge of this Province An. 71

An Act Concerning Ordinary keepers made An. 74

An Act for the Repeal of Certain Laws An. 74

An Act for mending the ways out of Charles County to the City of St. Maryes An. 74

An Act for to Reforme attorneys Chancellors & Solicitors at Law of this Province to avoid unnecessary Charges in suits at Law An. 74

An Act appointing Sherriffes to take byle An. 74

An Act Concerning taxable persons An. 74

An Act for payment & assessing the Publick Charge of this Province An. 74

An Act for the Rayseing a present supply for his Excellency the Capt. Generall to defray the Charges of makeing peace with the Seneca Indians & makeing warr with the Susquehannoch Indians & their Confederates if occasion Requires An. 74

An Act impowering the Gouernour & Councell to Leavy the Charge for makeing warr or peace with the Indians An. 74

An Act for Reviveing Certain lawes within this Province An. 74

An Act for Regulacion of Attorneys fees An. 74

An Act for payment & Assessing the Publick Charge of this Province An. 74 81
Bee by this present Act of Generall Assembly absolutely
Repealed & for ever after to be void & of none Effect And Bee itt
further Enacted by the Authority advice and Consent aforesaid (att
the humble Request of his Lordpps lower house of Assembly) That these
Lawses following Entituled as in the Schedule hereunder written Viz:

An Act for Church Liberties made Anno 1640
An Act for uncertain goods An° 1640
An Act for providing against Suddaine accidents in the
Governmmt An° 1640
An Act touching Iudicature An° 1645
An Act touching Pagans An° 1647
An Act Concerning Religion An° 1649 & 50
An Act of Recognicion of the Lawfull & Un doubted Right & title
of the Right Hon ble Caecilius Lord Baron of Baltemore Absolute Lord
& Proprietary of the Province of Maryland unto the said Province &
vnto all Islands ports and Creeks to the same belonging 49 & 50
An Act Concerning the Purchasing of land from the Indians
An° 49 & 50
An Act of oblivion An° 49 & 50
An Act for the Punishment of Certain offences against the peace
& safety of the Province An° 49 & 50
An Act for the punishment of such as shall Counterfeit the Lord
Proprietary or his heires Lords and Proprietaryes of this Province
great Seale of this Province An° 49 & 50
An Act against rayseing of money within this Province without
Consent of the Assembly An° 49 & 50
An Act Concerning the Leavynge of war within this Province
An° 49 & 50

82
An Act prohibiting the transportacōn or Sale of his Lordshipps
Ordinance Amunicōn Goods Chattles &c. l9 & 50

An Act for the Speedy payment of debts due to the Lord Prop[Y]
An. l9 & 50

An Act for the planting of Corne An. l9:
An Act touching Indians l9-50
An Act for taking an oath of fidelity to the Lord Prop[Y] l9-50
The Oath of fidelity to the Lord Prop[Y] of this Province l9-50
An Act Concerning accomptants to the Lord Proprietary l9-50
An Act Concerning trade with the Indians l9-50
An Act touching hoggs & marking Cattle l9-50
An Act for punishment of Certain offences as swearing Curseing
Adultery &c. An. 1650

An Act for punishment of some other offences An. 50

An Act prohibiting all Companycce with Capn William Cleborne
in opposition of his Lordships Right & Dominion over this Province
An. 50

An Act Concerning deserted plantacōns An. 50

An Act for the Erecting of Province into a County by the name of
Ann Arundell County--50

Acts made at a Generall Assembly held att St. Leonards the 27th
of April 1658 by Capn Josias Fendall Esq'r Gouernour

An Act for the Encouragement of such Souldiers as shall adventure
in the defence of the Countrey Anno 1661

An Act Concerning the setting upp of a mint An. 61

An Act for the Repeale of the Act for Customs An. 61

An Act for the Fort duties & masters of Shipps An. 61

83
An Act for the Purchasing a State house & Prison An° 61
An Act imposing a penalty on all such who shall dispose of Tobacco seized & Received 'p the Sherriffe & Others An° 1664
An Act for the Repulse of an act made Anno 1661 Entituled An Act Concerning killing wild Cattle An° 64.
An Act for the preseruacion of the Severall Harbours within this Province An° 64.
An Act Concerning Negroes & other Slaves An° 64
An Act for appointing Coroners in each respective County An° 1666
An Act for Confirmation of the Articles of Peace made with the Indians An° 66
An Act for the Explanation of that clause in an Act made by Cap° Wm. Stone Aprill the 21th Aprill 1649 touching Hogs & markeing Cattle An° 64
An Act Empowering the Gouernour & Councell to make war or peace with any Indian Enemy beyond the bounds of this Province An° 1666
An Act prohibiting Comissioners Sherriffes & Clerkes to plead as attorneys in their Respective County Courts An° 66
An Act prohibiting the office of Sherriff & Clerke to be officiated att one & the same tyme by one & the same person An° 66
An Act for the Naturalization of John Jarbo & others An° 66
An Act for the Naturalization of James Neale & ca An° 66
An Act for the Publicacion of all lawes within this Province for the future An° 66
An Act for the Continuance of peace with and Proteccion of our Neighbours & Confederate Indians in Choptank River An° 1669
An Act for the Naturalizacion of Garrett Vansweringen & others An° 1669

84
An Act for Recording the Journall of the lower house An. 69
An Act for Encouragement of such persons as will undertake to
build watermills An. 69
An Act for the Naturalizaciôn of Bernard Johnson & others An. 71
An Act for the encouragement the Importaciôn of Negroes & slaves
into this Province An. 71
An Act Empowering the Commissioners of the County Courts to Leavy
and raise Tobacco towards defraying the necessary Charges of their
Countyes An. 71
An Act for the making void all fraudulent practices tending to
the defrauding of reall purchasers & Creditors An. 71
An Act for quieting possessions An. 71
An Act for the Naturalizaciôn of Dyniosa & others An. 71
An Act for the rayseing & providing a Support for his Lordship
the Lord and Proprietary of this Province during his naturall
life & likewise a Supply towards the defraying the Publick Charge of
the Government An. 71
An Act prohibiting all sherrifes Sub sherrifes or Dep'ty
sherrifes all Clerkes sub Clerkes or Dep'ty Clerkes to plea as
attorney in any Court or Courts within this Province wherein he or
they shall bear such office An. 71
An Act for the killing of wolves An. 71
An Act for the preservaciôn of Orphans Estates An. 71
An Act for the naturalizaciôn of Mathias DeCosta An. 71
An Act for the naturalizaciôn of Hans Hanson & others An. 71
An Act of gratitude to his Ex: Charles Calvert Esq: Cap'n
Gen: of Maryland Anno 1671
An Act for the Enrolment of Conveyances & securing the Estates of Purchasers Ano. 7th

An Act appointing Court days in each Respective County within this Province Ano. 7th

An Act declaring what shall be done by the Sherriffe Ex Officio Ano. 7th

An Act for Erecting a Court house & Prison in each County within this Province Ano. 7th

An Act for the Naturalization of John Johnson & Henry Greene Ano. 7th

An Act for John Long of London Marchant Ano. 7th

An Act for the building of a Statehouse & Prison att 3d Maryes Ano. 7th

An Act for the Naturalization of Jacob Dohattoway & others Ano. 7th

Bee hereby & by this present Act of Generall Assembly are Ratified and Confirmed to stand in full force and vertue till his Lordshipp by and with the advice & Consent of the Upper and lower houses of this or any future Assemblyes shall think fitt to alter amend revoke or Repeale the same or any one or more of them.

And Bee itt Enacted by the Authority aforesaid that every County Clerke within this Province shall att or before the first day of January next transcribe & fairely write out in a booke for that Purpose to be kept all the Lawes which att the end of this present Sessions of Assembly are or shall be in force without askeing demanding or Receiveing any fee or gratuity for the same vnder the forfeiture of five thousand pounds of Tobacco to the Right Honble the Lord Prop't.
APPENDIX D

A CHARACTER OF THE PROVINCE OF MARYLAND, BY GEORGE ALSOP, 1666¹

The Government of the Province doth continually, by all lawful means, strive to purge her Dominions from such base corroding humors, that would predominate upon the least smile of Liberty, did not the Laws check and bridle in those unwarranted and tumultuous Opinions. And truly, where a Kingdom, State or Government, keeps or cuts down the weeds of destructive Opinions, there must certainly be a blessed Harmony of quietness. And I really believe this Land or Government of Mary-land may boast, that she enjoys as much quietness from the disturbance of Rebellious Opinions, as most States or Kingdoms do in the world: For here every man lives quietly, and follows his labour and employment desiredly; and by the protection of the Laws, they are supported from those molestious troubles that ever attend upon the Commons of other States and Kingdoms, as well as from the Aquafortial operation of great and eating Taxes. Here's nothing to be levied out of the Granaries of Corn; but contrary-wise, by a Law every Domestick Governor of a Family is enjoyed to make or cause to be made so much Corn by a just limitation, as shall be sufficient for him and his Family: So that by this wise and Janus-like providence, the thin-jawed Skeliton with his starv'd Careness is never seen walking the Woods of Mary-Land to affrighten the Children.

Once every year within this Province is an Assembly called, and out of every respective County (by the consent of the People) there

is chosen a number of men, and to them is deliver'd up the Grievances of the Country; and they maturely debate the matters, and according to their Consciences make Laws for the general good of the people; and where any former Law that was made, seems and is prejudicial to the good or quietness of the Land, it is repeal'd. These men that determine on these matters for the Republique, are called Burgesses, and they commonly sit in Junto about six weeks, being for the most part good ordinary Householders of the several Counties, which do more by a plain and honest Conscience, than by artificial Syllogisms drest up in gilded Orations.

Here Suits and Tryals in Law seldom hold dispute two Terms or Courts, but according as the Equity of the Cause appears is brought to a period. The Temples and Grays-Inne are clear out of fashion here: Marriott John Marriott, a lawyer of Gray's Inn, noted for his large appetite would sooner get a paunch-devouring meal for nothing, then for his invading Counsil. Here if the Lawyer had nothing else to maintain him but his barding, he might button up his Chops, and burn his Buckrom Bag, or else hang it upon a pin untill its Antiquity had eaten it up with durt and dust. Then with a Spade, like his Grand sire Adam, turn up the face of Creation, purchasing his bread by the Sweat of his brows, that before was got by the motionated water-works of his jaws. So contrary to the Genius of the people, if not to the quiet Government of the Province, that the turbulent Spirit of continued and vexatious Law, with all its querks and evasions, is openly and most eagerly opposed, that might make matters either dubious, tedious, or troublesome. All other matters that would be ranging in contrary and improper Spheres,
(in short) are here by the Power moderated, lower'd and subdued. All villainous Outrages that are committed in other States, are not so much known here: A man may walk in the open woods as secure from being externally dissected, as in his own house or dwelling. So hateful is a Robber, that if but once imagin'd to be so, he's kept at a distance, and shun'd as the Pestilential Noysomness.
BIBLIOGRAPHY

Primary Sources


Bacon, Thomas, Laws of Maryland at Large. Annapolis: Jonas Green, Printer to the Province, 1765.


Streeter, Sebastian F., Papers Relating to the Early History of Maryland. Baltimore: John Murphy, 1876. (Fund Publications No. 9)

Secondary Sources


McSherry, James, Discourse Delivered at the Commemoration of the Landing of the Pilgrims of Maryland. Annapolis, Maryland: The "Star" Office, 1845.


Morris, John G., The Lords Baltimore. Baltimore: John Murphy, 1874. (Fund Publication No. 8)


