



**THE HISTORY, DEVELOPMENT, AND
INTERPRETATION OF THE MARYLAND
DECLARATION OF RIGHTS**

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MARYLAND STATE ARCHIVES

THE HISTORY, DEVELOPMENT, AND INTERPRETATION OF THE MARYLAND DECLARATION OF RIGHTS†

by
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“[A]n independent argument under the state clause takes homework—in texts, in history, in alternative approaches to analysis.”¹

Justice Hans A. Linde,
Oregon Supreme Court

Justice Linde’s statement, made at a state constitutional law symposium in Maryland,² clearly is true. This article and its accompanying chart make the “homework” easier for lawyers developing legal arguments based on the Maryland Declaration of Rights.³

The article first reviews the basic arguments in favor of independent state constitutional jurisprudence. Although familiar to the state constitutional scholar, many practitioners are unaccustomed to invoking the often greater protections afforded by state constitutions than by the federal document. A brief historical sketch of the political and social environs in which the various versions of the Maryland Declaration of Rights were adopted follows. Specific techniques for incorporating the Maryland Declaration of Rights into legal argument also are discussed.

At the heart of this article, in chart form, each provision of every version of the Maryland Declaration of Rights is analyzed. The chart, its accompanying commentary, and bibliography provide the raw material for crafting arguments based on the Maryland Declaration of Rights.

Although the article is, of course, geared toward Maryland lawyers, it is useful to all practitioners to assist them in understanding how to develop “alternative approaches to analysis” to formulate winning arguments under state constitutional law. It also may be helpful as a guide to the type of historical research required in other states.⁴

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I. THE VALUE OF INDEPENDENT STATE CONSTITUTIONAL ANALYSIS

At least since the publication of Justice Brennan's seminal article in 1977 advocating a return to state constitutions,⁵ there has been an increased focus on those rights protected by the state constitution.⁶ One source of this renewed interest can be found in an historical analysis of the political theory underlying our federalist system.

The federalist system was designed as a compromise to balance the perceived need for a strong national government with the political reality of the existing powerful state governments.⁷ The resulting competitive nature of the federal system has important implications for the protection of the fundamental rights of the people. During the early period of United States history, states, more than the national government, had the capacity to act to curtail citizens' freedoms.⁸ The national government was constrained to act within the limited powers delegated to it by the United States Constitution.⁹ Likewise, the United States Constitution was believed to have limited powers over citizens, and the Bill of Rights was believed to constrain only the actions of the federal government, not states.¹⁰ State constitutional guarantees of fundamental liberties were, therefore, a citizen's front line of protection.

Later, the balance shifted toward the national government in two parallel ways. First, as a result of the expansion of national authority in the 1930's and 1940's, the national government assumed greater power for direct action on the lives of its citizens.¹¹ Second, many states refused to enforce the basic guarantees of liberty and freedom for their citizens provided in their own constitutions.¹² This, in turn, led to intervention by the United States Supreme Court in the form of "incorporating" the guarantees of the United States Bill of Rights against the states.¹³

Although there is no necessary relationship between selective incorporation and a withering of state constitutional law, citizens, lawyers, and the state courts grew conditioned to view the United States Supreme Court as the guarantor of our most fundamental freedoms.¹⁴ Lawyers failed to consult state constitutions and to advance claims based upon them.¹⁵

Today, another paradigm shift is underway. In the political arena, there is a distinct trend away from national government as a provider of services, and toward an increased role for the states in the provision of services to citizens.¹⁶ Simultaneous with this shift in political models has been a shift in jurisprudential models. As it has retreated from the activism of the Warren Court, the United States Supreme Court, apart from enforcing the minimum constitutional standards, has become more willing to allow states freedom to determine their own policies.¹⁷ In some states, the state supreme courts have reacted vigorously and have begun to develop their own independent state constitutional jurisprudences.¹⁸ Other states' courts have been more cautious.¹⁹

Those states that have begun to develop independent analyses of their own state constitutions have done so in response to two largely incontrovertible theses. First, state constitutions largely predate the Federal Constitu-

tion.²⁰ The chart will illustrate that the large majority of the rights protected by Maryland's Declaration of Rights date to 1776, thirteen years before the adoption of the first ten amendments to the United States Constitution. Second, the United States Supreme Court's decisions must address the "lowest common denominator"²¹ that can be applied to every state, whereas the state supreme courts have the freedom to tailor more narrowly the rules they create to the unique characteristics, history, and traditions of their individual states.²²

II. THE HISTORY OF THE MARYLAND DECLARATION OF RIGHTS

A history of the Maryland Declaration of Rights encompasses at least five distinct phases: 1) the convention of 1776 and the adoption of the first Maryland Declaration of Rights; 2) the constitutional convention of 1850-1851 and the adoption of the Declaration of Rights of 1851; 3) the constitutional convention of 1864 and the adoption of the Declaration of Rights of 1864; 4) the constitutional convention of 1867 and the adoption of the Declaration of Rights of 1867; and 5) the amendments made to the constitution of 1867. Also of interest is the proposed Constitution of 1967-1968 and the refusal of Maryland voters to adopt that proposal. It is not the purpose of this article to give a complete history of the constitutional conventions from which the various versions of the Maryland Declaration of Rights arose. Instead, I will attempt to provide a reading list for each period so that the practicing lawyer may invoke the milieu from which a provision has developed.²³

A. *The Maryland Declaration of Rights of 1776.*

From 1774-1776, as the move to independence fermented in the American colonies, Marylanders governed themselves by a *de facto* "government by convention."²⁴ A total of nine conventions were held. The first of these was held June 22-25, 1774 and the last ran from August 14 through November 11, 1776, concluding with the adoption of the first Constitution of the State of Maryland.²⁵ While the first two conventions addressed policy questions, by the third convention, the delegates began to deal with the daily business of running the colony.²⁶ The fifth convention adopted an "Association of the Freemen of Maryland" that bound the people of the province into a "loose political organization."²⁷ That document served as the basis of government until the first state constitution went into effect in 1776.²⁸

On June 28, 1776, the eighth convention of Maryland authorized its representatives to the Continental Congress to vote for American independence.²⁹ The convention also called for elections to a ninth convention to draft a new constitution, to be held beginning August 12, 1776.³⁰ In planning the Constitutional Convention (which would be the ninth convention), the eighth convention retained the same stringent property requirements for the franchise that had governed previous conventions.³¹ This led to significant disruptions during the election.³² Despite several election defeats,³³ the

"Whiggish" conservatives held a majority of the delegates to the Constitutional Convention.³⁴ When the Constitutional Convention began, the Whig party quickly seized control.³⁵ Matthew Tilghman of Talbot County was unanimously elected president of the Convention,³⁶ a post he held in each of the previous conventions he attended.³⁷

When the Constitutional Convention of 1776 concluded its work by adopting a new constitution and declaration of rights on November 11, 1776, it had produced a document that has been called the most conservative of the colonial era constitutions.³⁸

A modern lawyer researching a provision of the 1776 Declaration of Rights has a wide range of materials available, but the materials that one desires most do not exist. There are many excellent secondary sources analyzing the revolution.³⁹ However, no records of the Maryland Constitutional Convention's deliberative process are known to exist.⁴⁰

B. The Maryland Declaration of Rights of 1851.

Fletcher Green has described the constitutional developments of the "South Atlantic" states of Maryland, Virginia, Georgia, and North and South Carolina, from immediately after the Revolutionary War to the 1850's, as a time of sectional conflict between "up-country" people and those of the "low country."⁴¹ In each state that Green studied, the rise in population and power of the western parts of each state came at the expense of the older, rural, and conservative eastern portions of the states.⁴²

In Maryland, the legislative branch was elected by county rather than population, creating huge disparities in political power in the General Assembly that favored the Eastern Shore, with its many counties and few residents.⁴³ Despite previous attempts to redistribute the power,⁴⁴ maldistribution continued to lead to agitation for constitutional reform, particularly in the newer, western parts of the state that included Baltimore City.⁴⁵

Advocates for a constitutional convention also cited a need to limit the authority of the General Assembly to appropriate funds and incur debt.⁴⁶ The General Assembly had incurred over sixteen million dollars of debt for public works projects primarily in the western portion of the state, leading to increased taxes statewide.⁴⁷ The Eastern Shore particularly resented the increased taxes because the proceeds were used to fund public works projects like the Chesapeake & Ohio Canal and the Baltimore & Ohio Railroad that brought products from the West and economic competition to the Eastern Shore.⁴⁸

Reformers also urged two changes in the judicial branch.⁴⁹ First, they wanted to do away with the appointed judiciary, which they argued was not sufficiently democratic, and replace it with an elected judiciary.⁵⁰ Second, the expense of running the judiciary was thought to be excessive and cost-saving devices were to be considered.⁵¹ When the convention began, Thomas F. Bowie, a convention delegate from Prince George's County,

stated that judicial reform was the most important issue of the convention, and without it the Eastern Shore and Southern Maryland would never have agreed to a convention.⁵²

Behind each discussion at the 1851 Constitutional Convention lurked the face of slavery, as residents of the Eastern Shore, and their Southern Maryland allies feared that the westerners would abolish slavery given sufficient power in the legislature.⁵³

For the historian, there are far fewer historical and interpretive works explaining the 1851 Constitutional Convention and they are of lesser quality than those about the 1776 Constitutional Convention, but excellent journals of the convention were kept and are available.⁵⁴

C. The Maryland Declaration of Rights of 1864.

Secession and joining the Confederacy, although threatened, were never realistic possibilities for Maryland. To avoid Washington, D.C. being surrounded by rebel states, the national authorities kept a close watch to ensure Maryland's loyalty.⁵⁵ When Marylanders elected Augustus W. Bradford, the Union Party candidate for Governor, on November 6, 1861,⁵⁶ it signaled that Maryland would remain with the Union.⁵⁷

The Constitution of Maryland, however, continued to recognize slavery.⁵⁸ At a minimum, a constitutional amendment was necessary for emancipation,⁵⁹ but by 1863, many emancipationists felt that a new constitutional convention would be preferable.⁶⁰ By this time, the Union Party in Maryland had broken into two parties.⁶¹ The "Unconditional Union" advocated immediate emancipation of slaves without compensation, a state constitutional convention, and "complete and absolute support of the National administration."⁶² The "Conditional Union" proclaimed its loyalty and desire to win the war, but condemned the Lincoln Administration's aggressive war measures, including the suspension of the writ of habeas corpus.⁶³ The Conditional Union also supported emancipation, but preferred a slower and more deliberate pace.⁶⁴ It was willing to submit the question of constitutional convention to the voters.⁶⁵ The Democratic Party was in a weakened state and could only field candidates in the areas of the Eastern Shore and Southern Maryland.⁶⁶

The 1863 elections⁶⁷ took place in the long shadow of the National Government. General Robert C. Schenck of the Union Army Corps, headquartered in Baltimore, openly advocated the election of the Unconditional Union ticket.⁶⁸ Further, to consolidate Union strength and in fear of agitation, Schenck virtually took military control of the supervision of the election.⁶⁹ Under such conditions, it is not surprising that the Unconditional Union ticket won an overwhelming victory.⁷⁰ When the new General Assembly session began on January 6, 1864, among the first items was a call for a constitutional convention.⁷¹ By January 8, the measure was adopted and a popular election was scheduled for April 6 to determine if the people of Maryland wanted a constitutional convention.⁷² The convention received strong support⁷³ and was scheduled to begin on April 27, 1864.⁷⁴ There were

ninety-six delegates elected to the convention: sixty-one Union party members from northern and western counties, Baltimore City, Talbot, Caroline, and Worcester Counties, and thirty-five Democrats exclusively from the Pro-Slavery counties of Kent, Queen Anne's, Dorchester, Somerset, Anne Arundel, Montgomery, Prince George's, Charles, Calvert, and St. Mary's.⁷⁵

As outside forces played a large role in the events leading up to the Convention, they also continued to play a critical role during the Convention. With Lt. General Ulysses Grant's Union Army besieging Petersburg and Richmond, Confederate General Robert E. Lee ordered General Jubal A. Early to march up the Shenandoah Valley, enter Maryland, and menace Washington, D.C. and Baltimore.⁷⁶ Lee hoped that the Union Army would be forced to send troops to defend their capital, thus relieving the pressure on the Confederate capital in Richmond.⁷⁷ The main Confederate thrust, although victorious at the battle of Monocacy Junction,⁷⁸ was delayed by the battle, thus permitting Union reinforcements to arrive,⁷⁹ and eventually requiring their withdrawal.⁸⁰ Small detachments of confederate cavalry, made up largely of Maryland natives, fought skirmishes in Cockeysville, Govanstown, and Pikesville.⁸¹ The Constitutional Convention, meeting in Annapolis, recessed for ten days during the height of Early's raid, but the psychological impact on Convention delegates lasted longer.⁸²

The constitution that was produced abolished slavery and sought to ensure continued Unionist control of the Maryland political landscape by disenfranchising southern sympathizers, Copperheads, and Democrats largely through the use of "iron clad" loyalty oaths.⁸³

The historical literature exploring the civil war period is too voluminous to catalog. Even those works limited to Maryland's role in the Civil War are numerous.⁸⁴ An excellent source for understanding the 1864 Constitutional Convention are its journals, which are the most extensive for any Maryland Constitutional Convention until 1967.

D. The Maryland Declaration of Rights of 1867 and Subsequent Amendments.

The Maryland Constitutional Convention of 1867 is properly described by William Starr Myers as the "self-reconstruction of Maryland."⁸⁵ Democrats, outlawed from voting after the 1864 Convention, made a tremendous political comeback after Governor Thomas Swann declined to enforce the "iron-clad" oaths.⁸⁶ The result was a sweep to power by the Democrats.⁸⁷ The entire body of the 1867 convention was from the Democratic party as the Union party failed to field a ticket of nominees.⁸⁸ Although unable to repeal emancipation, the Democrats did remove what they considered to be the most objectionable provisions of the 1864 Constitution, including the "iron-clad" oaths.⁸⁹

Although the 1867 Declaration of Rights and Constitution are still in force in Maryland, little scholarship has discussed their inception.⁹⁰ Convention records were not kept and the only record of the proceedings is a compilation of newspaper accounts.⁹¹

E. The Proposed Maryland Constitution and Declaration of Rights of 1967-68.

In 1967, Maryland attempted to write a new constitution. It was: [s]upported strongly by all but a handful of convention delegates, it was endorsed by all living governors, the highest judges, the legislative leaders, party luminaries, the captains of industry, the leaders of labor, the mass media of Baltimore and Washington, unlimited numbers of do-gooders, and various itinerant experts from out of state. Opposition came from a rag-tag band of the pitiful elite—courthouse gangs whose jobs had been excised from constitutional status, the know-nothings of the radical right, a few opportunistic politicians, selective puritans who took an instant dislike to a single provision—and a majority of the voters who turned out on May 14 [1968].⁹²

Despite its defeat at the polls, the proposed Constitution of 1967-68 is an important document. Many of the proposals rejected at the time have been adopted subsequently in a piecemeal fashion. Moreover, the proposals are seen as a high-water mark of good government and it is not infrequent that a proposal will be supported by reference to what would have happened had the 1967-98 Constitution been adopted.⁹³

With respect to the 1967-68 Constitutional Convention, there are many excellent resource materials, including convention documents and journals and secondary sources.⁹⁴

III. HOW TO READ THE CHART

Each column of the following chart represents the Maryland Declaration of Rights as it existed at a specific time in Maryland history. The left-most column is the Maryland Declaration of Rights as it exists on the publication date of this article. It is the document initially adopted in 1867 with subsequent amendments to date. The second column is the Declaration of Rights as adopted in 1867. The third column is the short-lived 1864 Maryland Declaration of Rights. In column four is the Declaration of Rights adopted in 1851. The fifth column is Maryland's original Declaration of Rights adopted in 1776. The final two columns are drafts that were circulated during the 1776 Constitutional Convention. While neither of these drafts has (or has had) the force of law, they provide useful legislative history.⁹⁵ To the best of my knowledge, never before have these drafts generally been available to the public.

I have retained the integrity of each version so that the reader may read down a column and see the version in the order adopted, as well as read across a row to see the history of a given constitutional provision. As a result there are a few gaps where provisions were moved by a convention to a different order.⁹⁶

In an analysis found in the footnotes to the chart, I have tried to draw upon every possible source to make the chart complete. A major source is the records of the Constitutional Conventions, although these are somewhat

uneven.⁹⁷ The annotations also include suggested historical antecedents for the Maryland Declaration of Rights, including the *Magna Carta* and the English Bill of Rights of 1689.⁹⁸ These sources are referenced as appropriate.

Other historical antecedents include those constitutions of our sister states adopted prior to the adoption of the first Maryland Declaration of Rights.⁹⁹ Although New Hampshire,¹⁰⁰ South Carolina,¹⁰¹ Virginia,¹⁰² New Jersey,¹⁰³ and Pennsylvania¹⁰⁴ all adopted constitutions prior to Maryland, only Virginia and Pennsylvania attempted declarations or bills of rights analogous to Maryland's. Therefore, the provisions adopted by Virginia and Pennsylvania are the most relevant antecedents to the Maryland Declaration of Rights. The three constitutions provide very similar and, in some cases, identical rights.¹⁰⁵ This is despite the fact that these documents differ greatly in many respects regarding the forms of government established.¹⁰⁶ Maryland's 1776 Constitution has been described as the most conservative of the state constitutions of this period.¹⁰⁷ Pennsylvania's 1776 Constitution has been described as "radical," providing the intellectual counterpoint to the Federal Constitution with its unicameral legislature, lack of an executive branch, and broad-based suffrage.¹⁰⁸

The similarities in the rights provisions of the Maryland, Virginia, and Pennsylvania Declarations of Rights give rise to two opposing interpretations. First, this would seem to support the claim (made about the Federal Bill of Rights, but equally applicable to those of the states) that those drafting the provisions "did not concern [themselves] primarily with stating, with absolute textual precision, the rights that Americans believed would best protect their liberty."¹⁰⁹ Under this view, whatever textual differences exist between provisions would be of minor interest because these distinctions would not signify an underlying attempt to give different meaning to a provision. Conversely, the similarities may suggest the universality of agreement that the protection of these rights was important. Even Maryland conservatives and Pennsylvania radicals could agree on the general contours of these rights.¹¹⁰ A natural corollary of this second view is to give increased importance to the different words used in the various constitutions. Great care would be necessary to ensure that a textual difference indicated an intent to give a different meaning, rather than invoke a preferred manner of expressing a universally understood meaning. I do not attempt to settle this fundamental debate about the nature of text. All relevant provisions of the first Virginia and Pennsylvania constitutions have been included in the chart.

Perhaps a word of caution is warranted. The chart frequently will claim that a provision of the Maryland Declaration of Rights is derived from a right provided by the *Magna Carta*, or is similar to a right afforded by another state's constitution. This does not necessarily mean that the interpretation must be identical. The American experience and Maryland traditions have improved upon the *Magna Carta*.

Although the chart refers to many of the cases decided by Maryland's appellate courts that are based on the Maryland Declaration of Rights, the case citations given are not an exhaustive compilation. The reason for this is

two-fold. First, the Constitutions volume of the Maryland Annotated Code and computer sources do an adequate job of providing a complete list of case citations decided on or referencing the Maryland Declaration of Rights. Second, Maryland's appellate courts traditionally have exhibited a reluctance to give independent content to the provisions of the Declaration of Rights. Instead, the courts have preferred to hold that the provisions of Maryland's fundamental document are "in pari materia"¹¹¹ with analogous federal constitutional guarantees.¹¹² Because these decisions premised on a "lock-step" approach are of limited utility in developing an independent jurisprudence, they generally are omitted. Only those cases that are noteworthy, or those in which the courts escaped the intellectual straight-jacket of this approach, are cited.

IV. HOW TO CREATE AN ARGUMENT

For the practitioner, the factual setting obviously drives litigation. If a provision of the Maryland Declaration of Rights might apply colorably to a client's case, turn to the chart, read across the row and see how that article has evolved over the 220 years of Maryland independence. If the Federal Constitution and its amendments do not provide an analogous right, counsel is limited only by the Court of Appeals of Maryland's prior interpretation of the provision. Arguments can be based on the article's text, history, framers' intent, or anything else.

The work is more challenging if the United States Constitution and Bill of Rights provide an analogous¹¹³ right, but the federal court interprets the right to exclude a client's claim or defense. In this situation, counsel must argue to both the state trial and appellate courts that the federal case law interpreting an analogous provision should be discarded and that independent Maryland interpretations of the Maryland provisions should be used.¹¹⁴ The bases for arguing for independent Maryland interpretations are limitless, but an excellent starting place is a list of factors developed by Justice Handler of the New Jersey Supreme Court in *State v. Hunt*:¹¹⁵

1. TEXTUAL LANGUAGE DIFFERENCES, including both where a right unprotected by the Federal Constitution is protected by the state constitution, and where the language used to describe a right protected by both the federal and state constitution is so significantly¹¹⁶ different to permit independent evaluation;
2. a unique LEGISLATIVE HISTORY;
3. the existence of state law on the subject prior to the creation or recognition of a constitutional right;
4. situations where the DIFFERENT STRUCTURES of federal and state governments compel different results;¹¹⁷
5. matters of particular STATE INTEREST or local concern;
6. unique STATE TRADITIONS; and
7. PUBLIC ATTITUDES.

To Justice Handler's list, I would add virtually anything else, including the persuasiveness of dissenting or subsequently overruled opinions in the United States Supreme Court, persuasive decisions of sister state courts, or

even a state court's ideological differences with the Supreme Court.¹¹⁸ Any of these bases provide a solid ground for counsel to argue that the interpretation of an analogous provision of the Federal Constitution should be disregarded in favor of an independent Maryland interpretation. Counsel must then convince the court that an alternative interpretation is superior.

Maryland courts will not be persuaded overnight, but I do not doubt that carefully-made, persuasive arguments will prevail.

Current	1867	1864	1851	1776	Draft #2	Draft #1
DECLARATION OF RIGHTS (1867, as amended to 1997) ¹¹⁹	DECLARATION OF RIGHTS (1867) ¹²⁰	DECLARATION OF RIGHTS (1864) ¹²¹	DECLARATION OF RIGHTS (1851) ¹²²	The DECLARATION of RIGHTS ¹²³ (adopted November 4, 1776)	The DECLARATION of RIGHTS ¹²⁴ (Draft #2, September 17, 1776)	The DECLARATION and CHARTER of RIGHTS ¹²⁵ (Draft #1, August 27, 1776)
<i>We the People of the State of Maryland, grateful to Almighty God for our civil and religious liberty, and taking serious consideration the best means of establishing a good Constitution of this State for the sure foundation and more permanent security thereof, declare:</i> ^{126,127}	<i>We the People of the State of Maryland, grateful to Almighty God for our civil and religious liberty, and taking into our serious consideration the best means of establishing a good Constitution in this State for the sure foundation and more permanent security thereof, declare:</i>	<i>We, the People of the State of Maryland, grateful to Almighty God for our civil and religious liberty, and taking into our serious consideration the best means of establishing a good Constitution in this State for the sure foundation and more permanent security thereof, declare:</i>	<i>We, the People¹²⁸ of the State of Maryland, grateful to Almighty God for our civil and religious liberty, and taking into our serious consideration the best means of establishing a good Constitution in this State, for the sure foundation and more permanent security thereof, declare:</i>	THE parliament of Great Britain, by a declaratory act, having assumed a right to make laws to bind the Colonies in all cases whatsoever, and in pursuance of such claim endeavored by force of arms to subjugate the United Colonies to an unconditional submission to their will and power, and having at length constrained them to declare themselves into independent states, and to assume government under the authority of the people—therefore We, the delegates of Maryland, in free and full Convention assembled, taking into our most serious consideration the best means of establishing a good constitution in this state, for the sure foundation, and more permanent security thereof, declare,	THE parliament of Great Britain, by a declaratory act, having assumed a right to make laws to bind the colonies in all cases whatsoever, and in pursuance of such claim endeavored by force of arms to subjugate the United Colonies to an unconditional submission to their will and power, and having at length constrained them to declare themselves into independent states, and to assume government under the authority of the people, therefore, We, the delegates of Maryland, in free and full Convention assembled, taking into our most serious consideration the best means of establishing a good constitution in this State, for the sure foundation, and more permanent security thereof, declare,	THE parliament of Great Britain, ¹²⁹ by a declaratory act, having assumed a right to make laws to bind the colonies in all cases whatsoever, and in pursuance of such claim endeavored by force of arms to subjugate the United Colonies to an unconditional submission to their will and power, and having at length constrained them to erect themselves into independent states, and to assume new forms of government; WE, therefore, the delegates of Maryland, in free and full Convention assembled, taking into our most serious consideration the best means of establishing a good constitution in this state, for the surer foundation, and more permanent security thereof, declare,

Current	1867	1864	1851	1776	Draft #2	Draft #1
<p>1. That all Government of right originates from the People, is founded in compact only, and instituted solely for the good of the whole; and they have, at all times, the inalienable right to alter, reform or abolish their Form of Government in such manner as they may deem expedient.^{132,133}</p>	<p>(eliminated)¹³⁰</p> <p>1. That all Government of right originates from the People, is founded in compact only, and instituted solely for the good of the whole; and they have, at all times, the inalienable right to alter, reform or abolish their form of Government in such manner as they may deem expedient.^{134,135,136}</p>	<p>1. That we hold it to be self-evident, that all men are created equally free; that they are endowed by their Creator with certain inalienable rights, among which are life, liberty, the enjoyment of the proceeds of their own labor, and the pursuit of happiness.¹³¹</p> <p>2. That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole; and they have at all times the inalienable right to alter, reform or abolish their form of Government in such manner as they may deem expedient.^{137,138}</p>	<p>1. That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole; and they have, at all times, according to the mode prescribed in this Constitution, the inalienable right to alter, reform or abolish their form of Government in such manner as they may deem expedient.^{139,140}</p>	<p>1. That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole.¹⁴¹</p>	<p>1. That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole.</p>	<p>1. That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole.</p>
<p>2. The Constitution of the United States, and the Laws made, or which shall be made, in pursuance thereof, and all Treaties made, or which shall be made, under the authority of the United States, are, and shall be the Supreme Law of the State; and the Judges of this State, and all the People of this State, are, and shall be bound thereby; anything in the Constitution or Law of this State to the contrary notwithstanding.^{142,143}</p>	<p>2. The Constitution of the United States, and the Laws made, or which shall be made, in pursuance thereof, and all Treaties made, or which shall be made, under the authority of the United States, are, and shall be the Supreme Law of the State; and the Judges of this State, and all the People of this State, are, and shall be bound thereby; anything in the Constitution or Law of this State to the contrary notwithstanding.^{144,145,146}</p>					

Current	1867	1864	1851	1776	Draft #2	Draft #1
<p>3. The powers not delegated to the United States by the Constitution thereof, nor prohibited by it to the States, are reserved to the States respectively, or to the people thereof.¹⁴⁷</p>	<p>3. The powers not delegated to the United States by the Constitution thereof, nor prohibited by it to the States, are reserved to the States, respectively, or to the People thereof.^{148,149,150}</p>					
<p>4. That the People of this State have the sole and exclusive right of regulating the internal government and police thereof, as a free, sovereign and independent State.^{151,152}</p>	<p>4. That the People of this State have the sole and exclusive right of regulating the internal government and police thereof, as a free, sovereign and independent State.^{153,154}</p>	<p>3. That the people of this State ought to have the sole and exclusive right of regulating the internal government and police thereof.¹⁵⁵</p>	<p>2. That the people of this State ought to have the sole and exclusive right of regulating the internal government and police thereof.¹⁵⁶</p>	<p>2. That the people of this state ought to have the sole and exclusive right of regulating the internal government and police thereof.</p>	<p>2. That the people of this state ought to have the sole and exclusive right of regulating the internal government and police thereof.^{157,158,159,160}</p>	

Current	1867	1864	1851	1776	Draft #2	Draft #1
<p>5. (a) That the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury,^{161,162,163} according to the course of that Law, and to the benefit of such of the English statutes, as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of Law or Equity; and also of all Acts of Assembly in force on the first day of June, eighteen hundred and sixty-seven; except such as may have since expired, or may be inconsistent with the provisions of this Constitution; subject, nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State. And the Inhabitants of Maryland are also entitled to all property derived to them from, or under the Charter granted by His Majesty, Charles the First, to Cæcilius Calvert, Baron of Baltimore.^{164,165}</p> <p>(b) The parties to any civil proceeding in which the right to a jury trial is preserved are entitled to a trial by jury of at least 6 jurors.</p>	<p>5. That the inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that law, and to the benefit of such of the English statutes, as existed on the Fourth day of July, seventeen hundred and seventy-six, and which, by experience, have been found applicable to their local and other circumstances; and have been introduced, used and practiced by the Courts of Law or Equity; and also of all Acts of Assembly in force on the first day of June, eighteen hundred and sixty-seven; except such as may have since expired, or may be inconsistent with the provisions of this Constitution; subject, nevertheless, to the revision of, and amendment or repeal by the Legislature of this State; and the Inhabitants of Maryland are also entitled to all property derived to them from, or under the Charter granted by His Majesty, Charles the First, to Cæcilius Calvert, Baron of Baltimore.^{168,169}</p>	<p>4. That the inhabitants of Maryland are entitled to the common law of England, and the trial by jury according to the course of that law, and to the benefit of such of the English Statutes as existed on the fourth day of July, seventeen hundred and seventy-six, and which, by experience have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of Law or Equity, and also of all acts of Assembly in force on the first day of June, eighteen hundred and sixty-four, except such as may have since expired, or may be altered by this Constitution, subject, nevertheless to the revision of, and amendment or repeal by the Legislature of this State; and the inhabitants of Maryland are also entitled to all property derived to them from or under the charter granted by his Majesty, Charles the First, to Cecilius Calvert, Baron of Baltimore.¹⁷⁰</p>	<p>3. That the inhabitants of Maryland are entitled to the common law of England, and the trial by jury, according to the course of that law, and to the benefit of such of the English statutes as existed on the fourth day of July, seventeen hundred and seventy-six, and which by experience have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the courts of law or equity, and also of all acts of Assembly in force on the first Monday of November, eighteen hundred and fifty, except such as may have since expired, or may be altered by this Constitution, subject, nevertheless to the revision of, and amendment or repeal by the Legislature of this State; and the inhabitants of Maryland are also entitled to all property derived to them from or under the charter, granted by his Majesty Charles the First, to Cæcilius Calvert, Baron of Baltimore.¹⁷¹</p>	<p>3. That the inhabitants of Maryland are entitled to the common law of England, and the trial by jury, according to the course of that law, and to the benefit of such of the English statutes, as existed at the time of their first emigration, and which, by experience, have been found applicable to their local and other circumstances, and of such others as have been since made in England or Great Britain, and have been introduced, used, and practised by the courts of law, or equity; and also to all acts of assembly in force on the first of June seventeen hundred and seventy-four, except such as may have since expired, or have been, or may be altered by acts of convention, or this Declaration of Rights—subject nevertheless to the revision of, and amendment or repeal by, the Legislature of this State; and the inhabitants of Maryland are also entitled to all property derived to them from or under the charter granted by his majesty Charles I, to Cæcilius Calvert, Baron of Baltimore.¹⁷²</p>	<p>3. That the inhabitants of Maryland are entitled to the common law of England, and the trial by jury, according to the course of that law, and to the benefit of such of the English statutes, as existed at the time of their first emigration, and which by experience have been found applicable to their local and other circumstances, and of such others as have been since made in England, or Great-Britain, and have been introduced, used, and practiced by the courts of law, or equity; and also to all acts of assembly in force on the first of June seventeen hundred and seventy-four, except such as may have since expired, or have been, or may be altered by acts of Convention, or this Declaration of Rights, subject nevertheless to the revision of, and amendment or repeal by the legislature of this state; and the inhabitants of Maryland are also entitled to all property derived from or under the charter granted by his majesty Charles the first to Cæcilius Calvert baron of Baltimore.¹⁷²</p>	

Current	1867	1864	1851	1776	Draft #2	Draft #1
<p>(c) That notwithstanding the Common Law of England, nothing in this Constitution prohibits trial by jury of less than 12 jurors in any civil proceeding in which the right to a jury trial is preserved.^{166,167}</p>		<p>5. The Constitution of the United States, and the laws made in pursuance thereof, being the supreme law of the land, every citizen of this State owes paramount allegiance to the Constitution and Government of the United States, and is not bound by any law or ordinance of this State in contravention or subversion thereof.¹⁷³⁻¹⁷⁴</p>				

Current	1867	1864	1851	1776	Draft #2	Draft #1
<p>6. That all persons invested with the Legislative or Executive powers of Government are the Trustees of the Public, and as such, accountable for their conduct: Wherefore, whenever the ends of Government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the People may, and of right ought, to reform the old, or establish a new government; the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of mankind.¹⁷⁵</p>	<p>6. That all persons invested with the Legislative or Executive powers of Government are the Trustees of the Public, and as such, accountable for their conduct: Wherefore, whenever the ends of Government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the People may, and of right ought to reform the old or establish a new government, the doctrine of nonresistance against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of mankind.^{176,177}</p>	<p>6. That all persons invested with the Legislative or Executive powers of government are the Trustees of the public, and as such, accountable for their conduct; wherefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to reform the old or establish a new government. The doctrine of non-resistance against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of mankind.¹⁷⁸</p>	<p>4. That all persons invested with the legislative or executive powers of government are the trustees of the public, and as such accountable for their conduct; whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to reform the old or establish a new government; the doctrine of non-resistance against arbitrary power and oppression, is absurd, slavish and destructive of the good and happiness of mankind.¹⁷⁹</p>	<p>4. That all persons invested with the legislative or executive powers of government, are the trustees of the public, and as such accountable for their conduct, wherefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought, to reform the old or establish a new government; the doctrine of nonresistance against arbitrary power and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.</p>	<p>4. That all persons invested with the legislative or executive powers of government are the trustees¹⁸⁰ of the public, and as such accountable for their conduct; wherefore whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought, to reform the old or establish a new government ; the doctrine of non-resistance against arbitrary power and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.</p>	<p>2. That persons entrusted with the legislative and executive powers are the trustees and servants of the public, and as such accountable for their conduct; wherefore whenever the ends of government are perverted, and public liberty manifestly endangered by the legislative singly; or a treacherous combination of both those powers, the people may, and of right ought, to establish a new, or reform the old government : passive obedience is only due to the laws of God, and to the laws of the land; the doctrine of non-resistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.^{181,182,183}</p>

Current	1867	1864	1851	1776	Draft #2	Draft #1
7. That the right in the people to participate in the Legislature is the best security of liberty, and the foundation of all free Government; for this purpose, elections ought to be free and frequent; and every citizen ¹⁸⁴ having the qualifications prescribed by the Constitution, ought to have the right of suffrage. ^{185,186,187}	7. That the right in the People to participate in the Legislature is the best security of liberty, and the foundation of all free Government; for this purpose, elections ought to be free and frequent; and every white male citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage. ^{188,189}	7. That the right in the people to participate in the Legislature is the best security of liberty, and the foundation of all free government; for this purpose elections ought to be free and frequent, and every free white male citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage. ¹⁹⁰	5. That the right in the people to participate in the Legislature is the best security of liberty, and the foundation of all free government; for this purpose elections ought to be free and frequent, and every free white male citizen having the qualifications prescribed by the Constitution, ought to have a right of suffrage. ^{191,192}	5. That the right in the people to participate in the legislature is the best security of liberty, and the foundation of all free government; for this purpose elections ought to be free and frequent, and every man having property in, a common interest with, and an attachment to the community, ought to have a right of suffrage.	5. That the right in the people to participate in the legislature is the best security of liberty, and the foundation of all free government; for this purpose, elections ought to be free and frequent, and every man having property in, a common interest with, and attachment to the community, ought to have a right of suffrage.	3. That the right in the people to participate in the legislature is the foundation of liberty, and of all free government; for this purpose, elections ought to be free, and frequent, made <i>viva voce</i> , without treating or bribery, and every man having sufficient evidence of a permanent common interest with, and attachment to the community, ought to have a right of suffrage. ¹⁹³
8. That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other. ^{194,195,196,197}	8. That the Legislative, Executive and Judicial powers of government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other. ^{198,199}	8. That the legislative, executive and judicial powers of government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said departments shall assume or discharge the duties of any other. ²⁰⁰	6. That the legislative, executive and judicial powers of government ought to be for ever separate and distinct from each other; and no person exercising the functions of one of said departments, shall assume or discharge the duties of any other. ^{201,202}	6. That the legislative, executive, and judicial powers of government ought to be for ever separate and distinct from each other. ^{203,204}	6. That the legislative, executive, and judicial powers of government, ought to be for ever separate, distinct from, and independent of each other.	4. That the legislative, judicial, and executive powers of government ought to be for ever separate, distinct from, and independent of each other. ^{205,206}
9. That no power of suspending Laws or the execution of Laws, unless by, or derived from the Legislature, ought to be exercised, or allowed. ^{207,208}	9. That no power of suspending Laws or the execution of Laws, unless by, or derived from the Legislature, ought to be exercised, or allowed. ^{209,210}	9. That no power of suspending laws or the execution of laws, unless by or derived from the Legislature, ought to be exercised or allowed. ²¹¹	7. That no power of suspending laws, or the execution of laws, unless by or derived from the legislature, ought to be exercised or allowed. ²¹²	7. That no power of suspending laws, or the execution of laws, unless derived from the legislature, ought to be exercised or allowed.	7. That no power of suspending laws, or the execution of laws, unless by or derived from the legislature, ought to be exercised or allowed.	5. That no power of suspending laws, or the execution of laws, unless by the legislature, ought to be exercised or allowed. ^{213,214}
10. That freedom of speech and debate, or proceedings in the Legislature, ought not to be impeached in any Court of Judicature. ^{215,216,217,218}	10. That freedom of speech and debate, or proceedings in the Legislature, ought not to be impeached in any Court of Judicature. ^{219,220}	10. That freedom of speech and debate, or proceedings in the Legislature, ought not to be impeached in any Court of Judicature. ²²¹	8. That freedom of speech and debates or proceedings in the Legislature, ought not to be impeached in any court of judicature. ²²²	8. That freedom of speech, and debates or proceedings, in the legislature, ought not to be impeached in any other court or judicature.	8. That freedom of speech, and debates, or proceedings, in the legislature, ought not to be impeached in any court or judicature.	6. That freedom of speech, and debates, or proceedings, in the legislature, ought not to be impeached or questioned in any other place. ²²³

Current	1867	1864	1851	1776	Draft #2	Draft #1
11. That Annapolis be the place of meeting of the Legislature; and the Legislature ought not to be convened, or held at any other place but from evident necessity. ^{224,225}	11. That Annapolis be the place of meeting of the Legislature; and the Legislature ought not to be convened, or held at any other place but from evident necessity. ^{226,227}	11. That Annapolis be the place for the meeting of the Legislature, and the Legislature ought not to be convened or held at any other place but from evident necessity. ²²⁸	9. That Annapolis be the place for the meeting of the Legislature; and the Legislature ought not to be convened or held at any other place but from evident necessity. ^{229,230,231}	9. That a place for the meeting of the legislature ought to be fixed, the most convenient to the members thereof, and to the depository of public records, and the legislature ought not to be convened or held at any other place but from evident necessity.	9. That a place for the meeting of the legislature ought to be fixed, the most convenient to the members thereof, and to the depository of public records, and the legislature ought not to be convened or held at any other place but from evident necessity.	7. That a place for the meeting of the legislature ought to be fixed, the most convenient to the members thereof, and to the depository of public records, and the legislature ought not to be convened and held at any other place but from evident necessity.
12. That for the redress of grievances, and for amending, strengthening and preserving the Laws, the Legislature ought to be frequently convened. ^{232,233}	12. That for the redress of grievances, and for amending, strengthening and preserving the laws, the Legislature ought to be frequently convened. ^{234,235}	12. That for the redress of grievances, and for amending, strengthening and preserving the laws, the Legislature ought to be frequently convened. ²³⁶	10. That for the redress of grievances, and for amending, strengthening and preserving the laws, the Legislature ought to be frequently convened. ²³⁷	10. That for redress of grievances, and for amending, strengthening and preserving, the laws, the legislature ought to be frequently convened.	10. That for redress of grievances, and for amending, strengthening and preserving the laws, the legislature ought to be frequently convened.	8. That for redress of all grievances, and for amending, strengthening and preserving of the laws, the legislature ought to be frequently convened. ²³⁸
13. That every man hath a right to petition the Legislature for the redress of grievances in a peaceable and orderly manner. ^{239,240}	13. That every man hath a right to petition the Legislature for the redress of grievances in a peaceable and orderly manner. ^{241,242}	13. That every man hath a right to petition the Legislature for the redress of grievances, in a peaceable and orderly manner. ²⁴³	11. That every man hath a right to petition the Legislature for the redress of grievances in a peaceable and orderly manner. ²⁴⁴	11. That every man hath a right to petition the legislature for the redress of grievances, in a peaceable and orderly manner.	11. That every man hath a right to petition the legislature for the redress of grievances, in a peaceable and orderly manner.	9. That every man hath a right to petition the legislature for the redress of grievances, in a peaceable and orderly manner. ²⁴⁵
14. That no aid, charge, tax, burthen or fees, ought to be rated or levied, under any pretence, without the consent of the Legislature. ^{246,247,248}	14. That no aid, charge, tax, burthen, or fees, ought to be rated or levied, under any pretence, without the consent of the Legislature. ^{249,250}	14. That no aid, charge, tax, burthen or fees, ought to be rated or levied under any pretence, without the consent of the Legislature. ²⁵¹	12. That no aid, charge, tax, burthen, or fees, ought to be rated or levied, under any pretence, without the consent of the Legislature. ²⁵²	12. That no aid, charge, tax, burden, fee, or fees, ought to be set, rated or levied, under any pretence, without the consent of the legislature. ²⁵³	12. That no aid, charge, tax, burden, fee, or fees, ought to be set, rated or levied, on any pretence, without the consent of the legislature.	10. That no aid, charge, tax, burthen, fee, or fees, ought to be set or levied on any pretence whatever, without the consent of the legislature. ²⁵⁴

Current	1867	1864	1851	1776	Draft #2	Draft #1
<p>15. That the levying of taxes by the poll is grievous and oppressive, and ought to be prohibited;²⁵⁵ that paupers ought not to be assessed for the support of the government; that the General Assembly shall, by uniform rules, provide for the separate assessment, classification and sub-classification of land, improvements on land and personal property, as it may deem proper; and all taxes thereafter provided to be levied by the State for the support of the general State Government, and by the Counties and by the City of Baltimore for their respective purposes, shall be uniform within each class or sub-class of land, improvements on land and personal property which the respective taxing powers may have directed to be subjected to the tax levy; yet fines, duties or taxes may properly and justly be imposed, or laid with a political view for the good government and benefit of the community.^{256,257,258}</p>	<p>15. That the levying of taxes by the poll is grievous and oppressive, and ought to be prohibited; that paupers ought not to be assessed for the support of the government; but every person in the State, or person holding property therein, ought to contribute his proportion of public taxes for the support of the government, according to his actual worth in real or personal property; yet fines, duties or taxes may properly and justly be imposed or laid, with a political view, for the good government and benefit of the community.^{259,260}</p>	<p>15. That the levying of taxes by the poll is grievous and oppressive, and ought to be prohibited;^{261,262} that paupers ought not to be assessed for the support of the government, but every other person in the State or person holding property therein, ought to contribute his proportion of public taxes, for the support of the government, according to his actual worth in real or personal property; yet fines, duties, or taxes may properly and justly be imposed or laid, with a political view, for the good government and benefit of the community.²⁶³</p>	<p>13. That the levying of taxes by the poll is grievous and oppressive and ought to be abolished;²⁶⁴ that paupers ought not to be assessed for the support of government; but every other person in the State or person holding property therein, ought to contribute his proportion of public taxes, for the support of government, according to his actual worth in real or personal property;²⁶⁵ yet fines, duties, or taxes, may properly and justly be imposed or laid on persons and property, with a political view, for the good government and benefit of the community.</p>	<p>13. That the levying of taxes by the poll is grievous and oppressive, and ought to be abolished; that paupers ought not to be assessed²⁶⁶ for the support of government; but every other person in the State ought to contribute his proportion of public taxes for the support of government, according to his actual worth, in real or personal property, within the State; yet fines, duties, or taxes, may properly and justly be imposed or laid, with a political view, for the good government and benefit of the community.²⁶⁷</p>	<p>13. That the levying of taxes by the poll is grievous and oppressive, and ought to be abolished; that paupers ought not to be assessed for the support of government, but every other person of the state ought to contribute his proportion of public taxes for the support of government according to his actual worth in real or personal property within the state;²⁶⁸ yet fines, duties, or taxes, may properly and justly be imposed or laid with a political view for the good government and benefit of the community.</p>	<p>11. That every person in the State ought to contribute his proportion of public taxes for the support of government, according to his actual worth in real or personal estate;²⁶⁹ that the levying of taxes by the poll is grievous and oppressive, and ought to be abolished;²⁷⁰ that pauper estates not exceeding thirty pounds currency²⁷¹ ought not to be assessed for the support of government.</p>

Current	1867	1864	1851	1776	Draft #2	Draft #1
16. That sanguinary Laws ^{272,273} ought to be avoided as far as it is consistent with the safety of the State; and no Law to inflict cruel and unusual pains and penalties ought to be made in any case, or at any time, hereafter. ²⁷⁴	16. That sanguinary Laws ought to be avoided as far as it is consistent with the safety of the State; and no Law to inflict cruel and unusual pains and penalties ought to be made in any case, or at any time hereafter. ^{275,276}	16. That sanguinary laws ought to be avoided, as ²⁷⁷ far as it is consistent with the safety of the State; and no law to inflict cruel and unusual pains and penalties ought to be made in any case or at any time hereafter. ²⁷⁸	14. That sanguinary laws ought to be avoided, so far as is consistent with the safety of the State; and no law to inflict cruel and unusual pains and penalties ought to be made in any case, or at any time hereafter. ²⁷⁹	14. That sanguinary laws ought to be avoided, as far as is consistent with the safety of the State; and no law to inflict cruel and unusual pains and penalties ought to be made in any case, or at any time hereafter.	14. That sanguinary laws ought to be avoided, as far as is consistent with the safety of the State; and no law to inflict cruel and unusual pains and penalties ought to be made in any case, or at any time hereafter. ²⁸⁰	12. That sanguinary laws ought to be avoided as far as is consistent with the safety of the state. ²⁸¹
17. That retrospective Laws, punishing acts committed before the existence of such Laws, and by them only declared criminal, are oppressive, unjust and incompatible with liberty; wherefore, no <i>ex post facto</i> Law ought to be made; nor any retrospective oath or restriction be imposed, or required. ^{282,283}	17. That retrospective Laws, punishing acts committed before the existence of such Laws, and by them only declared criminal, are oppressive, unjust and incompatible with liberty; wherefore, no <i>ex post facto</i> Law ought to be made, nor any retrospective oath, or restriction be imposed, or required. ^{284,285}	17. That retrospective laws, punishing acts committed before the existence of such laws, and by them only declared criminal are oppressive, unjust and incompatible with liberty; wherefore, no <i>ex post facto</i> law ought to be made. ²⁸⁶	15. That retrospective laws, punishing acts committed before the existence of said laws, and by them only declared criminal, are oppressive, unjust and incompatible with liberty; wherefore, no <i>ex post facto</i> ²⁸⁷ law ought to be made.	15. That retrospective laws, punishing facts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust, and incompatible with liberty; wherefore no <i>ex post facto</i> law ought to be made. ²⁸⁸	15. That retrospective laws, punishing facts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust, and incompatible with liberty; wherefore no <i>ex post facto</i> law ought to be made.	13. That retrospective laws, punishing facts committed before the existence of such laws, and by them only declared to be criminal, are oppressive, unjust, and incompatible with liberty; therefore no <i>ex post facto</i> law ought to be made.
18. That no Law to attaint particular persons of treason or felony ought to be made in any case, or at any time, hereafter. ^{289,290}	18. That no Law to attaint particular persons of treason, or felony ought to be made in any case, or at any time hereafter. ^{291,292}	18. That no law to attaint ²⁹³ particular persons of treason or felony ought to be made in any case, or at any time, hereafter. ²⁹⁴	16. That no law to attaint particular persons of treason or felony, ought to be made in any case or at any time hereafter. ²⁹⁵	16. That no law to attaint particular persons of treason or felony, ought to be made in any case or at any time hereafter. ²⁹⁶	16. That no law to attaint particular persons of treason or felony ought to be made in any case, or at any time hereafter.	14. That no law to attaint particular persons of treason or felony; ²⁹⁷ no law to inflict unusual pains and penalties, unknown to the common law, ought to be made in any case, or at any time hereafter. ²⁹⁸
						15. That the people of this state ought to have the sole and exclusive right of regulating the internal government and police thereof. ^{299,300}

Current	1867	1864	1851	1776	Draft #2	Draft #1
						<p>16. That the inhabitants of Maryland are entitled to the common law of England, and to the trial by jury, according to the course of that law, and to the benefit of such English statutes, as existed at the time of their first emigration, and which by experience have been found applicable to the local, and other circumstances, and of such others as have been since introduced, used, and practiced by the courts of law, or equity; and also to all acts of assembly in force prior to the first of June seventeen hundred and seventy-four, except such as have been, or may be altered by acts of Convention, or this charter of rights; and to all property derived from, or under the charter granted by his majesty Charles the first to Cæcilius Calvert baron of Baltimore.^{301,302,303}</p>

Current	1867	1864	1851	1776	Draft #2	Draft #1
19. That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the land. ^{304,305,306}	19. That every man for any injury done to him in his person, or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land. ^{307,308}	19. That every man, ^[309] for any ^[310] injury done to him in his person or property, ought to have remedy by the course of the law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the law of the land.	17. That every free man, for every injury done to him in his person or property, ought to have remedy by the course of the law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay according to the law of the land. ³¹¹	17. That every freeman, for every injury done to him in his goods, lands, or person, ought to have remedy by the course of the law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the law of the land.	17. That every freeman for every injury done to him in his person or property ought to have remedy by the course of the law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the law of the land.	17. That every freeman for every injury done to him in his goods, lands, or person, by any other person, ought to have remedy by the course of the law of the land, and ought to have justice and right for the injury done to him, freely without sale, fully without any denial, and speedily without delay, according to the law of the land. ^{312,313}
20. That the trial of facts, where they arise, is one of the greatest securities of the lives, liberties, and estate of the People. ^{314,315,316}	20. That the trial of facts, where they arise, is one of the greatest securities of the lives, liberties, and estate of the People. ^{317,318}	20. That the trial of facts where they arise, is one of the greatest securities of the lives, liberties, and estate of the people. ³¹⁹	18. That the trial of facts where they arise, is one of the greatest securities of the lives, liberties, and estate of the people. ³²⁰	18. That the trial of facts where they arise, is one of the greatest securities of the lives, liberties, and estate of the people.	18. That the trial of facts where they arise is one of the greatest securities of the lives, liberties, and estate of the people.	18. That the trial of facts where they arise is one of the greatest securities of the lives, liberties, and estate of the people. ³²¹
21. That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indictment, or charge, in due time (if required) to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; ³²² to have process for his witnesses; to examine the witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty. ^{323,324,325,326}	21. That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indictment or Charge, in due time, if required, to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty. ^{327,328}	21. That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the indictment or charge, in due time (if required) to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath, and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty. ³²⁹	19. That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the indictment or charge, in due time (if required) to prepare for his defence; to be allowed counsel; ³³⁰ to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty. ³³¹	19. That in all criminal prosecutions, every man hath a right to be informed of the accusation against him, to have a copy of the indictment or charge in due time (if required) to prepare for his defence, to be allowed council, ³³² to be confronted with the witnesses against him, to have process for his witnesses, to examine the witnesses for and against him on oath, ³³³ and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.	19. That in all criminal prosecutions, every man hath a right to be informed of the accusation against him, to have a copy of the indictment or charge in due time (if required) to prepare for his defence, to be allowed counsel, to be confronted with the witnesses against him, to have process for his witnesses, to examine the witnesses for and against him on oath, and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.	19. That in all capital ³³⁴ and criminal prosecutions, every man hath a right to be informed of the accusation against him, ³³⁵ to be allowed counsel, to be confronted with the accusers, or witnesses, ³³⁶ to examine evidence on oath in his favour, and to a speedy trial ³³⁷ by an impartial jury, without whose unanimous ³³⁸ consent he ought not to be found guilty. ^{339,340}

Current	1867	1864	1851	1776	Draft #2	Draft #1
<p>22. That no man ought to be compelled to give evidence against himself in a criminal case.^{341,342,343,344}</p>	<p>22. That no man ought to be compelled to give evidence against himself in a criminal case.^{345,346}</p>	<p>22. That no man ought to be compelled to give evidence against himself in a criminal case.^{347,348}</p>	<p>20. That no man ought to be compelled to give evidence against himself in a court of common law, or in any other court, but in such cases as have been usually practiced in this State, or may hereafter be directed by the Legislature.³⁴⁹</p>	<p>20. That no man ought to be compelled to give evidence against himself in a court of common law, or in any other court, but in such cases only as have been usually practiced in this state.</p>	<p>20. That no man ought to be compelled to give evidence against himself in a court of common law, or in any other court, but in such cases as have been usually practiced in this state, or may hereafter be directed by the legislature.</p>	<p>20. That no man in the courts of common law ought to be compelled to give evidence against himself.^{350,351}</p>
<p>23. In the trial of all criminal cases, the Jury shall be the Judges of Law, as well as of fact, except that the Court may pass upon the sufficiency of the evidence to sustain a conviction.^{352,353,354,355}</p> <p>The right of trial by Jury of all issues of fact in civil proceedings in the several Courts of Law in this State, where the amount in controversy exceeds the sum of five thousand dollars, shall be inviolably preserved.³⁵⁶</p>						

Current	1867	1864	1851	1776	Draft #2	Draft #1
<p>24. That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.^{357,358,359,360,361,362}</p>	<p>23. That no man ought to be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the Land.^{363,364}</p>	<p>23. That no man³⁶⁵ ought to be taken or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the judgment of his peers, or by the law of the land.³⁶⁶</p>	<p>21. That no freeman³⁶⁷ ought to be taken or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the judgment of his peers, or by the law of the land: <i>Provided</i>, That nothing in this article shall be so construed as to prevent the Legislature from passing all such laws for the government, regulation and disposition of the free colored population of this State as they may deem necessary.³⁶⁸</p>	<p>21. That no freeman ought to be taken, or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the lawful judgment of his peers, or by the law of the land.³⁶⁹</p>	<p>21. That no freeman ought to be taken, or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the lawful judgment of his peers, or by the law of the land.</p>	<p>21. That no freeman ought to be taken, or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the lawful judgment of his peers, or by the law of the land.³⁷⁰</p>
<p>(eliminated)³⁷¹</p>	<p>24. That Slavery shall not be re-established in this State; but having been abolished under the policy and authority of the United States, compensation, in consideration thereof,³⁷² is due from the United States.^{373,374,375}</p>	<p>24. That hereafter, in this State, there shall be neither slavery nor involuntary servitude, except in punishment of crime, whereof the party shall have been duly convicted; and all persons held to service or labor as slaves are hereby declared free.^{376,377,378}</p>				
<p>25. That excessive bail ought not be required, nor excessive fines imposed,³⁷⁹ nor cruel or unusual punishment inflicted, by the Courts of Law.^{380,381,382}</p>	<p>25. That excessive bail ought not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted by the Courts of Law.^{383,384}</p>	<p>25. That excessive bail ought not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted by the Courts of Law.³⁸⁵</p>	<p>22. That excessive bail ought not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted by the courts³⁸⁶ of law.³⁸⁷</p>	<p>22. That excessive bail ought not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted by the court of law.</p>	<p>22. That excessive bail ought not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted by the court of law.</p>	<p>22. That excessive bail ought not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.^{388,389}</p>

Current	1867	1864	1851	1776	Draft #2	Draft #1
26. That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous [grievous] and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted. ^{390,391,392,393}	26. That all warrants, without oath or affirmation, to search suspected places, or to seize any person, or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted. ^{394,395}	26. That all warrants, without oath, or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted. ³⁹⁶	23. That all warrants, without oath, or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted. ³⁹⁷	23. That all warrants without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants—to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special,—are illegal, and ought not to be granted.	23. That all warrants without oath or affirmation, to search suspected places, or to seize any person, or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.	23. That all warrants, without oath, to search suspected places, or to seize any person, or his property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend all persons suspected, without naming or describing the place, or any person in special, are illegal. ^{398,399}
27. That no conviction shall work corruption of blood or forfeiture of estate. ^{400,401}	27. That no conviction shall work corruption of blood, or forfeiture of estate. ^{402,403}	27. That no conviction shall work corruption of blood, nor shall there be any forfeiture of the estate of any person for any crime, except treason, and then only on conviction. ^{404,405}	24. That no conviction shall work corruption of blood, or forfeiture of estate. ⁴⁰⁶	24. That there ought to be no forfeiture of any part of the estate of any person for any crime except murder, or treason against the State, and then only on conviction and attainder.	24. That there ought to be no forfeiture, of any part of the estate of any person for any crime, except murder, or treason against the State, and then only on conviction and attainder.	24. That there ought not to be forfeiture of any part of the estate of convicted and attainted persons except for murder or high treason against the State.
28. That a well regulated Militia is the proper and natural defence of a free Government. ^{407,408,409}	28. That a well regulated Militia is the proper and natural defence of a free government. ^{410,411}	28. That a well regulated militia is the proper and natural defence of a free government. ⁴¹²	25. That a well regulated militia is the proper and natural defence of a free government. ⁴¹³	25. That a well-regulated militia is the proper, and natural defence of a free government.	25. That a well regulated militia is the proper and natural defence of a free government.	25. That a well regulated militia is the proper, natural and safe ⁽⁴¹⁴⁾ defence of a free government. ⁴¹⁵
29. That standing Armies are dangerous to liberty, and ought not to be raised, or kept up, without the consent of the Legislature. ^{416,417}	29. That Standing Armies are dangerous to liberty, and ought not to be raised, or kept up, without the consent of the Legislature. ^{418,419}	29. That standing armies are dangerous to liberty, and ought not to be raised or kept up without the consent of the Legislature. ⁴²⁰	26. That standing armies are dangerous to liberty, and ought not to be raised or kept up without consent of the Legislature. ⁴²¹	26. That standing armies are dangerous to liberty, and ought not to be raised or kept up, without consent of the legislature.	26. That standing armies are dangerous to liberty, and ought not to be raised or kept up without consent of the legislature.	26. That standing armies are dangerous to liberty, and ought not to be raised, or kept up without consent of the legislature. ⁴²²

Current	1867	1864	1851	1776	Draft #2	Draft #1
30. That in all cases, and at all times, the military ought to be under strict subordination to, and control of, the civil power. ^{423,424}	30. That in all cases, and at all times, the military ought to be under strict subordination to, and control of the civil power. ^{425,426}	29. That in all cases and at all times the military ought to be under strict subordination to and control of the civil power. ⁴²⁷	27. That in all cases and at all times the military ought to be under strict subordination to, and control of the civil power. ⁴²⁸	27. That in all cases, and at all times, the military ought to be under strict subordination to, and control of the civil power.	27. That in all cases and at all times the military ought to be under strict subordination to, and control of the civil power.	27. That in all cases and at all times the military ought to be under strict subordination to, and control of the civil power.
31. That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, except in the manner prescribed by Law. ^{429,430}	31. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor, in time of war except in the manner prescribed by Law. ^{431,432}	30. That no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war except in the manner prescribed by law. ^{433,434}	28. That no soldier ought to be quartered in any house in time of peace without the consent of the owner, and in time of war in such manner only ⁴³⁵ as the Legislature shall direct.	28. That no soldier ought to be quartered in any house, in time of peace, without the consent of the owner; and in time of war, in such manner only as the Legislature shall direct.	28. That no soldier ought to be quartered in any house in time of peace, without the consent of the owner; and in time of war, in such manner only as the legislature shall direct.	28. That no soldier ought to be quartered in any house in time of peace, without the consent of the owner; and in time of war in such manner only as the legislature shall direct. ⁴³⁶
32. That no person except regular soldiers, marines, and mariners in the service of this State, or militia, when in actual service, ought, in any case, to be subject to, or punishable by Martial Law. ⁴³⁷	32. That no person except regular soldiers and marines and mariners in the service of this State, or militia when in actual service, ought, in any case, to be subject to, or punishable by, Martial Law. ^{438,439}	31. That no person, except regular soldiers, marines, and marines, in the service of this State, or militia when in actual service, ought in any case to be subject to, or punishable by, martial law. ⁴⁴⁰	29. That no person except regular soldiers, marines, and marines, in the service of this State, or militia when in actual service, ought in any case to be subject to or punishable by martial law. ⁴⁴¹	29. That no person, except regular soldiers, marines and marines in the service of this State, or militia when in actual service, ought in any case to be subject to or punishable by martial law.	29. That no person except regular soldiers, marines and marines in the service of this State, or militia when in actual service, ought in any case to be subject to, or punishable by, martial law.	29. That no person except soldiers, marines or marines in the service of this State, ought in any case to be subject to, or punishable by martial law.

Current	1867	1864	1851	1776	Draft #2	Draft #1
<p>33. That the independency and uprightness of Judges are essential to the impartial administration of Justice, and a great security to the rights and liberties of the People: Wherefore, the Judges shall not be removed, except in the manner, and for the causes provided in this Constitution.⁴⁴² No Judge shall hold any other office, civil or military, or political trust, or employment of any kind, whatsoever, under the Constitution or Laws of this State, or of the United States, or any of them; except that a Judge may be a member of a reserve component of the armed forces of the United States or a member of the militia of the United States or this State; or receive fees or perquisites of any kind for the discharge of his official duties.^{443,444,445}</p>	<p>33. That the independency and uprightness of Judges are essential to the impartial administration of Justice, and a great security to the rights and liberties of the People; wherefore, the Judges shall not be removed, except in the manner, and for the causes provided in this Constitution.⁴⁴⁶ No Judge shall hold any other office, civil or military, or political trust,⁴⁴⁷ or employment of any kind, whatsoever, under the Constitution or Laws of this State, or of the United States, or any of them; or receive fees or perquisites of any kind for the discharge of his official duties.⁴⁴⁸</p>	<p>33. That the independency and uprightness of Judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people; wherefore the Judges shall not be removed, except for misbehavior, on conviction in a Court of Law, or by the Governor, upon address of the General Assembly; <i>provided</i> , that two-thirds of all the members of each House concur in such address.⁴⁴⁹ No Judge shall hold any other office, civil or military, or political trust or employment of any kind whatsoever, under the Constitution or Laws of this State, or of the United States, or any of them, or receive fees or perquisites of any kind for the discharge of his official duties.</p>	<p>30. That the independency and uprightness of Judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people, wherefore the Judges shall not be removed except for misbehaviour, on conviction in a court of law, or by the Governor, upon address of the General Assembly; <i>provided</i>, that two-thirds of all the members of each House concur in such address. No Judge shall⁴⁵⁰ hold any other office, civil or military, or political trust or employment of any kind whatsoever,⁴⁵¹ under the Constitution or Laws of this State, or of the United States, or any of them, or receive fees or perquisites of any kind for the discharge of his official duties.⁴⁵²</p>	<p>30. That the independency and uprightness of Judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people; wherefore the Chancellor and Judges ought to hold commissions during good behaviour, and the said Chancellor and Judges shall be removed for misbehaviour, on conviction in a court of law, and may be removed by the Governor upon address of the General Assembly, <i>Provided</i>, that two-thirds of all the members of each house concur in such address. That salaries, liberal, but not profuse, ought to be secured to the Chancellor and the Judges during the continuation of their commissions, in such manner, and at such time as the legislature shall hereafter direct, upon consideration of the circumstances of this state. No Chancellor or Judge ought to hold any other office, civil or military, or receive fees or perquisites of any kind.⁴⁵³</p>	<p>30. That the independency and uprightness of judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people; wherefore the chancellor and all judges ought to hold commissions during good behaviour, and the said chancellor and judges shall be removed for misbehaviour on conviction in a court of law, and may be removed by the governor upon the address of the general assembly, provided that two thirds of all the members of each house concur in such address.⁴⁵⁴ That salaries liberal but not profuse ought to be secured to the chancellor and the judges during the continuation of their commissions, in such manner and at such time as the legislature shall hereafter direct upon consideration of the circumstances of this state.⁴⁵⁵ No chancellor or judge ought to hold any other office civil or military, or receive fees or perquisites of any kind.</p>	<p>30. That the independency and uprightness of judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people; therefore the chancellor and all judges ought to hold commissions during good behaviour, removable only for misbehaviour on conviction in a court of law, on conviction by impeachment, or by a vote of the legislature.⁴⁵⁶</p>

Current	1867	1864	1851	1776	Draft #2	Draft #1
<p>34. That a long continuance in the Executive Departments of power or trust is dangerous to liberty; a rotation, therefore, in those Departments is one of the best securities of permanent freedom.^{457,458,459,460}</p>	<p>34. That a long continuance in the Executive Departments of power, or trust, is dangerous to liberty; a rotation, therefore, in those Departments is one of the best securities of permanent freedom.^{461,462}</p>	<p>34. That a long continuance in the Executive Departments of power or trust, is dangerous to liberty; a rotation, therefore, in those departments is one of the best securities of permanent freedom.⁴⁶³</p>	<p>31. That a long continuance in the executive departments of power or trust, is dangerous to liberty; a rotation, therefore, in those departments is one of the best securities of permanent freedom.⁴⁶⁴</p>	<p>31. That a long continuance, in the first executive departments of power or trust, is dangerous to liberty; a rotation, therefore, in those departments, is one of the best securities of permanent freedom.⁴⁶⁵</p>	<p>31. That a long continuance in the first executive departments of power or trust is dangerous to liberty, a rotation therefore in those departments is one of the best securities of permanent freedom.⁴⁶⁶</p>	<p>31. That a long continuation in offices of trust or profit is dangerous to liberty, a rotation therefore in office is one of the best securities of permanent freedom; that salaries liberal, but not profuse, ought to be secured to the chancellor and the judges, during the continuation of their commissions, and reasonable salaries, or fees, allowed to the offices.⁴⁶⁷</p>
						<p>32. That no person holding a place of profit, or receiving any part of the profits thereof, or concerned in army, navy, or government contracts, or employed in the executive department of civil government, or in the regular land service, or marine, of this, or the United States, or a minor, or an alien, ought to have a seat in the legislature or privy council of this State.⁴⁶⁸</p>

Current	1867	1864	1851	1776	Draft #2	Draft #1
<p>35. That no person shall hold, at the same time, more than one office of profit, created by the Constitution or laws of this State; nor shall any person in public trust receive any present from any foreign Prince or State, or from the United States, or any of them, without the approbation of this State. The position of Notary Public shall not be considered an office of profit within the meaning of this Article.⁴⁶⁹ Membership in the militia of this State shall not be considered an office of profit within the meaning of this Article; nor shall any remuneration received as a consequence of membership in a reserve component of the armed forces of the United States or of membership in the militia of the United States or of this State be considered a present within the meaning of this Article.^{470,471,472,473}</p>	<p>35. That no person shall hold, at the same time, more than one office of profit, created by the Constitution or Laws of this State; nor shall any person in public trust receive any present from any foreign Prince or State, or from the United States, or any of them, without the approbation of this State.^{474,475}</p>	<p>35. That no person ought to hold, at the same time more than one office of profit,⁴⁷⁶ created by the Constitution or laws of this State; nor ought any person in public trust to receive any present⁴⁷⁷ from any Foreign Prince or State, or from the United States, or any of them, without the approbation of this State.</p>	<p>32. That no person ought to hold at the same time more than one office of profit, created by the Constitution or laws of this State; nor ought any person in public trust to receive any present from any Foreign Prince, or State, or from the United States, or any of them, without the approbation of this State.⁴⁷⁸</p>	<p>32. That no person ought to hold, at the same time, more than one office of profit, nor ought any person, in public trust, to receive any present from any foreign prince or state, or from the United States, or any of them, without the approbation of this State.⁴⁷⁹</p>	<p>32. That no person ought to hold at the same time more than one office of profit, nor ought any person in public trust to receive any present from any foreign prince or state, or from the United States, or any of them, without the approbation of this state.</p>	<p>33. That no person ought to hold at the same time more than one office of profit, nor any person in public trust to receive any gratuity, present, or emolument, from any foreign prince, or State, or from the United States, or any of them.</p>

Current	1867	1864	1851	1776	Draft #2	Draft #1
<p>36. That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore, no person ought by any law to be molested in his person or estate, on account of his religious persuasion, or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights, nor ought any person to be compelled to frequent, or maintain, or contribute, unless on contract, to maintain, any place of worship, or any ministry;⁴⁸⁰ nor shall any person, otherwise competent, be deemed incompetent, as a witness, or juror, on account of his religious belief;⁴⁸¹ provided, he believes in the existence of God, and that, under His dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor either in this world or in the world to come.^{482,483}</p>	<p>36. That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore no person ought, by any law to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice, unless under the color of religion any man shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights nor ought any person to be compelled to frequent, or maintain, or contribute, unless on contract, to maintain any place of worship, or any ministry; nor shall any person, otherwise competent, be deemed incompetent, as a witness or juror on account of his religious belief; provided, he believes in the existence of God, and that under His dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor, either in this world, or the world to come.⁴⁸⁷⁻⁴⁸⁸</p>	<p>36. That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore no person ought, by any law, to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice, unless under color of religion, any man shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights, nor ought any person to be compelled to frequent or maintain or contribute, unless on contract, to maintain any place of worship, or any ministry; nor shall any person be deemed incompetent as a witness⁴⁸⁹ or juror, who believes in the existence of God, and that under his dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor, either in this world or the world to come.</p>	<p>33. That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore, no person ought, by any law, to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice, unless under color of religion, any man shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights; nor ought any person to be compelled to frequent or maintain or contribute, unless on contract, to maintain any place of worship, or any ministry; nor shall any person be deemed incompetent as a witness or juror, who believes in the existence of a God, and that under his dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor, either in this world or the world to come.⁴⁹⁰</p>	<p>33. That, as it is the duty of every man to worship God in such manner as he thinks most acceptable to him; all persons, professing the Christian religion, are equally entitled to protection in their religious liberty; wherefore no person ought by any law to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice; unless under colour of religion, any man shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil, or religious rights; nor ought any person to be compelled to frequent or maintain, or contribute, unless on contract, to maintain any particular place of worship, or any particular ministry; yet the legislature may in their discretion lay a general and equal tax for the support of the Christian religion; leaving to each individual the power of appointing the payment over of the money collected from him, to the support of any particular place of worship or minister, or for the benefit of the poor of his own</p>	<p>33. That as it is the duty of every man to worship God in such manner as he thinks most acceptable to him, all persons professing the christian religion are equally entitled to protection in their religious liberty, wherefore no person ought by any law to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice, unless under colour of religion any man shall disturb the good order, peace, or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights; nor ought any person to be compelled to frequent or maintain, or contribute, unless on contract, to maintain any particular place of worship, or any particular ministry; yet the legislature may in their discretion lay a general and equal tax for the support of the christian religion, leaving to each individual the power of appointing the payment over of the money collected from him, to the support of any particular place of worship or minister, or for the poor of his own denomination, or the</p>	<p>35. That no person ought to be by any law molested in his person or estate for his religious persuasion, profession, or practice, nor compelled to frequent or maintain, or contribute, unless on contract, to maintain any religious worship, place of worship, or ministry, provided that such of the present clergy of the church of England, who have remained in their parishes, and performed their duty, and shall continue to do so, be entitled to receive during their lives the provision and support established by an act of assembly passed at a session of assembly, begun and held at the city of Annapolis the 16th of November, 1773, entitled, "An act for the support of the clergy of the church of England in this province," subject nevertheless to such rules and regulations as shall be hereafter made by the legislature.⁴⁹³⁻⁴⁹⁴</p>

Current	1867	1864	1851	1776	Draft #2	Draft #1
<p>Nothing shall prohibit or require the making reference to belief in, reliance upon, or invoking the aid of God or a Supreme Being in any governmental or public document, proceeding, activity, ceremony, school, institution, or place.</p> <p>Nothing in this article shall constitute an establishment of religion.⁴⁸⁴⁻⁴⁸⁵</p>				<p>denomination, or the poor in general of any particular county : but the churches, chapels, glebes, and all other property now belonging to the church of England, ought to remain to the church of England forever. And all acts of Assembly, lately passed, for collecting monies for building or repairing particular churches or chapels of ease, shall continue in force, and be executed, unless the Legislature shall, by act, supersede or repeal the same: but no county court shall assess any quantity of tobacco, or sum of money, hereafter, on the application of any vestry-man or church-wardens; and every encumbent of the church of England, who hath remained in his parish, and performed his duty, shall be entitled to receive the provision and support established by the act, entitled, "An act for the support of the clergy of the church of England in this Province," till the November court of this present year, to be held for the county in which his parish shall lie, or partly lie, or for such time as he hath remained in his parish, and performed his duty.⁴⁹¹</p>	<p>poor in general of any particular county;^[492] but the churches, chapels, glebes, and all other property now belonging to the church of England, ought to remain to the church of England for ever. And all acts of assembly lately passed for collecting monies for building or repairing particular churches or chapels of ease, shall continue in force and be executed, unless the legislature shall by act supersede or repeal the same; but no county court shall assess any quantity of tobacco or sum of money hereafter on the application of any vestryman or churchwardens : and every incumbent of the church of England who hath remained in his parish and performed his duty, shall be entitled to receive the provision and support established by the act, entitled, "An act for the support of the clergy of the church of England in this province," till the November court of this present year, to be held for the county in which his parish shall lie, or partly lie, or for such time as he hath remained in his parish and performed his duty.</p>	

Current	1867	1864	1851	1776	Draft #2	Draft #1
<p>37. That no religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God:[495] nor shall the legislature prescribe any other oath of office than the oath prescribed by this Constitution.^{496,497,498}</p>	<p>37. That no religious test ought ever to be required as a qualification for any office of profit or trust, in this State, other than a declaration of belief in the existence of God; nor shall the legislature prescribe any other oath of office than the oath prescribed in this Constitution.^{499,500}</p>	<p>37. That no other test or qualification ought to be required, on admission to any office of trust or profit, than such oath of allegiance and fidelity to this State, and the United States,^[501] as may be prescribed by this Constitution; and such oath of office and qualification as may be prescribed by this Constitution, or by the Laws of the State, and a declaration of belief in the Christian religion, or in the existence of God, and in a future state of rewards and punishments.^{502,503}</p>	<p>34. That no other test or qualification ought to be required on admission to any office of trust or profit, then such oath of office as may be prescribed by this Constitution, or by the Laws of the State, and a declaration of a belief in the Christian religion;^[504] and if the party shall profess to be a Jew, the declaration shall be of his belief in a future state of rewards and punishments.^{505,506}</p>			

Current	1867	1864	1851	1776	Draft #2	Draft #1
(Repealed) ⁵⁰⁷	<p>38. That every gift, sale or devise of land, to any Minister, Public Teacher or Preacher of the Gospel, as such, or to any Religious Sect, Order or Denomination, or to, or for the support, use or benefit of, or in trust for any Minister, Public Teacher or Preacher of the Gospel, as such, or any Religious Sect, Order or Denomination, and every gift, or sale of goods, or chattels, to go in succession, or to take place after the death of the Seller or Donor, to or for such support, use or benefit, and also every devise of goods, or chattels to or for the support, use or benefit of any Minister, Public Teacher or Preacher of the Gospel, as such, or any Religious Sect, Order or Denomination, without the prior, or subsequent sanction of the Legislature, shall be void; except always, any sale, gift, lease or devise of any quantity of land, not exceeding five acres for a church, meeting-house, or other house of worship, or parsonage, or for a burying ground, which shall be improved, enjoyed or used only for such purpose; or such sale, gift, lease or devise, shall be void.^{508,509,510,511}</p>	<p>38. That every gift, sale or devise of lands to any minister, public teacher or preacher of the Gospel, as such, or to any religious sect, order or denomination, or for the support, use or benefit of, or in trust for any minister, public teacher, or preacher of the Gospel, as such, or any religious sect, order or denomination, and every gift or sale of goods or chattels, to go in succession or to take place after the death of the seller or donor, to or for such support, use or benefit, and also every devise of goods or chattels to or for the support, use or benefit of any minister, public teacher or preacher of the Gospel, as such, or any religious sect, order or denomination, without the prior or subsequent sanction⁵¹² of the Legislature, shall be void; except, always, any sale, gift, lease or devise of any quantity of land not exceeding five acres for a church, meeting house, or other house of worship, or parsonage, or for a burying ground, which shall be improved, enjoyed or used only for such purpose; or such sale, gift, lease or devise, shall be void.</p>	<p>35. That every gift, sale or devise of lands to any minister, public teacher or preacher of the gospel, as such, or to any religious sect, order or denomination, or to or for the support, use or benefit of, or in trust for, any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order or denomination, and every gift or sale of goods or chattels to go in succession, or to take place after the death of the seller or donor, to or for such support, use or benefit; and, also, every devise of goods or chattels, to or for the support, use or benefit of any minister, public teacher or preacher of the gospel, as such, or any religious sect, order or denomination, without the leave of the Legislature, shall be void; except always, any sale, gift, lease or devise of any quantity of land not exceeding five acres for a church, meeting house, or other house of worship, or parsonage, or for a burying ground, which shall be improved, enjoyed or used only for such purpose; or such sale, gift, lease or devise, shall be void.⁵¹³</p>	<p>34. That every gift, sale or devise of lands to any minister, public teacher, or preacher of the gospel, as such, or to any religious sect, order or denomination, or to or for the support, use or benefit of, or in trust for, any minister, public teacher or preacher of the gospel, as such, or any religious sect, order or denomination—and every gift or sale of goods, or chattels, to go in succession, or to take place after the death of the seller or donor, to or for such support, use or benefit—and also every devise of goods or chattel to, or to or for the support, use or benefit of any minister, public teacher or preacher of the gospel, as such, or any religious sect, order or denomination, without the leave of the legislature, shall be void; except always any sale, gift, lease or devise of any quantity of land not exceeding two acres, for a church, meeting, or other house of worship, and for a burying-ground, which shall be improved, enjoyed or used only for such purpose—or such sale, gift, lease or devise shall be void.</p>	<p>34. That every gift, sale, or devise of lands to any minister, public teacher or preacher of the gospel, as such, or to any religious sect, order or denomination, or to or for the support, use or benefit of, or in trust for, any minister, public teacher or preacher of the gospel, as such, or any religious sect, order or denomination; and every gift or sale of goods or chattels to go in succession, or to take place after the death of the seller or donor, to or for such support, use or benefit; and also every devise of goods or chattels to, or to or for the support, use or benefit of any minister, public teacher or preacher of the gospel, as such, or any religious sect, order or denomination, without the leave of the legislature, shall be void; except always any sale, gift, lease or devise of any quantity of land not exceeding two acres, for a church, meeting, or other house of worship, and for a burying ground, which shall be improved, enjoyed or used only for such purpose or such sale, gift, lease or devise shall be void.⁵¹⁴</p>	

Current	1867	1864	1851	1776	Draft #2	Draft #1
						36. That no person conscientiously scrupulous of taking an oath ought to be obliged by any law to take an oath in order to be admitted into office, and in all civil cases such persons ought to be permitted to take an affirmation. ⁵¹⁵
				35. That no other test or qualification ought to be required, on admission to any office of trust or profit, then such oath of support and fidelity to this State, and such oath of office as shall be directed by this Convention, or the Legislature of this State, and a declaration of a belief in the Christian religion. ⁵¹⁶	35. That no other test or qualification ought to be required on admission to any office of trust or profit, than such oath of support and fidelity to this State, and such oath of office as shall be directed by this Convention or the legislature of this state, and a declaration of a belief in the christian religion.	37. That no other oath, affirmation, test or qualification ought to be required on admission to any office of trust or profit, then such oath or affirmation of support and fidelity to this State as shall be prescribed by this Convention, and such oath of office as shall be directed by law, and a declaration of a belief in the Christian religion.

Current	1867	1864	1851	1776	Draft #2	Draft #1
<p>39. That the manner of administering an oath or affirmation to any person, ought to be such as those of the religious persuasion, profession, or denomination, of which he is a member, generally esteem the most effectual confirmation by the attestation of the Divine Being.^{517,518,519}</p>	<p>39. That the manner of administering an oath or affirmation to any person ought to be such as those of the religious persuasion, profession, or denomination, of which he is a member, generally esteem the most effectual confirmation by the attestation of the Divine Being.^{520,521}</p>	<p>39. That the manner of administering an oath or affirmation to any person ought to be such as those of the religious persuasion, profession or denomination of which he is a member generally esteem the most effectual confirmation by the attestation of the Divine Being.⁵²²</p>	<p>36. That the manner of administering an oath or affirmation to any person ought to be such as those of the religious persuasion, profession or denomination of which he is a member, generally esteem the most effectual confirmation by the attestation of the Divine Being.⁵²³</p>	<p>36. That the manner of administering an oath to any person, ought to be such, as those of the religious persuasion, profession, or denomination, of which such person is one, generally esteem the most effectual confirmation, by the attestation of the Divine Being. And that the people called Quakers, those called Dunkers, and those called Menonists, holding it unlawful to take an oath on any occasion, ought to be allowed to make their solemn affirmation, in the manner that Quakers have been heretofore allowed to affirm; and to be of the same avail as an oath, in all such cases, as the affirmation of Quakers hath been allowed and accepted within this State, instead of an oath. And further, on such affirmation, warrants to search for stolen goods, or the apprehension or commitment of offenders, ought to be granted, or security for the peace awarded, and Quakers, Dunkers or Menonists ought also, on their solemn affirmation as aforesaid, to be admitted as witnesses, in all criminal cases not capital.⁵²⁴</p>	<p>36. That the manner of administering an oath to any person, ought to be such as those of the religious persuasion, profession or denomination of which such person is one, generally esteem the most effectual confirmation by the attestation of the divine being. And that the people called quakers, those called dunkers, and those called menonists, holding it unlawful to take an oath on any occasion, ought to be allowed to make their solemn affirmation in the manner that quakers have been heretofore allowed to affirm, and to be of the same avail as an oath in all such cases as the affirmation of quakers hath been allowed and accepted within this state instead of an oath. And further, on such affirmation warrants to search for stolen goods, or the apprehension or commitment of offenders, ought to be granted, or security for the peace awarded, and quakers, dunkers or menonists, ought also be on their solemn affirmation as aforesaid, to be admitted as witnesses in all criminal cases not capital.⁵²⁵</p>	

Current	1867	1864	1851	1776	Draft #2	Draft #1
			37. That the city of Annapolis ought to have all its rights, privileges and benefits, agreeable to its Charter and the Acts of Assembly confirming and regulating the same; subject to such alterations as have been or as may be made by the Legislature. ⁵²⁶	37. That the city of Annapolis ought to have all its rights, privileges, and benefits, agreeable to its Charter, and the acts of Assembly confirming and regulating the same, subject nevertheless to such alteration as may be made by this Convention, or any future Legislature.	37. That the city of Annapolis ought to have all its rights, privileges, and benefits, agreeable to its charter and the acts of assembly confirming and regulating the same, subject nevertheless to such alterations as may be made by this Convention or any future legislature.	38. That the city of Annapolis ought to have all its rights, privileges, and benefits, agreeable to its charter and the acts of assembly.
40. That the liberty of the press ought to be inviolably preserved; that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege. ^{527,528,529,530,531}	40. That the liberty of the press ought to be inviolably preserved; that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege. ^{532,533}	40. That the liberty of the press ought to be inviolably preserved; that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty. ^{534,535}	38. That the liberty of the press ought to be inviolably preserved. ⁵³⁶	38. That the liberty of the press ought to be inviolably preserved.	38. That the liberty of the press ought to be inviolably preserved.	39. That the liberty of the press ought to be inviolably preserved. ⁵³⁷
41. That monopolies are odious, contrary to the spirit of a free government and the principles of commerce, and ought not to be suffered. ^{538,539,540}	41. That monopolies are odious, contrary to the spirit of a free government and the principles of commerce, and ought not to be suffered. ^{541,542}	41. That monopolies are odious, contrary to the spirit of a free government and the principles of commerce, and ought not to be suffered. ⁵⁴³	39. That monopolies are odious, contrary to the spirit of a free government and the principles of commerce, and ought not to be suffered. ⁵⁴⁴	39. That monopolies are odious, contrary to the spirit of a free government, and the principles of commerce and ought not to be suffered. ⁵⁴⁵	39. That monopolies are odious, contrary to the spirit of a free government, and the principles of commerce, and ought not to be suffered.	40. That monopolies in trade are odious, contrary to the spirit of a free government, and the principles of commerce, and ought not to be suffered.
						41. That no person hereafter imported into this state from Africa, or any part of the British dominions, ought to be held in slavery under any pretence whatever, and that no negro or mulatto slave ought to be brought into this State for sale from any part of the world. ⁵⁴⁶

Current	1867	1864	1851	1776	Draft #2	Draft #1
42. That no title of nobility or hereditary honors ought to be granted in this State. ^{547,548,549}	42. That no title of nobility or hereditary honors ought to be granted in this State. ^{550,551}	42. That no title of nobility or hereditary honors ought to be granted in this State. ⁵⁵²	40. That no title of nobility or hereditary honors ought to be granted in this State. ⁵⁵³	40. That no title of nobility, or hereditary honours, ought to be granted in this State. ⁵⁵⁴	40. That no title of nobility or hereditary honours ought to be granted in this State.	42. That no title of nobility ought to be granted in this State.
43. That the Legislature ought to encourage the diffusion of knowledge and virtue, the extension of a judicious system of general education, the promotion of literature, the arts, sciences, agriculture, commerce and manufactures, and the general amelioration of the condition of the People. ⁵⁵⁵ The legislature may provide that land actively devoted to farm or agricultural use shall be assessed on the basis of such use and shall not be assessed as if subdivided. ^{556,557}	43. That the Legislature ought to encourage the diffusion of knowledge and virtue, the extension of a judicious system of general education, the promotion of literature, the arts, sciences, agriculture, commerce and manufactures, and the general melioration of the condition of the people. ^{558,559}	43. That the Legislature ought to encourage the diffusion of knowledge and virtue, the extension of a judicious system of general education, ⁵⁶⁰ the promotion of literature, the arts, sciences, agriculture, commerce and manufactures, and the general melioration of the condition of the people. ⁵⁶¹	41. That the Legislature ought to encourage the diffusion of knowledge and virtue, the promotion of literature, the arts, sciences, agriculture, commerce and manufactures, and the general melioration of the condition of the people. ⁵⁶²			
44. That the provisions of the Constitution of the United States, and of this State, apply, as well in time of war, as in time of peace; and any departure therefrom, or violation thereof, under the plea of necessity, or any other plea, is subversive of good Government, and tends to anarchy and despotism. ^{563,564,565}	44. That the provisions of the Constitution of the United States, and of this State, apply as well in time of war as in time of peace; and any departure therefrom, or violation thereof, under the plea of necessity, or any other plea, is subversive of good Government, and tends to anarchy and despotism. ^{566,567,568}					

Current	1867	1864	1851	1776	Draft #2	Draft #1
45. This enumeration of Rights shall not be construed to impair or deny others retained by the People. ⁵⁶⁹	45. This enumeration of Rights shall not be construed to impair or deny others retained by the People. ^{570,571}	44. This enumeration of rights shall not be construed to impair or deny others retained by the people. ⁵⁷²	42. This enumeration of rights shall not be construed to impair or deny others retained by the people. ^{573,574}			
				41. That the subsisting resolves of this and the several Conventions held for this colony, ought to be in force as laws, unless altered by this Convention, or the legislature of this State.	41. That the subsisting resolves of this and the several Conventions held for this colony ought to continue and be in force as laws, unless altered by this Convention or the legislature of this State.	43. That the resolves and proceedings of this and the several Conventions held for this colony ought to continue and be in force as laws, unless altered by this Convention, or the legislature of this State.
		45. That the Legislature shall pass no law providing for an alteration, change or abolishment of this Constitution, except in the manner therein prescribed and directed. ^{575,576}	43. That this Constitution shall not be altered, changed or abolished, except in the manner therein prescribed and directed. ⁵⁷⁷	42. That this declaration of rights, or the form of government, to be established by this Convention, or any part of either of them, ought not to be altered, changed or abolished by the legislature of this State, but in such manner as this Convention shall prescribe and direct.	42. That this declaration of rights, or the form of government to be established by this Convention, or any part of either of them, ought not to be altered, changed or abolished by the legislature of this state, but in such manner as this Convention shall prescribe and direct.	44. That the form of government to be established by this Convention ought not to be altered, changed or abolished, but in such manner as this Convention shall prescribe and direct. ⁵⁷⁸
46. Equality of rights under the law shall not be abridged or denied because of sex. ^{579,580,581}						

Current	1867	1864	1851	1776	Draft #2	Draft #1
<p>47. (a) A victim of crime shall be treated by agents of the State with dignity, respect, and sensitivity during all phases of the criminal justice process. (b) In a case originating by indictment or information filed in a circuit court, a victim of crime shall have the right to be informed of the rights established in this Article and, upon request and if practicable, to be notified of, to attend, and to be heard at a criminal justice proceeding, as these rights are implemented and the terms "crime", "criminal justice proceeding", and "victim" are specified by law. (c) Nothing in this Article permits any civil cause of action for monetary damages for violation of any of its provisions or authorizes a victim of crime to take any action to stay a criminal justice proceeding. 582,583</p>						

Current	1867	1864	1851	1776	Draft #2	Draft #1
				<p>This Declaration of Rights was assented to, and passed, in Convention of the Delegates of the freemen of Maryland, begun and held at Annapolis the 14th day of August, A.D. 1776.</p> <p>By order of the Convention,</p> <p>MAT. TILGHMAN, <i>President</i></p>	<p>This declaration of rights was assented to and passed in Convention of the delegates of the freemen of Maryland, begun and held at Annapolis the 14th day of August, anno domini 1776.</p> <p>By order of the Convention,</p> <p>MATTHEW TILGHMAN, President</p>	<p><i>Printed for the consideration of the members.</i></p>

NOTES

¹ Hans A. Linde, *First Things First: Rediscovering the States' Bills of Rights*, 9 U. BALT. L. REV. 379, 392 (1980).

² The first annual Judge Irving A. Levine Memorial program was held May 16, 1979, in College Park, Maryland. The topic was "States' Bills of Rights."

³ The scope of this article is limited to a discussion of the Declaration of Rights and not the main body of the Maryland Constitution. There are arguments for and against adopting this limitation. One argument is that the two documents are indivisible, and that only together do they give a complete picture of the intended balance of power between government and the governed. On the other hand, John R. Haeuser suggests that the two documents as an historical matter, were intended to be separate. He argues that "the Declaration of Rights was regarded not as establishing, but only affirming [sic] those traditional rights" that the colonists possessed as English subjects. John Richard Haeuser, *The Maryland Conventions, 1774-1776: A Study in the Politics of Revolution 88* (1968) (unpublished M.A. thesis, Georgetown University) (on file with the author). By contrast, "[t]he [f]orm of [g]overnment, on the other hand, was acknowledged to be revolutionary. Only to this latter document did the Convention apply the term 'constitution'." *Id.* Haeuser concludes that the "Declaration of Rights was considered entirely separate and logically prior." *Id.* at 89; see also 1 A. E. DICK HOWARD, *COMMENTARIES ON THE CONSTITUTION OF VIRGINIA* 34-35 (1974) (arguing that members of Virginia Convention of 1776, trained in Lockean conceptions, would find a declaration of man's inherent rights to be a natural first step after dissolution of bond to Great Britain). Without endorsing either of these entirely plausible arguments, I chose to limit this article to an analysis of the Maryland Declaration of Rights due to space and time constraints.

⁴ The Virginia Bill of Rights, Georgia Bill of Rights, and Florida Declaration of Rights each have been the subject of similar articles. See 1 HOWARD, *supra* note 3, at 27-313; Dorothy T. Beasley, *The Georgia Bill of Rights: Dead or Alive?*, 34 EMORY L.J. 341 (1985); Robert N. Katz, *The History of the Georgia Bill of Rights*, 3 GA. ST. U. L. REV. 83 (1986-87); Joseph W. Little & Steven E. Lohr, *Textual History of the Florida Declaration of Rights*, 22 STETSON L. REV. 549 (1993).

⁵ William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977).

⁶ It is ironic that there is a far greater body of academic literature justifying a reliance upon state constitutions than there are articles that actually rely upon state constitutions. The justification for the reliance on state constitutions given here necessarily is cursory. For a more complete analysis, see Robert F. Williams, *In the Supreme Court's Shadow: Legitimacy of State Rejection of Supreme Court Reasoning and Result*, 35 S.C. L. REV. 353 (1984). For a bibliography of other resources, see Earl M. Maltz, Robert F. Williams & Michael Araten, *Selected Bibliography on State Constitutional Law, 1980-1989*, 20 RUTGERS L.J. 1093 (1989).

⁷ See Shirley S. Abrahamson & Diane S. Gutmann, *The New Federalism: State Constitutions and State Courts*, 71 JUDICATURE 88, 90-91 (1987-1988) (discussing impact of federalism on state and federal court systems).

⁸ *Barron v. Baltimore*, 32 U.S. (7 Pet.) 243, 247-48 (1833).

⁹ See U.S. CONST. art. I, § 8 (enumerating limited powers of Congress).

¹⁰ *Barron*, 32 U.S. (7 Pet.) at 247.

¹¹ The unrestrained power of the national congress to legislate under the Commerce Clause, and the United States Supreme Court's refusal to check that power, reached what may be their outer limits in three cases. See *Perez v. United States*, 402 U.S. 146, 156-57 (1971) (upholding congressional power to make and enforce legal penalties for loan sharking based on finding that cumulative loan sharking affects interstate commerce); *Katzenbach v. McClung*, 379 U.S. 294, 304 (1964) (upholding enforcement of racial discrimination prohibition on small restaurant because general racial discrimination affected interstate travel and commerce); *Wickard v. Filburn*, 317 U.S. 111, 125 (1942) (upholding Congress's power to regulate single farmer's wheat grown solely for his home consumption on grounds that cumulative effect of personal consumption might affect interstate commerce). More recent decisions have retreated from this position. See e.g., *United States v. Lopez*, 514 U.S. 549, 551 (1995) (holding federal "Gun-Free School Zones Act" exceeded Congress's legislative power under Commerce Clause).

¹² Robert F. Williams, *Equality Guarantees in State Constitutional Law*, 63 TEX. L. REV. 1195, 1217 (1985) (stating that equal protection claims brought under state constitutions have been rejected by state courts).

¹³ See *Benton v. Maryland*, 395 U.S. 784, 794 (1969) (holding that double jeopardy prohibition of Fifth Amendment applies to states through Fourteenth Amendment); *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968) (holding that Sixth Amendment right to jury trial applies to states); *Washington v. Texas*, 388 U.S. 14, 18-19 (1967) (holding that Sixth Amendment right to compulsory process for obtaining witnesses applies to states); *Klopfer v. North Carolina*, 386 U.S. 213, 223 (1967) (holding that Sixth Amendment right to speedy trial applies to states); *Pointer v. Texas*, 380 U.S. 400, 406 (1965) (holding that Sixth Amendment right to confront witnesses applies to states); *Malloy v. Hogan*, 378 U.S. 1, 5 (1964) (holding that Fourteenth Amendment secures against states same right to remain silent as Fifth Amendment applies to federal government); *Gideon v. Wainwright*, 372 U.S. 335, 345 (1963) (holding that Sixth Amendment right to assistance of counsel applies to states); *Robinson v. California*, 370 U.S. 660, 667 (1962) (holding that state law inflicted cruel and unusual punishment in violation of Fourteenth Amendment); *Mapp v. Ohio*, 367 U.S. 643, 656-57 (1961) (holding that evidence procured by means of unreasonable search and seizure must be excluded from state criminal trials); *Irvin v. Dowd*, 366 U.S. 717, 722 (1961) (holding that Fourteenth Amendment entitles accused to impartial jury); *In re Oliver*, 333 U.S. 257, 273 (1948) (holding that Fourteenth Amendment guarantees public trial); *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (holding that Fourteenth Amendment concept of liberty embraces Free Exercise Clause); *DeJonge v. Oregon*, 299 U.S. 353, 364 (1937) (holding that right to peaceable assembly guaranteed by Due Process Clause of Fourteenth Amendment); *Near v. Minnesota*, 283 U.S. 697, 707 (1931) (holding that freedom of the press is protected from state invasion by Fourteenth Amendment); *Gitlow v. New York*, 268 U.S. 652, 666 (1925) (assuming that Fourteenth Amendment protects freedom of speech from impairment by states).

¹⁴ Williams, *supra* note 6, at 353.

¹⁵ Shirley S. Abrahamson, *Criminal Law and State Constitutions: the Emergence of State Constitutional Law*, 63 TEX. L. REV. 1141, 1161-63 (1985) (arguing that most lawyers fail to raise, or raise only in passing, state constitutional issues in trial and appellate courts).

¹⁶ See, e.g., *Balanced Budget Act of 1997*, Pub. L. No. 105-33, 111 Stat. 251, 575 (providing grants to states to use in administering independently their welfare programs).

17 See, e.g., *United States v. Lopez*, 514 U.S. 549, 551 (1995) (holding that Federal "Gun-Free School Zones Act" exceeded Congress's authority under Commerce Clause because it sought to regulate intrastate activity that could have no substantial impact on interstate commerce).

18 See *State v. Cadman*, 476 A.2d 1148, 1151-52 (Me. 1984) (holding that defendant's claim that he was denied state and federal right to speedy trial failed under both state and federal constitutional analysis); *State v. Ball*, 471 A.2d 347, 350 (N.H. 1983) (holding, in part, that when defendant brought claims of unreasonable search and seizure under both state and federal law, court would interpret independently defendant's state constitutional guarantees); *State v. Hunt*, 450 A.2d 952, 957 (N.J. 1982) (holding, in part, that individual's interest in telephone company's billing records was entitled to protection under state constitution even though it was not entitled to protection under Federal Constitution); *Sterling v. Cupp*, 625 P.2d 123, 126 (Or. 1981) (in banc) (holding, in part, that claim based on state constitutional provision guaranteeing rights of prisoners should be addressed prior to federal right to privacy claim).

19 See e.g., Ronald K. L. Collins, *Reliance on State Constitution - The Montana Disaster*, 63 TEX. L. REV. 1095, 1115 (1985) (criticizing Montana Supreme Court for limiting Montana's constitutional protection from self-incrimination to protection afforded by Fifth and Fourteenth Amendments); Lisa D. Munyon, Comment, "It's A Sorry Frog Who Won't Holler In His Own Pond:" *The Louisiana Supreme Court's Response to the Challenge of New Federalism*, 42 LOY. L. REV. 313, 318 (1996) (discussing Louisiana Supreme Court's general failure to interpret state constitutional provisions independently from federal standards established by United States Supreme Court).

20 The following states, listed chronologically, adopted their first state constitutions before the Federal Constitution became effective in 1789: Delaware (DEL. CONST. OF 1776, reprinted in 2 SOURCES AND DOCUMENTS OF UNITED STATES CONSTITUTIONS 199 (William F. Swindler ed., 1973) [hereinafter SOURCES AND DOCUMENTS]); Maryland (MD. CONST. OF 1776, reprinted in 4 *id.* at 372 (1975)); New Jersey (N.J. CONST. OF 1776, reprinted in 6 *id.* at 449 (1976)); Pennsylvania (PA. CONST. OF 1776, reprinted in 8 *id.* at 277 (1979)); South Carolina (S.C. CONST. OF 1776, reprinted in 8 *id.* at 462 (1979)); Virginia (VA. CONST. OF 1776, reprinted in 10 *id.* at 51 (1979)); Georgia (GA. CONST. OF 1777, reprinted in 2 *id.* at 443 (1973)); New York (N.Y. CONST. OF 1777, reprinted in 7 *id.* at 163 (1978)); Vermont (VT. CONST. OF 1777, reprinted in 9 *id.* at 487 (1979)); Massachusetts (MASS. CONST. OF 1780, reprinted in 5 *id.* at 92 (1975)). Even those states whose constitutions post-date the adoption of the United States Constitution may contain provisions which pre-date the analogous federal provision. This is a result of the heavy borrowing that was done in the adoption of later state constitutions. For example, the rights provisions of Oregon's original 1859 Constitution "adopted Indiana's copy of Ohio's version of sources found in Delaware and elsewhere." Linde, *supra* note 1, at 381. Justice Linde's attribution to Delaware as an ultimate source probably is inaccurate as Delaware's 1776 Declaration of Rights was little more than a copy of Maryland's Declaration of Rights of the same year. See *infra* note 99. For a discussion of the borrowing of provisions of state constitutions, see Christian G. Fritz, *More than "Shreds and Patches": California's First Bill of Rights*, 17 HASTINGS CONST. L.Q. 13, 14 (1989) (discussing other 19th century state constitutions and their impact on creation of California's first bill of rights); Christian G. Fritz, *The American Constitutional Tradition Revisited: Preliminary Observations on State Constitution-Making in the Nineteenth Century West*, 25 RUTGERS L.J. 945 (1994) (discussing process of state constitution-making in west and relationship between state constitutions and Federal Constitution).

21 *Alderwood Assocs. v. Washington Envtl. Council*, 635 P.2d 108, 115 (Wash. 1981) (en banc) (citing *Project Report: Toward An Activist Role for State Bills of Rights*, 8 HARV. C.R.-C.L. L. REV. 271, 290 (1973)).

22 Lawrence G. Sager, *Forward: State Courts and the Strategic Space Between the Norms and Rules of Constitutional Law*, 63 TEX. L. REV. 959, 960-61 (1985) (discussing strategic relationship between constitutional ideals and rules of constitutional law and corresponding need for state courts to interpret independently state constitutional law).

23 There are a few resources that cut across time periods. Several general Maryland histories exist. By far the best among these is ROBERT J. BRUGGER, *MARYLAND: A MIDDLE TEMPERAMENT, 1634-1980* (1989). Also available are MARYLAND: A HISTORY, 1632-1974 (Richard Walsh & William Lloyd Fox eds., 1974); 3 J. THOMAS SCHARF, *HISTORY OF MARYLAND* (1967). The Constitutional Convention Commission, in 1967, wrote a short history of the Maryland Constitution. CONSTITUTIONAL CONVENTION COMMISSION, *REPORT OF THE CONSTITUTIONAL CONVENTION COMMISSION 25-68* (1967); see also Michael S. Miller, *Tracking the United States and Maryland Constitution in Literature: Then and Now*, 20 MD. BAR J. 5 (1987) (identifying primary and secondary sources that discuss the United States Constitution and the history of the Maryland Constitution); Charles J. Rohr, *The Constitutions of Maryland*, 24 JOHNS HOPKINS ALUMNI MAG. 213 (1936) (discussing the framing of each of Maryland's four constitutions). There are also works that analyze a particular aspect of the Maryland Constitution across the relevant time periods, although none are directly concerned with the Declaration of Rights. One such work is Charles J. Rohr, *The Governor of Maryland: A Constitutional Study*, 50 JOHNS HOPKINS U. STUD. IN HIST. & POL. SCI., No. 3 (1932) [hereinafter *Governor of Maryland*], which provides a constitutional study of the development of the governor's office from the colonial period to the time of publication. Another is CARL N. EVERSTINE, *THE GENERAL ASSEMBLY OF MARYLAND: 1634-1776* (1980), which provides a general history of Maryland's General Assembly, with particular focus placed on matters of legislative philosophy, organization, and procedure.

24 EVERSTINE, *supra* note 23, at 517. During this period Maryland's Colonial Governor, Robert Eden, played an inactive role in governmental affairs. *Id.* at 521.

25 *Id.* at 522, 559-63.

26 *Id.* at 522-28.

27 *Id.* at 531. The Association of Freemen of Maryland provided that political power was vested in the Convention and provided a means for election to the Convention. The executive and some judicial power were given to a 16 member "Council of Safety." *Id.* at 531-38. Membership was reduced to seven by the sixth convention. *Id.* at 541.

28 *Id.* at 531.

29 *Id.* at 555; PROCEEDINGS OF THE CONVENTIONS OF THE PROVINCE OF MARYLAND, HELD AT THE CITY OF ANNAPOLIS, IN 1774, 1775 & 1776, at 176 (1836) [hereinafter PROCEEDINGS].

30 PROCEEDINGS, *supra* note 29, at 184-89.

31 *Id.* at 184-85.

32 See DAVID CURTIS SKAGGS, *ROOTS OF MARYLAND DEMOCRACY: 1753-1776*, at 180-84 (1973) (describing demonstrations protesting method of choosing convention's election judges).

33 Among the election losers were influential conservative leaders from previous conventions, including Thomas Stone (a signer of the Declaration of Independence), Thomas Johnson, Jr. (Maryland's first governor (1777-1779)),

William Paca (Governor of Maryland, 1782-1785), Charles Carroll of Carrollton (a signer of the United States Constitution and a United States Senator), Thomas Contee, Robert Tyler, Josias Beall, Walter Tolley, Jr., and John Moale. It was only through considerable maneuvering that William Paca and Charles Carroll of Carrollton became the representatives from Annapolis, and Thomas Johnson, Jr. was chosen to represent Caroline County, where he owned no property. *Id.* at 180, 182. Ronald Hoffman, by contrast, says that Johnson did own some minimal property in Caroline County. RONALD HOFFMAN, *A SPIRIT OF DISSENSION: ECONOMICS, POLITICS AND THE REVOLUTION IN MARYLAND 172* (1973).

³⁴ Skaggs divides the Convention into two factions: a small "democratic" group and a larger "Whiggish" or "country" party. SKAGGS, *supra* note 32, at 187. The democratic group was led by Rezin Hammond. The Whig group was led by Samuel Chase (a signer of the Declaration of Independence), Thomas Johnson, Jr., William Paca, Matthew Tilghman, Charles Carroll of Carrollton, and Charles Carroll, Barrister. *Id.* at 188.

³⁵ *Id.* at 195.

³⁶ PROCEEDINGS, *supra* note 29, at 209.

³⁷ Mr. Tilghman, in fact, was President of six previous conventions. *Id.* at 3 (first convention, June 22, 1774); *id.* at 6 (second convention, Nov. 21, 1774); *id.* at 11 (fourth convention, Apr. 24, 1775); *id.* at 19 (fifth convention, July 26, 1775); *id.* at 39 (sixth convention, Dec. 7, 1775); *id.* at 165 (eighth convention, June 21, 1776).

³⁸ HOFFMAN, *supra* note 33, at 269.

³⁹ See PHILIP A. CROWL, *MARYLAND DURING AND AFTER THE REVOLUTION, A POLITICAL AND ECONOMIC STUDY* (1943) (discussing predominantly aristocratic social makeup of Maryland constitutional framers); HOFFMAN, *supra* note 33 (discussing economic and social movements affecting Maryland's revolutionary period); H. H. WALKER LEWIS, *THE MARYLAND CONSTITUTION OF 1776* (1976) (discussing forces that helped shape the Maryland Constitution); SKAGGS, *supra* note 32 (same); Edward A. Tomlinson, *The Establishment of State Government in Maryland: The Constitution of 1776*, 9 MD. BAR J. 4 (1976) (same); Haeuser, *supra* note 3 (evaluating ideas and intentions of members of constitutional convention); James Alfred Haw, *Politics in Revolutionary Maryland, 1753-1788* (1972) (unpublished Ph.D. dissertation, University of Virginia) (on file with the author) (discussing politics of the period). Other works of smaller scope also abound, including Thorton Anderson, *Maryland's Property Qualification for Office: A Reinterpretation of the Constitutional Convention of 1776*, 73 MD. HIST. MAG. 327 (1978) (taking a critical look at the property ownership requirement); Herbert E. Klingelhofer, *The Cautious Revolution: Maryland and the Movement Toward Independence: 1774-1776*, 60 MD. HIST. MAG. 261 (1965) (describing events leading up to Convention of 1776). About the revolutionary period generally, see WILLI PAUL ADAMS, *THE FIRST AMERICAN CONSTITUTIONS: REPUBLICAN IDEOLOGY AND THE MAKING OF THE STATE CONSTITUTIONS IN THE REVOLUTIONARY ERA* (1980) (discussing general tendencies in early American constitutional formation); FLETCHER M. GREEN, *CONSTITUTIONAL DEVELOPMENT IN THE SOUTH ATLANTIC STATES, 1776-1860: A STUDY IN THE EVOLUTION OF DEMOCRACY* (1930) (same); Max Farrand, *The Delaware Bill of Rights of 1776*, 3 AM. HIST. REV. 641 (1898) (comparing 1776 constitutions of Maryland, Pennsylvania, and Delaware); John Rainbolt, *A Note on the Maryland Declaration of Rights and Constitution of 1776*, 66 MD. HIST. MAG. 420 (1971).

⁴⁰ Secrecy was an important consideration for the delegates to the 1776 Constitutional Convention. For example, the oath of office taken by the Clerk of the Convention, Gabriel Duvall (who later served as a Justice of the United States Supreme Court), was to "honestly, diligently and faithfully discharge the office of clerk to the convention of Maryland," and "not disclose or reveal the secrets thereof." PROCEEDINGS, *supra* note 29, at 209 (emphasis added). As a result of this penchant for secrecy, no records of the debates of the convention were kept. All that remains for the modern historian is the record of the proceedings, recording the questions and the resulting votes. Early drafts circulated among the delegates also provide some insight into the working of the convention. *Id.*; see also THE DECISIVE BLOW IS STRUCK: A FACSIMILE EDITION OF THE PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF 1776 AND THE FIRST MARYLAND CONSTITUTION (1977) [hereinafter THE DECISIVE BLOW] (beginning August 14, 1776).

⁴¹ GREEN, *supra* note 39, at 209.

⁴² *Id.* at 146-50.

⁴³ *The History of Legislative Apportionment in Maryland*, in CONSTITUTIONAL REVISION STUDY DOCUMENTS OF THE CONSTITUTIONAL CONVENTION COMMISSION OF MARYLAND 138-39 (State of Md. 1968) [hereinafter CONSTITUTIONAL REVISION STUDY DOCUMENTS].

⁴⁴ The most significant attempt at redistribution came in 1836. This crisis was precipitated by the senatorial electors, whose function it was to select the 15-member state senate. Because of voting inequalities, the Whigs had won 21 of the 40 elector's seats despite receiving only about 1/3 of the total votes cast. In protest, the Democratic electors refused to attend the electoral college, denying the Whigs a quorum. Although sufficient senatorial electors later acquiesced and attended the electoral college, the point was not lost on the General Assembly. BRUGGER, *supra* note 23, at 229; see also CONSTITUTIONAL REVISION STUDY DOCUMENTS, *supra* note 43, at 138-39; James Warner Harry, *The Maryland Constitution of 1851*, 20 JOHNS HOPKINS U. STUD. IN HIST. & POL. SCI., Nos. 7-8, at 15 (1902) (describing effects of Democratic electors' boycott of early stages of 1836 State Reform Convention). During the next session, despite a conservative, Whig majority, the General Assembly approved a reform measure to reapportion the legislature. 1836 Md. Laws ch. 197, §§ 3-28 (amending districts and term lengths of State Senators).

⁴⁵ CONSTITUTIONAL REVISION STUDY DOCUMENTS, *supra* note 43, at 138-39.

⁴⁶ Harry, *supra* note 44, at 16-17. Rohr discusses this desire to limit the General Assembly's authority to incur debt as part of a general, and necessary, trend away from the dominance of the legislative branch and toward an equal balance of powers. *Governor of Maryland*, *supra* note 23, at 71-72.

⁴⁷ Harry, *supra* note 44, at 34-35.

⁴⁸ *Id.* at 35. Mr. Harry also links these tax protests to objections to Acts of 1844, Chapter 280, the "Stamp Tax." *Id.* at 22; see also 3 SCHARF, *supra* note 23, at 212-14 (noting resistance of Marylanders to British Stamp Tax).

⁴⁹ Harry, *supra* note 44, at 18-19.

⁵⁰ *Id.* at 19.

⁵¹ According to contemporary accounts, the expenditures for the judiciary totaled \$41,500 in 1840. *Id.* at 19 n.15. A conflicting report is given in WILLIAM J. EVITTS, *A MATTER OF ALLEGIANCES: MARYLAND FROM 1850 TO 1861* (1974), in which Evitts reports that "[i]n 1842 Governor Francis Thomas declared that Maryland's annual \$36,000 expenditure was the largest judicial salary bill in all the states. In fact, it was not, but most Marylanders took the governor's estimate as gospel." *Id.* at 34 n.47.

⁵² 2 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION 460-61 (1851). This is likely an exaggeration: the delegates from the Eastern Shore and Southern Maryland had resisted a constitutional convention for as long as possible in order to try to avoid changes in slavery laws. Harry, *supra* note 44, at 20-21.

⁵³ *Id.* at 29-67.

⁵⁴ A good starting point for researching the 1851 Convention is Harry, *supra* note 44. Although not specifically about the constitutional convention, several books and articles explain the political climate of the period. The best among these is EVITTS, *supra* note 51. Others include Douglas Bowers, *Ideology and Political Parties in Maryland 1851-1856*, 64 MD. HIST. MAG. 197 (Fall 1969); Laurence Frederick Schmeckebier, *History of the Know-Nothing Party in Maryland*, 17 JOHNS HOPKINS U. STUD. IN HIST. & POL. SCI., Nos. 4-5 (April-May, 1899). A glimpse of the life of a delegate to the 1851 convention, albeit a relatively unimportant one, is provided in George M. Anderson, *A Delegate to the 1850-51 Constitutional Convention: James W. Anderson of Montgomery County*, 76 MD. HIST. MAG. 250 (Fall 1981).

⁵⁵ William Starr Myers, *The Maryland Constitution of 1864*, 19 JOHNS HOPKINS U. STUD. IN HIST. & POL. SCI., Nos. 8-9 at 8 (1901).

⁵⁶ This election is decried as a "shameless mockery, and its results were but the work of fraud and violence." 3 SCHARF, *supra* note 23, at 460. (The home of Governor Bradford, located in Baltimore County on the present-day grounds of the Elkridge Country Club was burned during the Civil War by Confederate soldiers in apparent retribution for the destruction of the Virginia Governor's mansion.)

⁵⁷ Myers, *supra* note 55, at 8-9.

⁵⁸ MD. CONST. OF 1851, art. III, § 43.

⁵⁹ The Emancipation Proclamation, by its terms, did not affect the slaves of Maryland. The Emancipation Proclamation, 12 Stat. 1268 (1862); see also Lea S. VanderVelde, *The Labor Vision of the Thirteenth Amendment*, 138 U. P.A. L. REV. 437, 441 n.22 (1984) (stating that Emancipation Proclamation had "no effect on the legal status of slaves in . . . Maryland" and other states).

⁶⁰ There had been several calls for a constitutional convention, notably in 1858 and 1862. See Myers, *supra* note 55, at 13.

⁶¹ See *id.* at 13 (discussing formation of "Unconditional Union" party).

⁶² *Id.* at 15, 32.

⁶³ *Id.* at 15.

⁶⁴ See *id.* (discussing President Lincoln's aggressive war measures and Unconditional Union's opposition to them).

⁶⁵ See *id.* (discussing convention bill).

⁶⁶ *Id.* at 16; see also *id.* at 24 (discussing overall election results).

⁶⁷ 1863 was not a gubernatorial election year. Candidates for Comptroller of the Treasury headed their parties' tickets. *Id.* at 14-15.

⁶⁸ *Id.* at 20.

⁶⁹ See *id.* at 17-24 (discussing actions taken by General Schenck, including issuance of "General Order No. 53").

⁷⁰ *Id.* at 24.

⁷¹ See *id.* at 30 (discussing opening message delivered to joint meeting of Session of General Assembly).

⁷² *Id.* at 30-31.

⁷³ The vote was 31,593 in favor of the convention, with 19,524 opposed to it. *Id.* at 34.

⁷⁴ *Id.* at 35.

⁷⁵ See *id.* at 35-39 (discussing delegates in attendance and their respective duties).

⁷⁶ 3 SHELBY FOOTE, *THE CIVIL WAR: A NARRATIVE: RED RIVER TO APPOMATTOX* 446 (1974).

⁷⁷ *Id.*

⁷⁸ *Id.* at 452.

⁷⁹ *Id.* at 454.

⁸⁰ *Id.* at 461.

⁸¹ Myers, *supra* note 55, at 44-45.

⁸² *Id.* at 44-48.

⁸³ The "iron-clad" oaths were authorized by the Maryland Constitution of 1864 in Article I, Sections 4 and 7, and Article III, Section 47. The election judges were required to ask a series of questions designed to eliminate the vote of any Southern sympathizers.

⁸⁴ Research on the Constitutional Convention of 1864 should begin with Myers, *supra* note 55. For politics of the period, see JEAN H. BAKER, *THE POLITICS OF CONTINUITY: MARYLAND POLITICAL PARTIES FROM 1858 TO 1870* (1973); CHARLES BRANCH CLARK, *POLITICS IN MARYLAND DURING THE CIVIL WAR* (1952).

⁸⁵ William Starr Myers, *The Self-Reconstruction of Maryland 1864-1867*, 27 JOHNS HOPKINS U. STUD. IN HIST. & POL. SCI., Nos. 1-2, at 9-10 (1909).

⁸⁶ *Governor of Maryland*, *supra* note 23, at 83.

⁸⁷ Myers, *supra* note 85, at 76-77.

⁸⁸ *Id.* at 113.

⁸⁹ See *supra* note 83 for a discussion of the source and nature of these oaths.

⁹⁰ The only work that I can recommend is Myers, *supra* note 85.

⁹¹ See PHILIP B. PERLMAN, *DEBATES OF THE MARYLAND CONSTITUTIONAL CONVENTION OF 1867* (1923) (noting that sole record of Convention debates consisted of newspaper accounts).

⁹² JOHN P. WHEELER, JR. & MELISSA KINSEY, *MAGNIFICENT FAILURE: THE MARYLAND CONSTITUTIONAL CONVENTION OF 1967-1968*, at 4 (1970) (quoting Royce Hanson, *Analysis: In Maryland, the Courthouse Gangs and the Little Guys Join Forces to Defeat a Reform Constitution*, CITY, July-August 1969, at 38).

⁹³ Prior to his appointment to the Court of Appeals in Maryland in May of 1968, Judge Marvin Smith served as a delegate to the 1967-68 Constitutional Convention. Judge Smith, more than any other member of the Court, has relied on the work of the Constitutional Convention. In *In re Special Investigation No. 244*, 459 A.2d 1111 (Md. 1983), Judge Smith adopted a rule for the appropriate use of the proposed constitution of 1967-68 as legislative history: "[t]hat proposed Constitution can effectively be used to interpret our present Constitution, that from the Convention of 1867, only in the case of an amendment to the present Constitution adopting some of the language of the proposed Constitu-

tion, as has been done in certain instances." *Id.* at 1114-15. For other opinions of Judge Smith relying upon the 1967-68 Constitutional Convention, see *Maryland Act for Foster Children Inc. v. State*, 367 A.2d 491, 507 (Md. 1977) (Smith, J. dissenting) ("The constitutional provisions here under discussion are essentially the same as those proposed by the Constitutional Convention of Maryland in 1968. I find interesting and persuasive the views expressed at the Constitutional Convention on this subject by Delegates Joseph Sherbow and William S. James.") (citations omitted); *Kadan v. Board of Supervisors of Elections of Baltimore County*, 329 A.2d 702, 711-12 (Md. 1974) (citing 1967-68 Constitutional Convention records regarding lay judges of Orphan's Court); *State Admin. Bd. of Election Laws v. Calvert*, 327 A.2d 290, 300-04 (Md. 1974) (citing 1967-68 Constitutional Convention proposals as relevant legislative history for provision granting original jurisdiction over redistricting to the Court of Appeals); *In re Diener and Broccolino*, 304 A.2d 587, 617-19 (Md. 1973) (Smith, J., dissenting) (concerning judicial removal provisions of 1967-68 Constitution).

⁹⁴ In addition to WHEELER & KINSEY, *supra* note 92, other sources discussing the 1967-68 Convention include WAYNE RICHARD SWANSON ET AL., *POLITICS AND CONSTITUTIONAL REFORM: THE MARYLAND EXPERIENCE, 1967-68* (Wash. Ctr. for Metro. Stud. October, 1970); Marianne Ellis Alexander, *The Issues and Politics of the Maryland Constitutional Convention, 1967-1968* (1972) (unpublished Ph.D. dissertation, University of Maryland) (on file with the author); Wayne Richard Swanson, *The Politics of Constitutional Revision: The Maryland Constitutional Convention, 1967-1968* (1969) (unpublished Ph.D. dissertation, Brown University) (on file with the author). A vast amount of original material from the 1967-68 Constitutional Convention is part of the collection of the Maryland State Law Library and the Thurgood Marshall Law Library at the University of Maryland School of Law.

⁹⁵ The drafts are among the only pieces of legislative history available for the 1776 Declaration, as much of the work was done by committee and not recorded.

⁹⁶ One example is Article 5 of our current Declaration of Rights. In the August 27, 1776, draft, the same guarantees were made by Article 16. To maintain the order in both directions, the August 27, 1776, box for the historical antecedent of our Article 5 is blank, but a cross reference sends the reader to the appropriate box for Article 16 of the August 27, 1776, version.

⁹⁷ It is ironic that those Maryland Constitutional Conventions that were most meticulous about providing an historical record of their debates and proceedings (1967-68 and to a lesser degree, 1864) are those that had the least impact, while the more important conventions (1867 and 1776) kept significantly fewer records and held many of their discussions in private sessions.

⁹⁸ Professor Howard has described the Virginia Bill of Rights of 1776 as:

a restatement of the basic principles of the English liberty documents, such as Magna Carta, the Petition of Right, and the Bill of Rights. To this English heritage were added statements of natural rights philosophy: that power derives from the people, that men have certain inherent rights which they retain in civil society, and that a majority of the people have the right to alter or abolish an existing form of government.

1 HOWARD, *supra* note 3, at 7. A similar statement could be made about the Maryland Constitution. For reference to origins of Maryland provisions in historic English sources, see chart *infra*. For specific provisions drawing on a natural rights philosophy, see Tom N. McInnis, *Natural Law and the Revolutionary State Constitutions*, 14 *LEGAL STUD. F.* 351 (1990).

⁹⁹ Some commentators have erroneously suggested that the Delaware Declaration of Rights of 1776 predates Maryland's and was a model for the Maryland document. See e.g. Max Farrand, *The Delaware Bill of Rights of 1776*, *THE AMERICAN HISTORICAL REVIEW*, Vol. III (1898); Tom W. Bell, *The Third Amendment: Forgotten But Not Gone*, 2 *WM. & MARY BILL OF RTS. J.* 127 n.96 (1993). The reverse is true. The Maryland Constitutional Convention assembled in Annapolis on August 14, 1776. *THE DECISIVE BLOW*, *supra* note 40 (August 14, 1776). On Saturday, August 17, 1776, the convention elected a drafting committee to prepare "a declaration and charter of rights, and a form of government for this state." *Id.* (August 17, 1776). By August 27, 1776, an initial draft of the Declaration of Rights was circulated to the convention body. *Id.* (August 27, 1776). A second draft of the Declaration of Rights was produced on September 17, 1776. *Id.* (September 17, 1776). The convention body adopted the Declaration of Rights in final form along with the new constitution on November 11, 1776. *Id.* (November 11, 1776).

In Delaware, immediately after Independence, Assembly Speaker Caesar Rodney called a special session of the Assembly beginning on July 22, 1776. GEORGE HERBERT RYDEN, *LETTERS TO AND FROM CAESAR RODNEY, 1756-1784* 94-95 (Univ. of Penna., 1933); H. Clay Reed, *The Delaware Constitution of 1776*, *DELAWARE NOTES* 15 (Sixth Series, 1930). The Assembly approved a call for a convention "to ordain and declare the future Form of Government of this State." RICHARD LYNCH MUMFORD, *CONSTITUTIONAL DEVELOPMENT IN THE STATE OF DELAWARE, 1776-1897* 51 (unpublished Ph.D. dissertation, Univ. of Delaware, 1968). The Convention assembled in New Castle on August 27, 1776. The Convention approved the proposed Declaration of Rights on September 11, 1776.

Thus, a careful review of the proceedings of the respective conventions reveals that Maryland's first draft Declaration of Rights was completed on August 27, 1776, the same day that the Delaware Convention convened. Given that Maryland's August 27, 1776 draft, was substantially similar to the version ultimately adopted, it is clear that Maryland's version preceded the Delaware version. H. Clay Reed, *The Delaware Constitution of 1776*, *DELAWARE NOTES* 15 (Sixth Series, 1930); RICHARD LYNCH MUMFORD, *CONSTITUTIONAL DEVELOPMENT IN THE STATE OF DELAWARE, 1776-1897* 51 (unpublished Ph.D. dissertation, Univ. of Delaware, 1968); see also Letter from George Read to Caesar Rodney (September 17, 1776) reprinted in GEORGE HERBERT RYDEN, *LETTERS TO AND FROM CAESAR RODNEY, 1756-1784* (Univ. of Penna., 1933).

¹⁰⁰ New Hampshire's original constitution was adopted January 5, 1776, and contained no rights-type provisions. See N.H. CONST. OF 1776, reprinted in Sources and Documents, *supra* note 20, at 342-43 (1976).

¹⁰¹ South Carolina's initial constitution, adopted March 26, 1776, contained no declaration or bill of rights. That constitution proved inadequate and was superseded by a new constitution a mere two years later. See S.C. CONST. OF 1776, reprinted in 8 *id.* at 462-67 (1979); *id.* at 461 ("[The South Carolina Constitution of 1776] was a hasty improvisation, and two years later a more systematic scheme of government was substituted.")

¹⁰² The Virginia Bill of Rights was adopted June 12, 1776, and its constitution was adopted on June 20, 1776. VA. CONST. OF 1776, reprinted in 10 *id.* at 13-14 (1979). Although the officially adopted version of the Virginia Declaration of Rights is cited throughout this article, it is generally accepted that George Mason's May 27, 1776 draft was more influential nationally and internationally than the official draft. George Mason's May 27, 1776, draft of the Virginia Declaration of Rights served as a model for the American Declaration of Independence, PAULINE MAIER, *AMERICAN*

SCRIPTURE: MAKING THE DECLARATION OF INDEPENDENCE 125-28 (1997); the French Declaration of the Rights of Man, Gilbert Chinard, *Notes on the French Translations of the "Forms of Government or Constitutions of the Several United States" 1778 and 1783*, 88-106 YEARBOOK OF THE AMERICAN PHILOSOPHICAL SOCIETY, 1943; Durand Echeverria, *French Publication of the Declaration of Independence and the American Constitutions, 1776-1783*, 47 PAPERS OF THE BIBLIOGRAPHICAL SOCIETY OF AMERICA 313 (1953); and the bills and declarations of rights of many of the American states. JOHN SELBY, *THE REVOLUTION IN VIRGINIA, 1775-1783* 103 (1988); R. Carter Pittman, *Book Review of SOURCES OF OUR LIBERTIES*, 68 VA. MAG. HIST. & BIOG. 109 (1960). Professor Howard notes that Mason's May 27, 1776 draft of the Virginia Declaration of Rights was reprinted in *THE MARYLAND GAZETTE* on June 13, 1776, 1 HOWARD, *supra* note 3, at 39, and was thus available to the delegates to the Maryland constitutional convention that would assemble on August 14, 1776.

¹⁰³ New Jersey's July 2, 1776, Constitution did not contain a separate declaration or bill of rights, but several familiar rights provisions were codified in that document. See Art. XVI (addressing right to counsel and witnesses in criminal trials); Art. XVIII (guaranteeing freedom of religion); Art. XIX (establishing guaranty against the establishment of religion); Art. XX (stating prohibition against dual office holding); and Art. XXII (providing for retention of English common law). See N.J. CONST. OF 1776, reprinted in 6 SOURCES AND DOCUMENTS, *supra* note 20, at 449-53 (1976).

¹⁰⁴ The Pennsylvania Convention convened on July 15, 1776, and after a period of public comment, a constitution was adopted September 28, 1776. John N. Schaeffer, *Public Consideration of the 1776 Pennsylvania Constitution*, 98 PA. MAG. HIST. & BIOG. 415, 417 (1974).

¹⁰⁵ Compare *infra* chart and accompanying commentary (outlining the legislative history of the various Maryland constitutions including proposed constitutions and drafts), with VA. CONST. OF 1776, reprinted in 10 SOURCES AND DOCUMENTS, *supra* note 20, at 48-50 (1979) (containing Virginia's Bill of Rights), and PA. CONST. OF 1776, reprinted in 8 *id.* at 278-79 (1979) (containing Pennsylvania's Declaration of Rights).

¹⁰⁶ See Robert F. Williams, *The State Constitutions of the Founding Decade: Pennsylvania's Radical 1776 Constitution and its Influences on American Constitutionalism*, 62 TEMP. L. REV. 541, 567 (1989) (stating that Maryland's constitution was the most conservative of the "founding decade").

¹⁰⁷ HOFFMAN, *supra* note 33, at 269.

¹⁰⁸ Williams, *supra* note 106, at 547-48, 576-79.

¹⁰⁹ Maeva Marcus, *The Adoption of the Bill of Rights*, 1 WM. & MARY BILL RTS. J. 115, 115 (1992).

¹¹⁰ See McInnis, *supra* note 98, at 368-69.

¹¹¹ It is my contention that the Maryland appellate courts use the phrase "*in pari materia*" in two distinct ways. The first is used primarily when analyzing statutes, but also with regards to the due process and equal protection guarantees implicit within the Declaration of Rights. When speaking of these subjects, the courts give a nuanced meaning to the phrase "*in pari materia*" meaning that two items arose from the same background and generally have complementary, but not necessarily identical, meanings. See, e.g., *Aero Motors, Inc. v. Administrator, Motor Vehicle Adm'n*, 337 A.2d 685, 699 (Md. 1975) (holding that although article of Maryland Declaration of Rights concerning due process has "been equated" with Due Process Clause of Fourteenth Amendment, by judicial construction and application, the two provisions are not synonymous). The second meaning of the phrase "*in pari materia*" is used when the subject is any other provision of the Declaration of Rights, and particularly those protecting the rights of criminal defendants. In those circumstances the phrase "*in pari materia*" means that the right protected by the state constitution is identical to the analogous federal provision, and that the Maryland court will defer completely to the United States Supreme Court's interpretation of the provision. See, e.g., *State v. Bell*, 638 A.2d 107, 109 n.2 (Md. 1994) (interpreting Article 26 of Maryland Declaration of Rights as being identical to Fourth Amendment).

¹¹² The academic literature of state constitutional law is highly critical of the "lock-step" method of constitutional interpretation, wherein the content of a state provision is shackled to the United States Supreme Court's interpretation of an analogous federal provision. See, e.g., Linde, *supra* note 1, at 382-83 (arguing that most state courts rely on interpretations of Federal Bill of Rights to determine meaning of state constitutional guarantees); Robert F. Utter, *Swimming in the Jaws of the Crocodile: State Court Comment on Federal Constitutional Issues when Disposing of Cases on State Constitutional Grounds*, 63 TEX. L. REV. 1025, 1047 (1985) (asserting that if states cease to consider constitutional provisions from their own perspective then the federal bench would be deprived of rich and diverse research); Williams, *supra* note 6, at 397 (stating that state court judicial review of state statutes or executive actions qualitatively different from Supreme Court's judicial review of same action).

¹¹³ I use the word "analogous" intentionally, but somewhat tentatively. I do not want to suggest in any way that the Federal Fourth Amendment right against unreasonable searches and seizures is identical to the warrant requirement of Article 26 of the Maryland Declaration of Rights. I mean to say only that they are analogous, "similar or comparable in certain respects." WEBSTER'S NEW WORLD DICTIONARY (3d college ed. 1997).

¹¹⁴ Failure to preserve a state constitutional argument at trial likely will be interpreted as a waiver of that issue in any subsequent appellate proceeding. MD. R. 8-131.

¹¹⁵ 450 A.2d 952, 965-69 (N.J. 1982) (Handler, J., concurring). I hasten to note that I do not subscribe to Justice Handler's factor approach, but that I subscribe to the criticism of that approach given in Justice Pashman's concurring opinion in *Hunt*: "At bottom, Justice Handler's approach effectively entails a presumption against divergent interpretations of [the state] constitution unless special reasons are shown for [a state] to take a path different from that chosen at the federal level." *Id.* at 960 (Pashman, J., concurring). Nonetheless, Justice Handler's factors provide an excellent starting place for this discussion.

¹¹⁶ As must be obvious, different judges and different courts each will have different conceptions about what constitutes a significant textual difference.

¹¹⁷ I include within this category decisions of the Supreme Court based on federalism concerns, which obviously are not structurally relevant to the Court of Appeals of Maryland. A clear example of this is *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 58 (1973) (holding education policy to be uniquely state concern); see also Sager, *supra* note 22, at 975-76 (discussing role of federalism).

¹¹⁸ For a discussion of these sources for independent state constitutional analysis, see generally Williams, *supra* note 6 (comparing federal and state judicial review and evaluating states' rejection of Supreme Court reasoning).

¹¹⁹ This column contains the Declaration of Rights currently in force in Maryland. MD. CONST. decl. of rights. It is the version adopted in 1867 with amendments to date. An overall rewrite of the Declaration of Rights and the Mary-

land Constitution was undertaken in 1967-68, but failed to be ratified by voters. CONSTITUTIONAL REVISION STUDY DOCUMENTS, *supra* note 43, at ix. The proposed changes in the Declaration of Rights suggested by the Constitutional Convention of 1967-68 are provided in the notes discussing each provision.

¹²⁰ The Constitutional Convention of 1867, convened May 8, 1867, and adjourned August 17, 1867. CONSTITUTIONAL REVISION STUDY DOCUMENTS, *supra* note 43, at 511. The Constitution produced was ratified by the voters on September 18, 1867, and became effective October 5, 1867. *Id.* The 1867 version has been amended repeatedly. *Id.* at 583-595.

¹²¹ The Constitutional Convention of 1864 commenced April 27, 1864, and adjourned September 6, 1864. *Id.* at 445. The Constitution became effective November 1, 1864. 3 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND 1902 (Richard P. Bayly, 1864). The 1864 Constitution barely was approved and would have been defeated had votes of Maryland's Union troops in the field not been counted, a novel and perhaps unconstitutional procedure in the days before systematic absentee balloting. REPORT OF THE CONSTITUTIONAL CONVENTION COMMISSION 54-55 (State of Md. 1967). The 1864 Declaration of Rights was not amended before it was superseded by the 1867 version.

¹²² The Constitutional Convention that produced the 1851 Constitution initially convened on November 4, 1850. CONSTITUTIONAL REVISION STUDY DOCUMENTS, *supra* note 43, at 413. Thus, some sources refer to the Convention as that of 1850 or 1850-51. The Convention adjourned at one o'clock in the morning of May 14, 1851. 2 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 890. The effective date of this Constitution was July 4, 1851. The Declaration of Rights of 1851 was never amended before it was superseded by the 1864 version.

¹²³ CONSTITUTIONAL REVISION STUDY DOCUMENTS, *supra* note 43, at 369. The Maryland Constitutional Convention adopted this version on November 4, 1776, and it became effective without popular approval on November 11, 1776. Rainbolt, *supra* note 39, at 426. The 1776 Declaration of Rights was amended nine times before it was superseded: Acts of 1794, ch. 49 (stating persons being members of religious sects or societies who shall be conscientiously scrupulous of taking an oath and are otherwise qualified and duly appointed or elected may hold any office of Profit or trust to which he may be appointed); Acts of 1797, ch. 118 (allowing members of certain religions, which forbid taking oaths, to make affirmation in the manner that Quakers have been allowed to affirm and shall be admitted as a witness in any Court of Justice); Acts of 1801, ch. 90 (deleting ownership of property as a requirement for right of suffrage); Acts of 1809, ch. 167 (stating it shall not be lawful for the State to tax the people for the support of any religion); Acts of 1817, ch. 61 (allowing persons professing to be of the Christian religion, which forbid taking oaths, to make solemn affirmation in the same manner as Quakers); Acts of 1824, ch. 205 (requiring persons professing to be of the Jewish religion, and appointed to any office, in addition to taking an oath, to make and subscribe a declaration of his belief in a future state of Rewards and Punishments); Acts of 1836, ch. 148 (authorizing creation of additional election district of Washington County, to be composed of parts of third and seventh election districts); and Acts of 1836, ch. 197 (describing general election practices of the General Assembly). CONSTITUTIONAL REVISION STUDY DOCUMENTS, *supra* note 43, at 391-408.

¹²⁴ Printed and circulated at the Maryland Constitutional Convention on September 17, 1776. Rainbolt, *supra* note 39, at 426. The only reference to this draft is a resolution passed by the Convention on September 17, 1776, calling for the printing and distribution of the declaration of rights and form of government. PROCEEDINGS, *supra* note 29, at 258. The copy used is from the Historical Society of Pennsylvania. The Court of Appeals of Maryland rarely has consulted these drafts for guidance. *But see* Rice v. State, 532 A.2d 1357, 1362-63 n.8 (Md. 1987) (discussing drafting of Declaration of Rights to Maryland Constitution in 1776). There was a third draft of the Declaration of Rights, dated October 31, 1776. That draft is reproduced in THE DECISIVE BLOW, *supra* note 40 (October 31, 1776). It is not reproduced here, as it is largely identical to the version adopted on November 4, 1776. All differences between the October 31, 1776, and November 4, 1776, documents are noted within the relevant footnotes.

¹²⁵ A drafting "committee to prepare a declaration and charter of rights, and a form of government, for this state," was elected on August 17, 1776. THE DECISIVE BLOW, *supra* note 40 (August 17, 1776). The drafting committee submitted a first draft on August 27, 1776. *Id.*; Rainbolt, *supra* note 39, at 426. The only mention is the following sentence from the journal of the convention: "Mr. [George] Plater [of St. Mary's County] brings in and delivers to Mr. President [Delegate Matthew Tilghman of Talbot County] a declaration and charter of rights, which was read, and ordered to be printed for the consideration of the members." PROCEEDINGS, *supra* note 29, at 228. The copy used here was obtained from the Historical Society of Pennsylvania.

¹²⁶ The 1967-68 Constitutional Convention proposed replacing the preamble and the first four Articles with a new preamble:

We the people of the State of Maryland, grateful to Almighty God for our civil and religious freedom, recognizing that all political power originates in the people and that all government is instituted to secure their right to life, liberty, and the pursuit of happiness, and acknowledging our duty and responsibility to posterity, do establish and ordain this Constitution.

CONSTITUTIONAL CONVENTION COMMISSION, CONSTITUTIONAL CONVENTION OF MARYLAND 1967-1968: COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION 1 (1968) [hereinafter COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION]. The proposals of the 1967-68 Convention were defeated by the voters. *Id.* The proposals of the Constitutional Convention of 1967-68 were preceded by the efforts of a Constitutional Convention Commission, whose duties included preliminary research and drafting prior to the convening of the official convention. *Id.* The results of the Commission's labor are bound in a two volume set. *Id.* The Commission's views on the meaning and validity of the 1867 Declaration of Rights are included in REPORT OF THE CONSTITUTIONAL CONVENTION COMMISSION TO HIS EXCELLENCY, SPIRO T. AGNEW, GOVERNOR OF MARYLAND 97-111 (1967).

¹²⁷ Every state constitution currently in force, except those of Vermont and West Virginia, begins with a preamble. All of these preambles, with the exceptions of New Hampshire, Oregon and Tennessee, begin with a religious invocation similar to "grateful to Almighty God" in the Maryland preamble.

¹²⁸ The change from "Delegates" in 1776 to "People" in the 1851 version came as a result of an amendment offered by Delegate Alexander Randall of Anne Arundel County. Harry, *supra* note 44, at 53. This followed a long debate over the relationship between the counties and the state. *Id.* The debates of the 1851 Constitutional Convention reveal a debate about who were the parties in the compact of government. *Id.* at 51. The Convention clearly deter-

mined that it was the people and not the counties who created the state government. *Id.* at 53; *see also* 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 235-39, 437-41. The phrase "we, the people" also clearly invokes the preamble to the United States Constitution. U.S. CONST. preamble.

¹²⁹ Judge William Carr has noted that the preamble to the Maryland Declaration of Rights places the blame for the American Revolution on the English Parliament, in contrast to the United States Declaration of Independence, which places the onus squarely on King George III. The Honorable William O. Carr, Circuit Court for Hartford County, Maryland, Address to the Judicial Institute of Maryland (April 18, 1996). Judge Carr did not draw a conclusion based on this distinction. It is tempting to attribute this difference to Maryland's conservatism during this period and unwillingness to break from the monarchy. Contrary evidence, however, suggests that the difference was not particularly meaningful. On July 6, 1776, unaware that the Continental Congress had passed a Declaration of Independence two days previously, the Maryland Convention issued its own Declaration of Independence. PROCEEDINGS, *supra* note 29, at 201. That document claimed that "the king of Great Britain has violated his compact with this people, and that they owe no allegiance to him . . ." *Id.* at 202. It is unclear, therefore, how much weight should be ascribed to the decision made by the drafters of this preamble to blame the English Parliament as opposed to the king. An interesting analysis of the issue of upon whom the revolutionary generation placed the blame for the cause of the Revolution—King or Parliament—is contained in GARRY WILLS, INVENTING AMERICA: JEFFERSON'S DECLARATION OF INDEPENDENCE 68-73, 311-12 (1978).

¹³⁰ The deletion of this provision apparently was accomplished by the Committee on the Declaration of Rights. PERLMAN, *supra* note 91, at 61. When that Committee made its initial report, the Article was not among them. *Id.* at 76-84.

¹³¹ This Article was not included in the report of the Committee on the Declaration of Rights but offered from the floor and adopted without debate. 2 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 749. J. Thomas Scharf refers to this Article as an "acknowledgment from the Declaration of Independence with an attempted improvement." 3 SCHARF, *supra* note 23, at 582. Myers calls it "merely a broad statement of the principle involved in the article abolishing slavery." Myers, *supra* note 55, at 62. The fact that it was added as a new Article 1, after debate on all other Articles, makes the numbering used by the delegates in their debate of all other provisions off by one.

¹³² The 1967-68 Constitutional Convention proposed replacing the preamble and the first four Articles with a new preamble. *See supra* note 126 for the exact wording of the proposed preamble. The proposed constitution was rejected by the voters.

¹³³ Although the Court of Appeals of Maryland rarely has referenced this provision in its decisions, the West Virginia Supreme Court has been active in its interpretation of a similar provision in the West Virginia Constitution. *See United Mine Workers of America v. Parsons*, 305 S.E.2d 343, 350 (W. Va. 1983) (recognizing Article III as alternative source of equal protection); *Pushinsky v. West Virginia Bd. Of Law Examiners*, 266 S.E.2d 444, 449 (W. Va. 1980) (finding freedom of political speech and association protected under Article III of West Virginia Constitution); *Cowan v. County Comm'n of Logan County*, 240 S.E.2d 675, 681 n.6 (W. Va. 1977) (supporting inherent political rights of the people articulated in Article III of West Virginia Constitution); *Mapel v. John*, 42 W. Va. 30, 36-37 (1896) (justifying state's use of police power through Article III of West Virginia Constitution); Phillip B. Scott, *The "Right of Revolution": The Development of the People's Right to Reform Government*, 90 W. VA. L. REV. 283, 293 (1987) (discussing and evaluating courts' application of Article III of West Virginia Constitution in light of historical meaning of article). The West Virginia provision provides:

Government is instituted for the common benefit, protection and security of the people, nation or community. Of all its various forms that is the best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and when any government shall be found inadequate or contrary to these purposes, a majority of the community has an indubitable, inalienable, and indefeasible right to reform, alter or abolish it in such manner as shall be judged most conducive to the public weal.

W. VA. CONST. art. III, § 3.

¹³⁴ The Convention of 1867 considered amending this provision with the following:

All just powers of government are derived from the people, and all persons invested with the executive or legislative powers of government are trustees of the public, and as such are accountable for their conduct; wherefore, whenever the ends of government are perverted and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to, reform the old or establish a new government; that the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind.

PERLMAN, *supra* note 91, at 96. The amendment eventually was rejected. *Id.*

¹³⁵ Professor Alfred Niles in 1915 wrote the pre-eminent text on the Maryland Constitution. ALFRED S. NILES, MARYLAND CONSTITUTIONAL LAW (1915). Professor Niles divided the provisions of the Maryland Declaration of Rights into four categories: Class A ("[d]eclarations of abstract principles whose sole practical effect is to declare from what standpoint the law shall be considered and in what spirit interpreted"); Class B ("[e]xact duplications of provisions found in the Federal Constitution"); Class C ("[l]imitations on the power of the State similar to those limitations prescribed in the United States Constitution for the Federal Government"); and Class D ("[c]oncrete rules peculiar to Maryland, which have substantially equal force and equal practical value with any other part of the Maryland Constitution"). *Id.* at 12-14. Although I disagree with the underlying premises, and the categories that result, this chart would be incomplete without Professor Niles's classifications. He placed Article 1 in Class A (abstract principles). *Id.* at 15.

¹³⁶ A proposal was made to delete this Article and replace it with the text discussed *supra*, note 134. PERLMAN, *supra* note 91, at 96-97. It also was proposed to limit the right of altering, reforming or abolishing the government to legal, rather than revolutionary means. *Id.* at 98-99. This too was defeated. *Id.*

¹³⁷ The 1864 Convention deleted the "mode prescribed" language as the constitutional convention had not been called in accordance with the rules contained in the prior constitution. Myers, *supra* note 55, at 62-63.

¹³⁸ The Committee proposed the deletion of the phrase "according to the mode prescribed in this Constitution." 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 133. A floor

amendment sought to re-introduce the phrase, but was rejected after much debate about the inherent rights of the people to organize their government. *Id.* at 134-46, 149-60.

¹³⁹ Article 59 of the 1776 Constitution required stringent preconditions to constitutional amendment. Myers, *supra* note 55, at 63. These preconditions were not met in the call for the 1851 Constitutional Convention. *Id.* This clause was added to "vindicate the revolutionary character of the convention." Harry, *supra* note 44, at 53.

¹⁴⁰ The discourse surrounding the adoption of this provision was among the most sophisticated debates of this convention. The draft proposed by the Bill of Rights Committee proposed to replicate the 1776 provision. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 140. Delegate Benjamin C. Prestman of Baltimore City offered the following language as an amendment: "And they have at all times the inalienable right to alter, reform or abolish their form of government in such manner as they may think expedient." *Id.* at 143. Some feared that this statement of general principle would be interpreted to permit majorities to replace the constitution at will to the detriment of minorities. *Id.* at 143-86. Delegates from the counties particularly feared that Baltimore City would soon constitute a majority of the state's residents and, depending on the outcome of debate regarding the elective franchise, Baltimore City might contain a majority of the state's voters. *Id.* at 143-86. To alleviate these fears about Baltimore City's potential despotism, Delegate (and Circuit Court Judge) Ezekiel F. Chambers of Kent County proposed the additional requirement that constitutional change was to be accomplished by the "mode prescribed." *Id.* at 157. The entire provision was adopted as amended. *Id.* at 186.

¹⁴¹ This expression of the compact theory of government is more explicit than the equivalent language contained in the Virginia Bill of Rights of 1776. See PA. CONST. of 1776, decl. of rights, art. I (declaring "[t]hat all men are born equally free and independent, and have certain natural, inherent and unalienable rights, amongst which are, the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety"); VA. CONST. of 1776, bill of rights, § 1 (stating that all men are equal, free, and independent by nature, "and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety"). Delaware, writing immediately after Maryland, copied Maryland's Article I word for word. DEL. CONST. of 1776, § 1. See *supra* note 99.

¹⁴² The 1967-68 Constitutional Convention proposed replacing the Preamble and the first four Articles with a new preamble. See *supra* note 126 for the exact wording of the proposed preamble. The proposed constitution was rejected by the voters.

¹⁴³ Many state constitutions provide a similar recognition of the supremacy of the United States Constitution. Maryland's is most similar to those of Georgia and West Virginia. GA. CONST. art. XII, § 1, 2; W. VA. CONST. art. I, § 1. Other state constitutions merely provide that the United States Constitution is the "supreme law of the land." ARIZ. CONST. art. II, § 3; CAL. CONST. art. I, § 3; IDAHO CONST. art. I, § 3; N.M. CONST. art. II, § 1; N.D. CONST. art. I, § 3; S.D. CONST. art. VI, § 26; UTAH CONST. art. I, § 3; WASH. CONST. art. I, § 2; W. VA. CONST. art. I, § 1.

¹⁴⁴ This Article was derived from Article 5 in the 1864 Constitution. The language requiring "paramount allegiance" to the federal government was removed.

¹⁴⁵ Professor Niles placed this Article in Class B (exact duplications). NILES, *supra* note 135, at 16. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

¹⁴⁶ There was floor opposition to the adoption of this Article, based on its declaration of national supremacy, origins in the 1864 Constitution, and its inappropriateness in a declaration of rights. Alternatives were proposed, but this proposal was adopted. PERLMAN, *supra* note 91, at 99-101, 104-07, 381-82 (1923).

¹⁴⁷ The 1967-68 Constitutional Convention proposed replacing the Preamble and the first four Articles with a new preamble. See *supra* note 126 for the exact wording of the proposed preamble. The proposed constitution was rejected by the voters.

¹⁴⁸ This provision is a verbatim copy of the Tenth Amendment to the United States Constitution, except the word "thereof" is twice added.

¹⁴⁹ Professor Niles placed this Article in Class B (exact duplications). NILES, *supra* note 135, at 16. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

¹⁵⁰ An amendment adding a reservation to the state of all rights not granted to the federal government was defeated. PERLMAN, *supra* note 91, at 107-08.

¹⁵¹ The 1967-68 Constitutional Convention proposed replacing the Preamble and the first four Articles with a new preamble. See *supra* note 126 for the exact wording of the proposed preamble. The proposed constitution was rejected by the voters.

¹⁵² Similar reservations of the right to self-governance are found in several other state constitutions. GA. CONST. art. I, § II, 1; MO. CONST. art. II, § 3; N.C. CONST. art. I, § 3; VT. CONST. ch. I, art. 5; W. VA. CONST. art. I, § 2; see also MASS. CONST. pt. I, art. 4; N.H. CONST. pt. I, art. 7; N.M. CONST. art. II, § 3.

¹⁵³ Professor Niles placed this Article in Class A (abstract principles). NILES, *supra* note 135, at 16.

¹⁵⁴ The 1867 Convention adopted two floor amendments to this Article. The first amendment deleted the words "ought to." The second amendment added the phrase, "as a free, sovereign and independent State." That language was taken directly from the Massachusetts Constitution. PERLMAN, *supra* note 91, at 119-20. The Massachusetts provision states that

[t]he people of this commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction and right, which is not, or may not hereafter be, by them [expressly] delegated to the United States of America in Congress assembled.

MASS. CONST. pt. I, art. IV.

¹⁵⁵ A proposal was made to amend this Article by adding a new clause: "[p]rovided, however, that in times of civil war the internal government and police of this State shall be exclusively regulated by military commanders and Provost Marshals appointed by the President of the United States, and such orders as the President of the United States may deem right and proper." 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 165. The amendment was rejected unanimously; even its author, Delegate George Peter of Montgomery County, voted against it. *Id.*

¹⁵⁶ The committee draft proposed the capitalization of the word "State." 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 141. This provision was re-adopted without debate on the convention floor. *Id.* at 186.

¹⁵⁷ This provision had been Article 2 in the August 27, 1776 draft.

¹⁵⁸ Compare this provision with Pennsylvania Declaration of Rights (1776), Article III: "[t]hat the people of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same." PA. CONST. of 1776, decl. of rights, art. III, reprinted in 8 SOURCES AND DOCUMENTS, *supra* note 20, at 278 (1979).

¹⁵⁹ The delegates to the 1776 Maryland Constitutional Convention were particularly adamant about state prerogatives, only allowing Maryland's delegates to the Continental Congress to vote for independence, "[p]rovided the sole and exclusive right of regulating the internal government and police of this colony be reserved to the people thereof." GREEN, *supra* note 39, at 55. John Richard Haeuser traces the origin of this phrase to an earlier incident involving the colonial Governor of Maryland, Sir Robert Eden. Haeuser, *supra* note 3, at 39-47. Eden, thought to be benign by the revolutionaries, was discovered to be sending secret letters to the English government. The Continental Congress ordered that Eden be arrested. The Maryland Convention, however, knowing Eden well, trusted his word that nothing damaging to the Revolution had been sent. The Maryland Convention rejected the meddling by the Continental Congress and replied that the Congress had no authority over the internal government of Maryland. *Id.* at 46 (quoting 11 ARCHIVES OF MARYLAND 355 (letter from Council of Safety to Maryland Deputies in Congress, April 19, 1776)). The right of the State Convention, as opposed to the Continental Congress, to govern Maryland, also came to the forefront when the Congress requested that the colonies establish a "fully effective government." *Id.* The Convention responded, "the sole and exclusive right of regulating the internal government and police of this colony be preserved to the people thereof." *Id.* at 62.

¹⁶⁰ A similar provision was included in the Articles of Confederation of 1777: "Each State retains its sovereignty, freedom and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled." ARTICLES OF CONFEDERATION, art. II.

¹⁶¹ The right to a jury trial may be waived in accordance with MD. CONST. art. IV, pt. I, § 8(a).

¹⁶² See also MD. CONST. art. 23 (stating right to trial by jury exists for all cases in which amount in controversy exceeds \$5000). Both of these provisions guarantee the right to trial by jury.

¹⁶³ Article 5 of the Maryland Declaration of Rights and the Seventh Amendment to the United States Constitution both represent attempts to constitutionalize the rights to jury trials that existed at the respective dates of drafting, without being forced to enumerate specifically those situations to which the right attaches. See Charles W. Wolfram, *The Constitutional History of the Seventh Amendment*, 57 MINN. L. REV. 639, 639 (1973) (finding that due to simplistic nature of Seventh Amendment, it has been difficult to discern true intent of the framers). Article 5, by its text, freezes the jury trial right as it existed in English law on July 4, 1776. See MD. CONST. art. 5 (declaring that "the inhabitants of Maryland are entitled to the Common law of England, and the trial by jury"). The United States Supreme Court's interpretation of the Seventh Amendment consistently has been that the decision on whether the jury right attaches is governed by the practice of English courts in 1791, the date of the amendment's adoption. See Wolfram, *supra*, at 640 (stating that "if a jury would have been impaneled in this kind of case in 1791 English practice, then generally a jury is required by the seventh amendment"). It appears that in both the federal and Maryland constitutions, the respective drafters' decision to tie the interpretation to a date, rather than to specify those situations in which the jury trial right attaches, was a matter of convenience because then, as now, it is difficult to distinguish those cases in which a jury trial is necessary from those in which a jury is unnecessary. For a critique of the United States Supreme Court's jurisprudence in this regard, see Martin H. Redish & Daniel J. La Fave, *Seventh Amendment Right to Jury Trial in Non-Article III Proceedings: A Study in Dysfunctional Constitutional Theory*, 4 WM. & MARY BILL RTS. J. 407 (1995). The framers of the United States Constitution, working four years prior to the drafting of the Bill of Rights, also struggled with the difficulty of distinguishing equity and other non-jury cases from cases requiring a jury. See James Madison, *Debates in the Federal Convention*, in 2 DEBATES OF THE FEDERAL CONVENTION OF 1787, at 585, 587-88 (M. Farrand ed., 1911) (noting that "[i]t is not possible to discriminate equity cases from those in which juries are proper"). The difficulty in finding an appropriate distinction was one of the reasons a jury trial right eventually was omitted from the Federal Constitution. See *id.*

¹⁶⁴ See generally Nancy S. Forster & Michael R. Braudes, *The Common Law of Maryland: An Important and Independent Source of Criminal Law and Procedure*, 3 MD. J. CONTEMP. LEGAL ISSUES 199 (1992) (discussing application of common law principles to criminal law of Maryland).

¹⁶⁵ The scope of that property granted by the royal charter is defined in sections III and IV of the Charter. See Charter of Maryland granted by King Charles I to Caecilius Calvert, Baron of Baltimore (June 20, 1632) (giving Maryland to Baron of Baltimore); see also Kerpelman v. Board of Pub. Works of Md., 276 A.2d 56, 61 (Md. 1971) (stating that "the inhabitants of Maryland became entitled to all property derived from and under the Charter"); Board of Pub. Works of Md. v. Larmar Corp., 277 A.2d 427, 432 (Md. 1971) (quoting Kerpelman). The original charter was written in Latin, but English translations are reprinted in MARYLAND MANUAL 1979-1980, at 785-86 (Edward C. Papenfuss et al. eds., 1979) and 4 SOURCES AND DOCUMENTS, *supra* note 20, at 358 (1975).

¹⁶⁶ See 1992 Md. Laws 203, 204 (permitting six member juries in civil matters).

¹⁶⁷ The 1967-68 Constitutional Convention proposed replacing Article 5 with two new sections, Section 1.13 and Section 10.02. See COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 123 (stating text of articles). Section 1.13 would have provided that:

[e]very person shall have the right of trial by jury of all issues of fact in civil proceedings at law in the courts of this State where the amount or value in controversy exceeds the minimum that the General Assembly may prescribe by law. The jury shall consist of twelve, except that the General Assembly may provide by law for a jury of not less than six nor more than twelve in the District Court. A unanimous decision of the jury shall be required to constitute its verdict.

Id. at 222. Section 10.02 would have provided that:

[a]ll legislation, including local legislation, and all other law, including common law, in force on June 30, 1968, insofar as it is not in conflict with this Constitution, shall continue in force until it expires by its own limitation or is lawfully changed. A law in effect on June 30, 1968, shall not be deemed in conflict with this Constitution solely because it was enacted pursuant to authority granted by a provision of the Constitution of 1867 as amended. All existing writs, actions, suits, proceedings, civil or criminal liabilities, prosecutions, judgments,

sentences, orders, decrees, appeals, causes of action, contracts, claims, demands, property titles, and rights shall continue unaffected except as modified by law or in accordance with the provisions of this Constitution. *Id.* at 1-2. The proposed constitution was rejected by voters. WHEELER & KINSEY, *supra* note 92, at 4.

¹⁶⁸ Professor Niles placed this Article in Class D (concrete, peculiar rules). See NILES, *supra* note 135, at 16-18 (finding that Article 5 belongs to class of concrete rules peculiar to Maryland). See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

¹⁶⁹ There was no recorded debate prior to re-adoption of this Article. See PERLMAN, *supra* note 91, at 120.

¹⁷⁰ Floor amendments seeking to protect slave owners' property rights in their slaves were rejected on the floor of the convention. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 166.

¹⁷¹ This provision was adopted without floor debate upon the recommendation of the Bill of Rights Committee. See 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 186.

¹⁷² This provision is a slight update from Article 16 in the August 27, 1776, draft.

¹⁷³ J. Thomas Scharf states, "[w]hat idea it was intended to convey by the preposterous phrase 'paramount allegiance,' it were as idle now, as it would have been dangerous then, to inquire." 3 SCHARF, *supra* note 23, at 582. Myers concludes that this provision:

contained . . . the dangerous principle of absolutely denying any original or inherent rights on the part of the State of Maryland, which would enable it to make the least opposition to any acts the National Government might see fit to commit. While the tendency of the present day is to cede more and more authority to the National Administration [a tendency that has not alleviated since Mr. Myers wrote in 1901], yet there is certainly no disposition to take away all inherent power from the states as such, or vest in the Federal Government all authority not absolutely guaranteed to the state by the United States Constitution. This last is clearly the result to which the article tended.

Myers, *supra* note 55, at 59-60. The Constitution of North Carolina retains a statement that citizens "paramount allegiance" is to the United States Constitution. N.C. CONST. art. I, § 5. This provision was moved with amendments to Article 2 in the 1867 Constitution. See MD. CONST. art. 2.

¹⁷⁴ This Article was the subject of more debate than any other single topic at the Convention of 1864. It was proposed initially by the Committee on the Declaration of Rights. See 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 79 (quoting text of Article 4). A minority of the Committee opposed its adoption and filed a minority report. See *id.* at 81-82 (stating minority position). The debate consisted of long speeches including citation to the great common law lawyers of England, original American federalist sources, and the constitutions of other states. *Id.* at 272-92, 303-21, 325-56, 400-36, 441-68, 469-71, 477-503, 504-35 (discussing debate on Article 4). The reference to Article 4 rather than 5 is caused by the addition of the new Article 1. See *supra* note 131 for a discussion of the new Article 1.

¹⁷⁵ This provision would not have been continued had the 1967-68 Constitution been adopted. See COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 2 (showing no provision equivalent to Article 6 in constitution proposed in 1967-68). The proposed constitution was rejected by voters. See *id.* at xi.

¹⁷⁶ Professor Niles placed this Article in Class A. See NILES, *supra* note 135, at 18 (finding that Article 6 belongs to a class of abstract principles). See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

¹⁷⁷ There was no recorded debate prior to re-adoption of this Article. See PERLMAN, *supra* note 91, at 120. The changes in punctuation were the work of the Committee. See *id.* at 77.

¹⁷⁸ A floor amendment to delete the final sentence, so important in 1776, see *infra* note 181, thought to be a *non sequitur* in 1864, was defeated nonetheless. See 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 167 (showing that amendment deleting final sentence was defeated).

¹⁷⁹ This provision was re-adopted without recorded debate. See 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 186.

¹⁸⁰ Judge William Carr has pointed out that the drafters of this article were sophisticated lawyers and, hence, we may assume that the use of the word "trustee" was made deliberately. The preference of the trustee relationship over other legal relationships (*i.e.* master/servant or principal/agent) indicates certain notions about that relationship. Deletion in this second draft of the description of the relationship as a master/servant relationship is further evidence of the intentionality involved in the analogy to the trust relationship. While a trustee is accountable to the trust, it is clear that a trustee also has a broad range of authority over action in pursuit of the trust's goals. This analogy provides us with a glimpse of the framer's vision of representative democracy. The Honorable William O. Carr, Circuit Court for Hartford County, Maryland, Address to the Judicial Institute of Maryland (April 18, 1996). See generally Peter Charles Hoffer, "Their Trustees and Servants": Eighteenth-Century Maryland Lawyers and the Constitutional Implications of Equity Precepts, 82 MD. HIST. MAG. 142, 142-53 (1987) (proposing strict accountability of trust relationship as basic feature of republicanism).

¹⁸¹ This phrase rejected the Tory doctrine of non-resistance. See Haeuser, *supra* note 3, at 114. The Tories, English loyalists, argued that legitimate governments "receive their power from God, and to oppose the government was a form of sacrilege." *Id.* at 21-22. Moreover,

Many [Tories] admitted that [the English] Parliament was performing an illegal act in its attempt to tax the colonists without their consent, yet they insisted that the only path open to the colonists was to petition Parliament to change its mind. These Tories considered it immoral to use an economic boycott to force British compliance and unthinkable to use military force in defense of their rights.

Id. at 21-22. The state constitutions of both Tennessee and New Hampshire contain similar repudiations of this Tory philosophy. N.H. CONST. pt. I, art. 10 (repudiating non-resistance); TENN. CONST. art. I, § 2 (same).

¹⁸² Compare this provision with PA. CONST. of 1776, decl. of rights, art. IV, reprinted in 8 SOURCES AND DOCUMENTS, *supra* note 20, at 278 (1979) ("That all power being originally inherent in, and consequently derived from, the people; therefore all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them."), and VA. CONST. OF 1776, bill of rights, § 2, reprinted in 10 *id.*, at 49 (1979) ("That all

power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.”).

¹⁸³ For historical antecedents of the concept that sovereignty resides in the people, see 1 HOWARD, *supra* note 3, at 69-71.

¹⁸⁴ 1971 Md. Laws 357 (deleting “white male” from Article 7 of Maryland Declaration of Rights of Maryland Constitution). This amendment was ratified November 7, 1972.

¹⁸⁵ The 1967-68 proposal would have replaced this Article with Section 2.01:

Every citizen of the United States who has attained the age of nineteen years, and who has been a resident of this State for six months and of the county in which he offers to vote for three months next preceding an election, shall be eligible to vote, and if registered shall be qualified to vote in that county in national, state, and county elections. If any county is divided into different electoral districts or into portions of different electoral districts for the election of any national, state, or county officer, then, to vote for such an officer, a person shall have been a resident of the electoral district for three months next preceding the election. Removal from one electoral district to another electoral district in this State shall not deprive a person of his qualification to vote in the electoral district from which he has removed until three months after his removal.

COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 2. The proposed constitution was rejected by voters. WHEELER & KINSEY, *supra* note 92.

¹⁸⁶ See MICHAEL CARLTON TOLLEY, STATE CONSTITUTIONALISM IN MARYLAND 38-45 (1992) (discussing provision and voting rights). Tolley discusses this provision's relation to several substantive articles of the Maryland Constitution, as well as the effect the judiciary has had upon the principles of elective franchise. *Id.*

¹⁸⁷ See MD. CONST. art. I, §§ 1-8 (governing elective franchise).

¹⁸⁸ Professor Niles placed this Article in Class D (concrete, peculiar rules). NILES, *supra* note 135, at 18-19. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

¹⁸⁹ There was no debate prior to re-adoption of this Article. PERLMAN, *supra* note 91, at 120. The word “free” was deleted from the phrase “free white male citizen” by the Committee. *Id.* at 77.

¹⁹⁰ This provision was re-adopted without debate. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 167.

¹⁹¹ The Bill of Rights Committee recommended the two major revisions in this Article from the 1776 version: “free white male citizen” in place of “man” and the removal of the property requirement. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 141. The deletion of the property requirements was a “housekeeping” amendment as the property requirement for suffrage has been removed in 1802. Acts of 1801, ch. 90, ratified 1802. An amendment on the floor sought to reinsert the “common interest” requirement, but that was defeated. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 186-87.

¹⁹² In 1846, Maryland voters had approved a change from annual to biennial legislative sessions. Harry, *supra* note 44, at 29. One commentator has argued that the change was anti-reform in that aside from reducing the cost of government, it “remove[d] the agitation for a constitutional convention.” *Id.* When, at the 1851 Constitutional Convention, the reform delegates suggested a return to annual sessions, they buttressed their arguments by reference to this provision. See, e.g., 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 252, 261. The anti-reform delegates objected to the return to annual sessions and ridiculed the reform delegates for ignoring the voice of the people as expressed in the 1846 amendment creating biennial sessions. *Id.* at 253-59, 262-66.

¹⁹³ Compare this provision with VA. CONST. bill of rights, § 6 (1776), which provides:

That elections of members to serve as representatives of the people, in assembly, ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assembled, for the public good.

Id. Also compare with Pennsylvania's Declaration of Rights (1776): “[t]hat all elections ought to be free; and that all free men having a sufficient evident common interest with, and attachment to the community, have a right to elect officers, or be elected into office.” PA. CONST. of 1776, decl. of rights, art. VII.

¹⁹⁴ The proposed 1967-68 Constitution did not contain an explicit separation of powers provision relying, as does the United States Constitution, on the structure of the government to create the inference of separation. See COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 2-3. The proposed constitution was rejected by voters.

¹⁹⁵ See TOLLEY, *supra* note 186, at 131-49 (discussing separation of powers doctrine under Maryland Constitution).

¹⁹⁶ The Constitution of Maryland is structured in accord with the principle of a separation of powers: Article II governs the executive branch, Article III, the legislature, and Article IV controls the judiciary. The requirement for the presentation of legislation to the governor for approval is justified by a separation of powers theory: “To guard against hasty or partial legislation and encroachments of the legislative department upon the co-ordinate executive and judicial departments, every bill which shall have passed the house of delegates and the senate shall, before it becomes a law, be presented to the governor of the State. . . .” MD. CONST. art. II, § 17.

¹⁹⁷ It is more common for state constitutions specifically to require a separation of powers than to follow the model of the United States Government and create the separation by necessary implication of the structure. Specific state articulations of the separation of powers may be found in more than half of the states' constitutions. See ALA. CONST. art. III, §§ 1, 2; ARIZ. CONST. art. III; ARK. CONST. art. IV, §§ 1, 2; CAL. CONST. art. III; COLO. CONST. art. III; CONN. CONST. art. II; FLA. CONST. art. II; GA. CONST. art. I, § 1, para. 23; IDAHO CONST. art. II, § 1; ILL. CONST. art. III; IND. CONST. art. III, § 1; IOWA CONST. art. III; KY. CONST. §§ 27, 28; LA. CONST. art. II, §§ 1, 2; ME. CONST. art. III, §§ 1, 2; MASS. CONST. decl. of rights, § 30; MICH. CONST. art. IV, §§ 1, 2; MINN. CONST. art. III, § 1; MISS. CONST. art. I, §§ 1, 2; MO. CONST. art. III; MONT. CONST. art. IV, § 1; NEB. CONST. art. II, § 1; NEV. CONST. art. III; N.H. CONST. art. I, § 37; N.J. CONST. art. III; N.M. CONST. art. III, § 1; N.C. CONST. art. I, § 8; OKLA. CONST. art. IV; OR. CONST. art. III; R.I. CONST. art. III; S.C. CONST. art. I, § 14; S.D. CONST. art. II; TENN. CONST. art. II, §§ 1, 2; TEX. CONST. art. II; UTAH

CONST. art. V, § 1; VT. CONST. ch. II, §§ 1, 5; VA. CONST. art. I, § 5, art. III; W. VA. CONST. art. V, § 1; WYO. CONST. art. II, § 1.

198 Professor Niles placed this Article in Class C (analogous limitations). NILES, *supra* note 135, at 19-22. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

199 There was no recorded debate prior to the re-adoption of this Article. PERLMAN, *supra* note 91, at 120.

200 This provision was re-adopted without recorded debate. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 167.

201 The second clause, "and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other," was added by an amendment on the floor of the convention and adopted with only cursory explanation. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 187.

202 Governor Thomas Hicks (1858-62), resenting an entreaty by several state senators to call a special session of the General Assembly to contemplate secession, cited this provision as support for his position that the senators had no right to interfere with his executive duty to convene the legislature. George L. Radcliffe, *Governor Thomas H. Hicks of Maryland and the Civil War*, JOHNS HOPKINS U. STUD., SERIES XIX, NOS. 11-12, at 533-34 (Nov.-Dec., 1901).

203 A substitute Article was proposed on the convention floor on October 31, 1776: "That the legislative, executive and judicial powers of government, or any two of them, ought not to be vested in the same man or body of men." This proposal was defeated. PROCEEDINGS, *supra* note 29, at 302; see also THE DECISIVE BLOW, *supra* note 40 (October 31, 1776).

204 This provision was adopted by a single vote, 30 to 29. See TOLLEY, *supra* note 186 at 132.

205 Compare this provision with VA. CONST. bill of rights, § 5 (1776), which provides:

That the legislative and executive powers of the State should be separate and distinct from the judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct.

Id. There is no similar provision in the United States Constitution. The framers of the United States Constitution, in fact, realized that the system of "checks and balances" expressly violated the traditional notion of the separation of powers. See also *Nixon v. Administrator of Gen. Serv.*, 433 U.S. 425, 441-43 (1977) (rejecting argument that separate federal branches were to operate absolutely independently in Nixon tapes case).

206 Historians credit BARON DE MONTESQUE, SPIRIT OF THE LAWS (1748), for the concept of separation of powers, based on Montesque's incorrect understanding of the English system. GREEN, *supra* note 39, at 81.

207 This provision was proposed to be deleted in the 1967-68 Constitutional revision. COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 3. The proposed constitution was rejected by voters.

208 Reservation of the power to suspend laws is restricted to the legislature by several other state constitutions as well. See ALA. CONST. art. I, § 21; ARK. CONST. art. II, § 12; DEL. CONST. art. I, § 10; IND. CONST. art. I, § 26; KY. CONST. § 15; LA. CONST. art. XIX, § 5; ME. CONST. art. I, § 15; MASS. CONST. DECL. OF RIGHTS, § 20; N.H. CONST. art. I, § 29; N.C. CONST. art. I, § 9; OHIO CONST. art. I, § 18; OR. CONST. art. I, § 22; PA. CONST. art. I, § 12; S.C. CONST. art. I, § 13; S.D. CONST. art. VI, § 21; TEX. CONST. art. I, § 28; VT. CONST. art. I, § 15; VA. CONST. art. I, § 7.

209 Professor Niles placed this Article in Class A (abstract principles). NILES, *supra* note 135, at 22. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

210 There was no recorded debate prior to re-adoption of this Article. PERLMAN, *supra* note 91, at 120.

211 This provision was re-adopted without recorded debate. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 167.

212 This provision was re-adopted without recorded debate. DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 187.

213 The English Bill of Rights (1689) offered a similar protection: "[t]hat the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament is illegal; That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal." English Bill of Rights (1689), reprinted in 1 SOURCES AND DOCUMENTS, *supra* note 20, at 133 (1982).

214 The Virginia Bill of Rights (1776) provided a similar protection: "Sec. 7. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised." VA. CONST. of 1776, art. I, § 7.

215 The 1967-68 Constitutional Convention proposed combining the concepts of Articles 10, 13, and 40 into two new provisions, sections 1.01 and 3.14. Section 1.01 would have provided that: "The people shall have the right peaceably to assemble and to petition the government for a redress of grievances. Freedom of the press and freedom of speech shall not be abridged, each person remaining responsible for abuse of those rights." Section 3.14 would have provided for immunity for legislators: "Words used by a member of the General Assembly in any of its proceedings, including the proceedings of any committees and sub-committees, shall be absolutely privileged, and a member shall not be liable therefor in any civil action or criminal prosecution." COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 3. The proposed constitution was rejected by voters.

216 See also MD. CONST. art. III, § 18 (stating that "[n]o Senator or Delegate shall be liable in any civil action or criminal prosecution, whatever, for words spoken in debate").

217 Although the language employed by this article is unique, most other states also provide a freedom of speech for legislators. There is no Maryland case on point; however, the Maryland provision appears more limited than provisions of other states which declare that, "for any speech or debate in either House, [legislators] shall not be questioned in any other place." TENN. CONST. art. II, § 13 (emphasis added). For similar provisions, see ALASKA CONST. art. II, § 6; ARIZ. CONST. art. IV, pt. II, § 7; GA. CONST. art. III, § VII, para. 3; HAW. CONST. art. III, § 8; ME. CONST. art. IV, pt. III, § 8; MASS. CONST. decl. of rights, § 21; NEB. CONST. art. III, § 26; N.H. CONST. art. I, § 14; WASH. CONST. art. II, § 17; WIS. CONST. art. IV, § 16. For examples of the broader protections, see ALA. CONST. art. IV, § 56; ARK. CONST. art. V, § 15; COLO. CONST. art. V, § 16; CONN. CONST. art. III, § 13; DEL. CONST. art. II, § 13;

IDAHO CONST. art. III, § 7; ILL. CONST. art. IV, § 14; IND. CONST. art. IV, § 8; KAN. CONST. art. II, § 22; KY. CONST. § 43; LA. CONST. art. III, § 13; MICH. CONST. art. V, § 8; MINN. CONST. art. IV, § 8; MO. CONST. art. III, § 19; MONT. CONST. art. V, § 15; N.J. CONST. art. IV, § IV, 9; N.M. CONST. art. IV, § 13; N.Y. CONST. art. III, § 11; N.D. CONST. art. II, § 42; OHIO CONST. art. II, § 12; OKLA. CONST. art. V, § 22; OR. CONST. art. IV, § 9; PA. CONST. art. II, § 15; R.I. CONST. art. IV, § 5; S.D. CONST. art. III, § 11; TEX. CONST. art. III, § 21; UTAH CONST. art. VI, § 8; VA. CONST. art. IV, § 48; W. VA. CONST. art. VI, § 17; WYO. CONST. art. III, § 16.

²¹⁸ Compare this provision to U.S. CONST. art. I, § 6: "... and for any Speech or Debate in either House, . . . [Senators and Representatives] shall not be questioned in any other Place." The Court of Special Appeals of Maryland has held the two provisions to be *in pari materia*. *Blondes v. State*, 294 A.2d 661, 666 (Md. Ct. Spec. App. 1972).

²¹⁹ Professor Niles placed this Article in Class C (analogous limitations). NILES, *supra* note 135, at 22. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

²²⁰ There was no recorded debate prior to re-adoption of this Article. PERLMAN, *supra* note 91, at 120.

²²¹ This provision was re-adopted without recorded debate. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 167.

²²² This provision was re-adopted without recorded debate. DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 187. The change from "court or judicature" to "court of judicature" is unexplained, but I believe it is erroneous. One can at least imagine that "judicature" implied a quasi-judicial setting and that legislators' statements were to be protected in both official court and quasi-judicial, court-like settings. I know of no other usage of the phrase "court of judicature."

²²³ The English Bill of Rights (1689) offered a similar protection: "[t]hat the freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any court or place out of parliament." See English Bill of Rights (1689), *reprinted in* 1 SOURCES AND DOCUMENTS, *supra* note 20, at 133 (1982). No other 1776-era constitution provided this protection for legislators.

²²⁴ Had the 1967-68 Constitutional Convention proposals been adopted, this article would have been replaced by Section 3.02: "[t]he capital of the State and the meeting place of the General Assembly shall be at Annapolis." COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 141. The proposed constitution was rejected by voters.

²²⁵ This provision is supported by three provisions in the Constitution. MD. CONST. art. II, § 21 (requiring Governor to reside at seat of government); MD. CONST. art. III, § 25 (identifying Annapolis as seat of legislature); MD. CONST. art. IV, § 14 (requiring Court of Appeals to hold sessions in Annapolis).

²²⁶ Professor Niles placed this Article in Class D (concrete, peculiar rules). NILES, *supra* note 135, at 23. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

²²⁷ There was no recorded debate prior to re-adoption of this Article. PERLMAN, *supra* note 91, at 120.

²²⁸ This provision was re-adopted without recorded debate. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 167.

²²⁹ The only instance in which the Maryland General Assembly met in a place other than Annapolis was in 1861. Governor Thomas Hicks, fearful that secessionist leanings within the General Assembly would be exacerbated by southern sympathizers in and around Annapolis, moved the session to Frederick, a Union stronghold. Radcliffe, *supra* note 202, at 572-73.

²³⁰ A 1786 proposal to move the capital westward was defeated in the General Assembly. See generally GREEN, *supra* note 39, at 165 (identifying the failed effort as part of overall attempt at westward shift of power). In 1817, another proposal would have made Baltimore the capital. Fletcher Green identifies these attempts with those in other states to move state capitals westward, part of an overall westward shift of power. *Id.*

²³¹ The change from the 1776 version was proposed by the Bill of Rights Committee. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 187. The proposal was accepted without recorded debate by the convention. *Id.*

²³² The proposed 1967-68 Constitution did not recommend carrying this provision forward. Section 3.15 of the proposed constitution did provide for annual ninety-day assembly sessions. COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 146. The proposed constitution was rejected by voters.

²³³ MD. CONST. art. III, §§ 14, 15 (providing detailed requirements concerning sessions of General Assembly).

²³⁴ Professor Niles placed this Article in Class A (abstract principles). NILES, *supra* note 135, at 23. Niles says that if a "new Declaration of Rights were to be framed to-day without reference to previous documents, [it is questionable if] this article would find a place in it." *Id.* See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

²³⁵ There was no recorded debate prior to re-adoption of this Article. PERLMAN, *supra* note 91, at 120.

²³⁶ This provision was re-adopted without recorded debate. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 167.

²³⁷ This provision was re-adopted without recorded debate. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 187.

²³⁸ The English Bill of Rights (1689) offered a similar protection: "that for redress of all grievances, and for the amending, strengthening and preserving of the laws, parliaments ought to be held frequently." English Bill of Rights (1689), *reprinted in* 1 SOURCES AND DOCUMENTS, *supra* note 20, at 133 (1982).

²³⁹ The Maryland Court of Appeals has interpreted this provision merely to permit direct redress to the legislative for "wrongs previously committed," but not before a law is passed. *Richards Furniture v. Board of County Comm's*, 196 A.2d 621, 626-27 (Md. 1964).

²⁴⁰ The 1967-68 Constitutional Convention proposed combining the concepts of Articles 10, 13, and 40, into two new sections, 1.01 and 3.14. Section 1.01 would have provided: "The people shall have the right peaceably to assemble and to petition the government for a redress of grievances. Freedom of the press and freedom of speech shall not be abridged, each person remaining responsible for abuse of those rights." COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 3. Section 3.14 would have provided for immunity of legislators: "Words used by a member of the General Assembly in any of its proceedings, including the proceedings of

any committees and sub-committees, shall be absolutely privileged, and a member shall not be liable therefor in any civil action or criminal prosecution." *Id.* at 145-46. The proposed constitution was rejected by voters.

²⁴¹ Professor Niles placed this Article in Class C (analogous limitations). NILES, *supra* note 135, at 23. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories. See *infra* notes 545 and 553 accompanying Articles 39 and 40 of the 1776 Declaration of Rights (characterizing articles as examples of "whiggish, republican ideology of equality").

²⁴² There was no recorded debate prior to the re-adoption of this Article. PERLMAN, *supra* note 91, at 120.

²⁴³ This provision was re-adopted without recorded debate. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 167.

²⁴⁴ This provision was re-adopted without recorded comment or debate. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 187.

²⁴⁵ Pennsylvania's Declaration of Rights (1776) also provided for a right to redress, but the scope of Pennsylvania's provision was broader in that it also encompassed a right to assemble: "XVI. That the people have a right to assemble together, to consult for their common good, to instruct their representatives, and to apply to the legislature for redress of grievances, by address, petition, or remonstrance." PA. CONST. decl. of rights, art. XVI (1776).

²⁴⁶ The proposed 1967-68 Constitution replaced this provision with Section 6.01: "Taxes shall be imposed only for public purposes and only by the elected representatives of the people exercising legislative powers." COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 194. The proposed constitution was rejected by voters.

²⁴⁷ See MD. CONST. art. III, § 51 (granting taxing authority to General Assembly).

²⁴⁸ That several other state constitutions contain similar, though not identical, provisions preventing "taxation without representation," should be no surprise given that this was a rallying point for the American Revolution. See ME. CONST. art. I, § 22; MASS. CONST. decl. of rights, § 23; N.H. CONST. art. I, § 28; N.C. CONST. art. I, § 23; OR. CONST. art. I, § 32; S.C. CONST. art. I, § 7; S.D. CONST. art. VI, § 17; VA. CONST. art. I, § 6; WYO. CONST. art. I, § 28.

²⁴⁹ Professor Niles placed this Article in Class C (analogous limitations). NILES, *supra* note 135, at 24. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

²⁵⁰ There was no recorded debate prior to re-adoption of this Article. PERLMAN, *supra* note 91, at 120.

²⁵¹ This provision was re-adopted without recorded debate. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 167.

²⁵² This provision was re-adopted without recorded debate. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 187.

²⁵³ It has been suggested that this Article was a reaction to the Proprietary fee controversy in Maryland rather than a more general colonial complaint against Parliamentary taxation. LEWIS, *supra* note 39, at 46. For a general discussion of the fee controversy, see HOFFMAN, *supra* note 33, at 92-125.

²⁵⁴ It is suggested that this right has origins in both the *Magna Carta* and the English Bill of Rights (1689). A. E. DICK HOWARD, THE ROAD FROM RUNNYMEDE: MAGNA CARTA AND CONSTITUTIONALISM IN AMERICA (UVA Press 1968). The English Bill of Rights provides "[t]hat levying money for or to the use of the Crown by pretence of prerogative, without grant of parliament, for longer time, or in other manner than the same is or shall be granted, is illegal." English Bill of Rights (1689), reprinted in 1 SOURCES AND DOCUMENTS, *supra* note 20, at 133 (1982). Howard also suggests that this is derived from the *Magna Carta*, ch. 12, which provides:

No scutage [money payment in lieu of a knight's services] or aid [a grant by the tenant to the lord in times of distress] shall be imposed in our kingdom except by the common council of our kingdom, except for the ransoming of our body, for the making of our oldest son a knight, and for marrying our oldest daughter, and for these purposes it shall be only a reasonable aid; in the same way it shall be done concerning the aids of the city of London.

MAGNA CARTA ch. 12. H. H. Walker Lewis also suggests the Bill of Rights promulgated by the Stamp Act Congress as an antecedent of this Article. Article III of that document provided: "That it is inseparably essential to the Freedom of a People, and the undoubted right of Englishmen, that no taxes be imposed on them, but by their own Consent, given personally, or by their Representatives." H. H. Walker Lewis, *The Tax Articles of the Maryland Declaration of Rights*, 13 MD. L. REV. 83, 84 (1953) (stating Article III of Bill of Rights adopted by Stamp Act Congress of 1765 "was the forerunner of Article 14 of the Maryland Declaration of Rights").

²⁵⁵ Only the state constitutions of Maryland, Oregon, and Ohio prohibit poll taxes. See MD. CONST. decl. of rights, art. 15 (prohibiting poll taxes); OHIO CONST. art. XII, § 1 (same); OR. CONST. art. IX, § 1a (same).

²⁵⁶ The uniformity clause of this article has been amended twice since 1867. Lewis, *supra* note 254, at 95. In 1915 the requirement that property taxes be apportioned according to actual worth was deleted and replaced by a system of classifications. 1914 Md. Laws 633. For a discussion of the history of these changes and their effect on the tax system, see Lewis, *supra* note 254, at 96-103. The historical roots of the 1915 amendments are inextricably linked to an experiment with a "single tax system" in Hyattsville, Maryland, and the legal challenge to that experiment. See Philip L. Merkel, *Tax Reform "With a Political View": The Hyattsville Single Tax Experiment in the Maryland Courts*, 79 MD. HIST. MAG. 145, 146 (1984); see also *Wells v. Commissioners of Hyattsville*, 77 Md. 125, 138-43 (1893) (holding act void because unrestricted exemption of personal property from assessment and taxation is unconstitutional). Subsequently, this clause was amended. 1960 Md. Laws 185. This final change permitted the classification and sub-classification of land. *Id.* Essentially, taxes no longer must be uniform as to people, but must be uniform in their application to similarly situated land and property. See *id.*

²⁵⁷ The proposed 1967-68 Constitution replaced this provision with three new sections: 6.03, 6.04 and 6.05. COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 194-96. Section 6.03 would have provided: "[a]ssessments with respect to any tax shall be made pursuant to uniform rules and pursuant to classifications of property, taxpayers, and events prescribed by law, which classes shall include agricultural property as defined by the General Assembly by law." *Id.* at 195. Section 6.04 would have provided: "[t]he State shall prescribe and administer uniform rules and methods for determining property tax assessments. State funds distributed to units of local government on the basis of assessments of property shall be determined by assessments equalized among those units, as prescribed by the General Assembly by law." *Id.* Section 6.05 would have provided that

"[e]xemptions with respect to any tax imposed by the State shall be made pursuant to uniform rules within classes of property, taxpayers, or events." *Id.* at 196. The proposed constitution was defeated by the voters. *Id.* at xi.

²⁵⁸ See MD. CONST. art. III, § 51 (granting taxing authority).

²⁵⁹ Professor Niles placed this Article in Class D (concrete, peculiar rules). NILES, *supra* note 135, at 24-36. He described the provision as "perhaps the most important in the whole Declaration of Rights." *Id.* at 24. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

²⁶⁰ Although there was much debate about removing the prohibition against poll taxes, no changes were made. PERLMAN, *supra* note 91, at 120-33.

²⁶¹ The change from "abolished" to "prohibited" was made in response to the objection of Delegate Henry Stockbridge of Baltimore City, who said, "[w]e cannot abolish a thing that does not exist." 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 168.

²⁶² By 1864, the concept of a "poll tax" as a general per capita tax had disappeared, and delegates discussed the "poll tax" as "a capitation tax levied upon the voters at the polls." Lewis, *supra* note 254, at 92 (quoting Delegate Frederick Schley of Frederick County in 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 168).

²⁶³ This Article was disparaged roundly, called self-contradictory, and became the subject of numerous vitiating amendments, yet emerged exactly as it had been in the Declaration of Rights of 1851. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 167-80, 185-202, 214-23.

²⁶⁴ The Bill of Rights Committee proposed deleting the initial clause banning the poll tax in order to give the General Assembly the freedom to institute such a tax to fund education. 2 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 187. The ban on poll taxes was quickly reinstated on the floor of the Convention. *Id.*

²⁶⁵ The two amendments to this provision were to add the phrase "or person holding property therein," and to delete the final phrase "within this State" from the clause. Both amendments originated in the Bill of Rights committee. The debate over these amendments reflect considerable confusion about the situs of intangible property. Lewis, *supra* note 254, at 95; see also 2 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 226-35 (showing confusion about intangible property during debate).

²⁶⁶ H. H. Walker Lewis suggests that use of the word "assessed" indicates that this was limited to property taxes. Lewis, *supra* note 254, at 93.

²⁶⁷ There was a proposal on the convention floor on October 31, 1776, to delete the final provision of this Article, beginning with "yet fines" to the end of this Article, but it was easily defeated. PROCEEDINGS, *supra* note 29, at 202; see also THE DECISIVE BLOW, *supra* note 40 (October 31, 1776).

²⁶⁸ H. H. Walker Lewis contends that the purpose of this phrase was expressly to permit taxation other than property taxes. Lewis, *supra* note 39, at 47.

²⁶⁹ H. H. Walker Lewis attributes this concept to Adam Smith. Smith's first maxim regarding taxation provides: "I. The subjects of every State ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state." Lewis, *supra* note 254, at 94.

²⁷⁰ Contrary to modern understanding, at the time of the revolution, a "poll tax" was any per capita tax. *Id.* at 90. Lewis states that pre-revolutionary poll taxes were used to support the unpopular and corrupt Church of England, thus leading to the obvious antipathy for such taxes. *Id.* at 90-91; see also LEWIS, *supra* note 39, at 46.

²⁷¹ Lewis refers to this August 27, 1776, version, which includes the phrase "pauper estates not exceeding thirty pounds currency," as a "more understandable and generous term" than the bare word "pauper" in the version adopted. *Id.* at 47.

²⁷² The 1967-68 Constitution Convention Commission found unequivocally that, "[i]n modern usage, a 'sanguinary law' is one providing for capital punishment." REPORT OF THE CONSTITUTIONAL CONVENTION COMMISSION TO HIS EXCELLENCY, SPIRO T. AGNEW, GOVERNOR OF MARYLAND, *supra* note 126, at 111.

²⁷³ "Sanguinary laws" also are prohibited by the Maine Constitution and are limited by the Constitution of New Hampshire. ME. CONST. art. 1, § 9 ("Sanguinary laws shall not be passed; all penalties and punishments shall be proportioned to the offense. . ."); N.H. CONST. pt. 1, art. 18 ("All penalties ought to be proportioned to the nature of the offense. . . Where the same undistinguishing severity is exerted against all offenses, the people are led to forget the real distinction in the crimes themselves, and to commit the most flagrant with as little compunction as they do the lightest offenses. . . The true design of all punishments being to reform, not to exterminate mankind.").

²⁷⁴ The proposed 1967-68 Constitution would have replaced Articles 16, 25, and 27 with a single provision, proposed Section 1.11: "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Conviction of crime shall not work corruption of blood or forfeiture of estate." COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 4. Although proposed, a prohibition against capital punishment was not adopted by the constitutional convention of 1967-68. WHEELER & KINSEY, *supra* note 92, at 130. The proposed constitution was rejected by voters.

²⁷⁵ Professor Niles placed this Article in Class C (analogous limitations). NILES, *supra* note 135, at 36-37. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

²⁷⁶ There was no recorded debate prior to re-adoption of this Article. PERLMAN, *supra* note 91, at 141.

²⁷⁷ The Committee proposed the change from "so" to "as." 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 80. There is no explanation given for the change.

²⁷⁸ Delegate Henry Stockbridge of Baltimore City, on the floor of the 1864 Convention argued that this article, and the article now known as Article 25, embraced the same topic and ought to be combined. Delegate Oliver Miller of Anne Arundel County (later a judge of the Court of Appeals of Maryland) persuaded the convention that the provisions were different in that this article is directed to the legislature in adopting penalties, while the other is directed exclusively to the courts in imposing punishments. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 224-26.

²⁷⁹ This provision was re-adopted without recorded debate. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 190.

²⁸⁰ This Article 14 in the September 17, 1776, draft appears to be a combination of Article 12 and the second clause of Article 14 from the August 27, 1776, draft. Significantly, the word "cruel" is added and the phrase "unknown to the common law" was deleted to create this Article 14 for the September 17, 1776, draft.

²⁸¹ Professor Howard suggests that such a provision is reminiscent of chapter 20 of the *Magna Carta*. See HOWARD, *supra* note 254, at 213. This chapter, entitled, "[f]ines to be measured by the offense," states that:

A free man shall be amerced for a small fault only according to the measure thereof, and for a great crime according to its magnitude, saving his position; and in like manner a merchant saving his trade, and a villein saving his tillage, if they should fall under Our mercy. None of these amerements shall be imposed except by the oath of honest men of the neighborhood.

Id., app. A at 387. The origin this provision in the *Magna Carta* is in contrast to MD. CONST. decl. of rights, art. 25, which, like the U.S. CONST. amend. VIII, clearly is derived from the English Bill of Rights.

²⁸² The proposed 1967-68 Constitution would have combined Articles 17 and 18 into a single protection, Section 1.15: "[n]o bill of attainder, or ex post facto law, or law impairing the obligation of contracts shall be enacted." COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 4-5. The proposed constitution was rejected by voters.

²⁸³ At least 41 of the state constitutions prohibit *ex post facto* laws. ALA. CONST. art. I, § 22; ALASKA CONST. art. I, § 15; ARIZ. CONST. art. II, § 25; ARK. CONST. art. II, § 17; CAL. CONST. art. I, § 9; COLO. CONST. art. II, § 11; FLA. CONST. art. I, § 10; GA. CONST. art. I, § 1, para. X; IDAHO CONST. art. I, § 16; ILL. CONST. art. I, § 16; IND. CONST. art. I, § 24; IOWA CONST. art. I, § 21; KY. CONST. § 19; ME. CONST. art. I, § 11; MD. CONST. art. 17; MASS. CONST. art. XXIV; MICH. CONST. art. I, § 10; MINN. CONST. art. I, § 11; MISS. CONST. art. 3, § 16; MO. CONST. art. I, § 13; MONT. CONST. art. II, § 31; NEB. CONST. art. I, § 16; NEV. CONST. art. I, § 15; N.H. CONST. art. 23; N.M. CONST. art. II, § 19; N.C. CONST. art. I, § 16; N.D. CONST. art. I, § 18; OKLA. CONST. art. II, § 15; OR. CONST. art. I, § 22; PA. CONST. art. I, § 17; R.I. CONST. art. I, § 12; S.C. CONST. art. I, § 4; S.D. CONST. art. VI, § 12; TENN. CONST. art. I, § 20; TEX. CONST. art. I, § 16; UTAH CONST. art. I, § 18; VA. CONST. art. I, § 9; WASH. CONST. art. I, § 23; W. VA. CONST. art. III, § 4; WIS. CONST. art. I, § 12; WYO. CONST. art. I, § 35. Since 1789, Article I, Section 10 of the United States Constitution has prohibited states from passing *ex post facto* laws. It must be presumed that any subsequent state constitutional conventions adopting or readopting such provisions were aware of the federal guarantee. That those states chose to adopt or readopt such a provision is testament both to the fundamental nature of the right and the fear that the federal government would fail to fully enforce Article I, Section 10 to the fullest extent.

²⁸⁴ This provision, regarding retrospective oaths, was added as a response to the "iron-clad" oaths of the 1864 Constitution. Those oaths were considered retrospective because they had the effect of disenfranchising Democrats for activities, which at the time undertaken, were legal. The Convention delegates, all members of the Democratic party, understood the purpose of this amendment and adopted it without recorded debate. PERLMAN, *supra* note 91, at 141.

²⁸⁵ Professor Niles placed this Article in Class B (exact duplications). NILES, *supra* note 135, at 37-39. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

²⁸⁶ This provision was re-adopted without recorded debate. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 226.

²⁸⁷ The printed debates of the convention spell "ex post facto" as three words, italicized, 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 190, but the resultant document used this spelling. There was a suggestion on the floor to remove the Latin phrase, but it was decided that "the expression 'ex post facto,' was so well understood by the profession, and by all law-givers . . . [that] it would be inexpedient to change it." *Id.* at 190.

²⁸⁸ H. H. Walker Lewis cites Bernard Schwartz as saying that this is the first constitutional use of the term "ex post facto laws." LEWIS, *supra* note 39, at 45 (citing Bernard Schwartz, 1 BILL OF RIGHTS: A DOCUMENTARY HISTORY 279 (1971)).

²⁸⁹ The proposed 1967-68 Constitution would have combined Articles 17 and 18 into a single protection, Section 1.15: "[n]o bill of attainder, or ex post facto law, or law impairing the obligation of contracts shall be enacted." COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 4-5. The proposed constitution was rejected by voters.

²⁹⁰ Although Article I, Section 10 of the United States Constitution prohibits states from passing bills of attainder, nearly every state constitution contains a similar prohibition. See, e.g., ALA. CONST. art. I, § 19 ("No person shall be attainted of treason by the legislature; and no conviction shall work corruption of blood or forfeiture of estate."); ALASKA CONST. art. I, § 15 ("No bill of attainder or ex post facto law shall be passed."); ARIZ. CONST. art. II, § 25 ("No bill of attainder . . . [or] ex-post-facto law . . . shall ever be enacted."); ARK. CONST. art. II, § 17 ("No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall ever be passed; and no conviction shall work corruption of blood and forfeiture of estate.")

²⁹¹ Professor Niles placed this Article in Class B (exact duplications). NILES, *supra* note 135, at 39. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

²⁹² There was no recorded debate prior to re-adoption of this Article. PERLMAN, *supra* note 91, at 141.

²⁹³ The Committee report had this word as "attain" rather than "attain," but presumably this was a typographical error, not an attempt to change this provision. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 80.

²⁹⁴ This provision was re-adopted without recorded debate. *Id.*

²⁹⁵ This provision was re-adopted without recorded debate. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 190.

²⁹⁶ H. H. Walker Lewis cites Bernard Schwartz as saying that this is the most significant innovation of the Maryland Declaration of Rights. LEWIS, *supra* note 39, at 45 (citing Bernard Schwartz, 1 BILL OF RIGHTS: A DOCUMENTARY HISTORY 279 (1971)).

²⁹⁷ A bill of attainder includes a "legislative act which inflicts punishment without a judicial trial." *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 287 (1866). The defect of a bill of attainder is that it serves to determine guilt without the procedural and evidentiary safeguards that attend a judicial trial. In this respect, the constitutional prohibition against bills of attainder promotes the separation of powers. See *United States v. Brown*, 381 U.S. 437 (1965) (empha-

sizing that Bill of Attainder clause was included in Federal Constitution to prevent legislature from exercising judicial function).

²⁹⁸ It appears that this "unusual pains and penalties" clause was deleted from this provision and grafted onto Article 14, in the September 17, 1776, draft. See *supra* note 280.

²⁹⁹ This article was moved to become Article 2 in the September 17, 1776 draft.

³⁰⁰ The delegates to the Maryland Constitutional Convention were adamant particularly about state prerogatives, only allowing Maryland's delegates to the Continental Congress to vote for independence, "[p]rovided the sole and exclusive right of regulating the internal government and police of this colony be reserved to the people thereof." See *supra* note 159.

³⁰¹ This article was moved to become Article 3 in the September 17, 1776, draft.

³⁰² The colonial charter of Maryland granted to Maryland's settlers the full rights of Englishmen including the right to common law. CHARTER OF MARYLAND art. X (1634). This article states:

We will also, and of our more abundant Grace, for Us, our Heirs and Successors, do firmly charge, constitute, ordain, and command, that the said Province be of our Allegiance; and that all and singular the Subjects and Liege-Men of Us, our Heirs and Successors, transplanted, or hereafter to be transplanted into the Province aforesaid, and the Children of them, and of others their Descendants, whether already born there, or hereafter to be born, be and shall be Natives and Liege-Men of Us, our Heirs and Successors, of our Kingdom of England and Ireland and in all Things shall be held, treated, reputed, and esteemed as the faithful Liege-Men of Us, and our Heirs and Successors, born within our Kingdom of England; also Lands, Tenements, Revenues, Services, and other Hereditaments whatsoever, within our Kingdom of England, and other our Dominions, to inherit, or otherwise purchase, receive, take, have, hold, buy, and possess, and the same to use and enjoy, and the same to give, sell, alien and bequeath; and likewise all Privileges, Franchises and Liberties of this our Kingdom of England, freely, quietly, and peaceably to have and possess, and the same may use and enjoy in the same manner as our Liege-Men born, or to be born within our said Kingdom of England, without Impediment, Molestation, Vexation, Impeachment, or Grievance of Us, or any of our Heirs or Successors; any Statute, Act, Ordinance, or Provision to the contrary thereof, notwithstanding.

Id.

³⁰³ Analytically, this Article contains two rights: the right to the common law and the right to trial by jury. Both the Virginia Bill of Rights (1776) and the Pennsylvania Declaration of Rights (1776) ensured trial by jury. See PA. CONST. of 1776, decl. of rights, art. XI ("That in controversies respecting property, and in suits between man and man, the parties have a right to trial by jury, which ought to be held sacred."); VA. CONST. of 1776, bill of rights, § 11 ("That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred."). The New Jersey Constitution of 1776, a precursor to the Maryland Constitution, also preserved the right to the common law. HOWARD, *supra* note 254, at 242. Professor Howard suggests that the choice to place this protection in the Declaration of Rights section of the Maryland Constitution is meaningful. *Id.* at 243.

³⁰⁴ Articles 19 and 23 of the Maryland Declaration of Rights of 1867 were slated to be replaced by Section 1.03 of the proposed 1967-68 Constitution. COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 120-21 ("No person shall be deprived of life, liberty, or property without due process of law, nor be denied the equal protection of the laws, nor be subject to discrimination by the State because of race, color, religion, or national origin."). The proposed constitution was rejected by voters.

³⁰⁵ For several lists of state constitutional provisions drawn from chapter 40 of the *Magna Carta*. See HOWARD, *supra* note 3, app. at 483-87.

³⁰⁶ Cf. U.S. CONST. amend. XIV, § 1.

³⁰⁷ Professor Niles placed this Article in Class B (exact duplications), NILES, *supra* note 135, at 39-40. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

³⁰⁸ There was no recorded debate prior to re-adoption of this Article. PERLMAN, *supra* note 91, at 141.

³⁰⁹ A floor amendment to return this phrase to "every free man" was defeated. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 228. The purpose of the proposal was argued only on the basis that the previous language was from the *Magna Carta*. *Id.* at 226-28 (indicating that the *Magna Carta* contained the phrase because there were men who were not free when document was written).

³¹⁰ The change to "any" from "every" was proposed by the committee. *Id.* at 80.

³¹¹ This provision was re-adopted by the convention without recorded debate. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 190.

³¹² Professor Howard attributes the origin of this right to chapter 39 of the *Magna Carta*. See HOWARD, *supra* note 254, at 388 ("No free man shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land.") Professor Howard also attributes the origin of this right to chapter 40 of the *Magna Carta*. See *id.* ("To no one will We sell, to no one will We deny, or delay right or justice.").

³¹³ For similar state court interpretations, see HOWARD, *supra* note 254, at 293-97 (discussing courts in Missouri, North Carolina, Rhode Island, and Wisconsin, which have held "open courts" necessary to justice).

³¹⁴ The proposed 1967-68 Constitution would have deleted this provision. The comparison chart prepared by the staff to the convention indicates some belief that the new Section 1.04 fulfilled some of the same function. COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 121 ("No person shall be denied the right to fair and just treatment in any investigation conducted by the State or by any unit of local government, or by any of their departments or agencies."). The proposed constitution was rejected by voters.

³¹⁵ See MD. CONST. art. IV, § 8 (b), (c) (governing venue in capital and non-capital cases).

³¹⁶ The Massachusetts Declaration of Rights (1780) provides a similar guarantee. MASS. CONST. decl. of rights, art. XIII ("In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.").

³¹⁷ Professor Niles placed this Article in classes A (abstract principles) and C (analogous limitations). NILES, *supra* note 135, at 40-41. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

³¹⁸ There was no recorded debate prior to re-adoption of this Article. PERLMAN, *supra* note 91, at 141.

³¹⁹ This provision was re-adopted without recorded debate. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 235.

³²⁰ This provision was re-adopted without recorded debate. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 190.

³²¹ Professor Howard suggests that this Article is derived analogously from chapter 18 of the *Magna Carta*: Recognizances [trials] of *novel disseisin* [an action to recover land following dispossession], *mort d'ancestor* [an action involving a disputed right to inherit land], and *darrein presentment* [an action involving ecclesiastical benefit] shall be taken only in their proper counties, and in this manner: We or, if We be absent from the realm, Our chief Justiciar shall send two justiciars through each county four times a year, and they, together with four knights elected out of each county by the people thereof, shall hold the said assizes in the county court, on the day and in the place where that court meets.

HOWARD, *supra* note 254, at 387.

³²² It may be useful to inform our understanding of the right of confrontation protected by this Article, with historical and contemporary analysis of the Confrontation Clause contained in the Sixth Amendment. I do not intend to bind the interpretations of these two conceptions irrevocably, but to suggest that they both arose out of similar concerns. Identifying these historical concerns has been and continues to be difficult. See White v. Illinois, 502 U.S. 346, 359 (1992) (Thomas, J., concurring) ("There is virtually no evidence of what the drafters of the [Federal] Confrontation Clause intended it to mean."); California v. Green, 399 U.S. 149, 173-74 (1970) (Harlan, J., concurring) ("[T]he Confrontation Clause comes to us on faded parchment.")

One historical explanation is that the right of confrontation evolved in English common law as a result of abuses like those documented in the treason trial of Sir Walter Raleigh. At Raleigh's 1603 trial, "the Crown's primary evidence . . . the confession of an alleged co-conspirator . . . was repudiated before trial and probably had been obtained by torture. . . ." White, 502 U.S. at 361 (Thomas, J., concurring). For articles advancing this theory, see Roger W. Kirst, *The Procedural Dimension of Confrontation Doctrine*, 66 NEB. L. REV. 485 (1987) (tracing origination of Confrontation Clause to objections to prosecutorial methodology in trial of Sir Walter Raleigh); Frank T. Read, *The New Confrontation-Hearsay Dilemma*, 45 S. CAL. L. REV. 1 (1972) (same); Daniel Shaviro, *The Supreme Court's Bifurcated Interpretation of the Confrontation Clause*, 17 HASTINGS CONST. L.Q. 383 (1990) (same). A second school of thought traces the origins of the Federal Confrontation Clause to the abuses encountered during the prosecutions under the Stamp Act. See Daniel H. Pollitt, *The Right of Confrontation: Its History and Modern Dress*, 8 J. PUB. L. 381 (1959). Still other scholars credit both sources, the reaction to the Stamp Act prosecutions, and the common law's reaction to trials like Raleigh's. See Margaret A. Berger, *The Deconstitutionalization of the Confrontation Clause: A Proposal for a Prosecutorial Restraint Model*, 76 MINN. L. REV. 557 (1992).

Professor Randolph N. Jonakait presents an alternative historical account of the Federal Confrontation Clause. His theory is that the Sixth Amendment generally, and the Confrontation Clause specifically, are the culmination of a developing American constitutionalism, which began in state law and state constitutions, aimed at reducing the power and privilege of the government and its prosecutors. Randolph N. Jonakait, *The Origins of the Confrontation Clause: An Alternative History*, 27 RUTGERS L.J. 77 (1995). In this way, it might be argued that Article 21 serves a similar function of checking prosecutorial power.

³²³ The changes proposed in 1967-68 for this Article were more stylistic than substantive:

[a] person accused of crime shall have the right to be informed of the nature and cause of the accusation in time to prepare his defense, to have the assistance of counsel for his defense, to be confronted with and to examine under oath or affirmation the witnesses against him, to have compulsory process for obtaining witnesses, and to have a speedy and public trial by an impartial jury of twelve without whose unanimous consent he shall not be adjudged guilty.

COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 121-22. Two other sections, 1.06 and 1.10, would have created rights not explicitly included (although included by judicial interpretation). Section 1.06 would have required grand jury indictment: "[n]o person shall be held to answer for a felony unless on indictment of a grand jury, except in cases arising in the militia while in actual service." *Id.* at 10. Section 1.10 would have created a double jeopardy protection: "[n]o person shall be twice placed in jeopardy of criminal punishment for the same offense." *Id.* at 123. The proposed constitution was rejected by voters.

³²⁴ See TOLLEY, *supra* note 186, at 186-99 (discussing under Maryland Constitution trial by jury rights).

³²⁵ The state constitutions of nearly every state protect these rights, although the jury unanimity requirement has been reduced in many states. See, e.g., LA. CONST. art 1, § 17 (requiring capital cases to be tried before twelve jurors, all of whom must agree; cases calling for confinement at hard labor to be tried before twelve jurors, ten of whom must agree; cases calling for confinement, with or without hard labor, for six months, to be tried before six jurors, five of whom must agree); OR. CONST. art 1, § 11 (amended 1991) (allowing accused to waive trial by jury in non-capital cases). The United States Supreme Court has ruled that non-unanimous state jury verdicts do not offend the federal constitution. See, e.g., Johnson v. Louisiana, 406 U.S. 356 (1972) (holding Louisiana provision for less-than-unanimous verdicts in other than capital or five member jury cases does not violate equal protection); Apodaca v. Oregon, 406 U.S. 404 (1972) (holding Sixth Amendment guarantee of trial by jury applicable to state via Fourteenth Amendment does not require unanimous verdicts).

³²⁶ Cf. U.S. CONST. amends. V, VI.

³²⁷ Professor Niles placed this Article in Class C (analogous limitations). NILES, *supra* note 135, at 41-45. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

³²⁸ There was no recorded debate prior to re-adoption of this Article. PERLMAN, *supra* note 91, at 141.

³²⁹ This provision was re-adopted without recorded debate. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 235.

³³⁰ There was a proposed floor amendment to add here the phrase "whether admitted to the bar or otherwise." 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 190. The proposal was withdrawn, making it reasonably clear that the "counsel" provided here is limited to lawyers.

331 Several other amendments to this Article were proposed on the floor, but all ultimately were rejected: allowing the accused the right to make a closing address, *id.* at 191; granting the State peremptory challenges, *id.*; designating the jury as trier of law and fact, *id.* at 193 (this proposal subsequently has been adopted and is now codified at Article 23); and permitting the right to jury instructions by the court, *id.*

332 Changed from "counsel" to "instructions" for the final 1776 version only. Delaware's 1776 Constitution, Article 14, adopted within days of the Maryland provision, see *supra* note 99, and in many regards similar to that provision, uses the spelling "counsel." DEL. CONST. decl. of rights, art. 14 (1776).

333 A proposal to add "or affirmation" after the word "oath" was offered, October 31, 1776, on the convention floor, but was defeated. PROCEEDINGS, *supra* note 29; see also THE DECISIVE BLOW, *supra* note 40 (October 31, 1776).

334 There is no record to explain why "capital" crimes would have been treated differently.

335 For a history of the right of a defendant to be informed of the charges, see *United States v. Cruikshank*, 92 U.S. 542 (1876), which states that the accused has a constitutional right to know of accusations and charges in order to defend himself. *Id.* at 557-59.

336 Professor A. E. Dick Howard cites the Bible (*Acts* 25:16) and an English statute of 1552, 5 & 6 Edw. 6, c. 11, § 12 (1552), as the sources of the right of confrontation. 1 HOWARD, *supra* note 3, at 101 (noting two thousand year old Bible precedent of Roman accused facing accuser and 1552 English Statute requiring accuser to confront accused).

337 Professor A. E. Dick Howard traces the speedy trial right to the *Magna Carta*, ch. 40, because "justice delayed" violates "speedy trial" rights. HOWARD, *supra* note 254, at 487; see also 1 HOWARD, *supra* note 3, at 106-07 (citing chapter 40 of the *Magna Carta*).

338 Chief Judge Robert C. Murphy of the Court of Appeals of Maryland, discussing the unanimity requirement of this Article, points out that in the original draft "the word proceeding 'consent' has been marked out and the word 'unanimous' written above it. This may indicate some dissension concerning unanimity: or it may indicate only a misspelling or other error." *Rice v. State*, 532 A.2d 1357, 1362-63 n.8 (Md. 1987).

339 Compare this provision with VA. CONST. bill of rights, § 8 (1776), which states:

That in all capital or criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of twelve men of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.

Id. Also compare this provision with PA. CONST. decl. of rights, § 9 (1776), which states:

In all prosecutions of criminal offences, a man hath a right to be heard by himself and his council, to demand the cause and nature of his accusations, to be confronted with the witnesses, to call for evidence in his favour, and a speedy public trial, by an impartial jury of the country, without the unanimous consent of which jury he cannot be found guilty; nor can he be compelled to give evidence against himself; nor can any man be justly deprived of his liberty except by the laws of the land, or the judgment of his peers.

Id. All three 1776-era provisions are more specific in their protections than the 5th Amendment to the United States Constitution.

340 It is noteworthy that the Maryland criminal rights provision omits a prohibition against double jeopardy, as did Virginia's Declaration of Rights of 1776. Professor Howard states that there is no obvious explanation for the omission from Virginia's Constitution, "unless it is precisely that the universal acceptance of the concept at the time caused it to be overlooked." 1 HOWARD, *supra* note 3, at 136.

341 The proposed 1967-68 Constitution would have made stylistic changes in this Article: "[N]o person shall be compelled in any criminal case to be a witness against himself." COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 5. The proposed constitution was rejected by voters.

342 See TOLLEY, *supra* note 186, at 94-97 (discussing right against self-incrimination in Maryland Constitution).

343 Other states provide similar protections against compelled self-incrimination. See, e.g., ALA. CONST. art. I, § 7 ("That in all criminal prosecutions the accused . . . shall not be compelled to give evidence against himself."); ALASKA CONST. art. I, § 9 ("No person shall be compelled in any criminal proceeding to be a witness against himself."); ARIZ. CONST. art. II, § 19 ("[N]o person shall be prosecuted or subject to any penalty or forfeiture for, or on account of, any transaction, matter, or thing concerning which he may so testify or produce evidence."); ARK. CONST. art. II, § 8 ("[N]or shall any person be compelled, in any criminal case to be a witness against himself."); CAL. CONST. art. I, § 15 ("Persons may not be compelled . . . in a criminal cause to be a witness against themselves."); COLO. CONST. art. II, § 18 ("No person shall be compelled to testify against himself in a criminal case."); CONN. CONST. art. I, § 8 ("No person shall be compelled to give evidence against himself."); GA. CONST. art. I, § 1, para. XVI ("No person shall be compelled to give testimony tending in any manner to be self-incriminating."); ILL. CONST. art. I, § 10 ("No person shall be compelled in a criminal case to give evidence against himself."); KAN. CONST. bill of rights, § 10 ("No person shall be a witness against himself."); LA. CONST. of 1974, art. I, § 16 ("No person shall be compelled to give evidence against himself."); MASS. CONST. pt. I, art. XII ("No subject shall be . . . compelled to accuse, or furnish evidence against himself."); NEB. CONST. art. I, § 12 ("No person shall be compelled, in any criminal case, to give evidence against himself."); N.H. CONST. pt. I, art. XV ("No subject shall . . . be compelled to accuse or furnish evidence against himself."); N.C. CONST. art. I, § 23 ("In all criminal prosecutions, every person charged with crime has the right . . . not [to] be compelled to give self-incriminating evidence."); OKLA. CONST. art. II, § 21 ("No person shall be compelled to give evidence which will tend to incriminate him."); § 27 ("[N]o person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence."); R.I. CONST. art. I, § 13 ("No person in a court of common law shall be compelled to give self-incriminating evidence.");

344 See U.S. CONST. amend. V ("[N]or shall [any person] be compelled in any criminal case to be a witness against himself.");

345 Professor Niles placed this Article in Class C (analogous limitations). NILES, *supra* note 135, at 45-46. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

346 There was no recorded debate prior to re-adoption of this Article. PERLMAN, *supra* note 91, at 141.

³⁴⁷ Professor Niles states that the opinion in *Day v. State*, 7 Gill. 321 (1848), urged that the power to compel self-incrimination be removed from the legislature. See NILES, *supra* note 135, at 45-46. The 1864 Constitution effected that change. *Id.* at 45.

³⁴⁸ The text adopted was proposed initially by the Bill of Rights Committee. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 80. There was no recorded floor debate on the Article. *Id.* at 235-36.

³⁴⁹ It was the proposal of the Bill of Rights Committee to permit the legislature to modify the right against self-incrimination. See 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 141. There was no recorded debate on the change. *Id.* at 194.

³⁵⁰ The 1776 constitutions of Virginia and Pennsylvania protected a right against self-incrimination, but in each of those documents the right was combined with other criminal rights. See *supra* note 339. Maryland's independent self-incrimination provision may have permitted the interpretation that this right was not limited to criminal cases but also was available in the civil context. Of course, the 1864 and subsequent constitutions have precluded this interpretation.

³⁵¹ For a discussion of the historical development of the right against self-incrimination, see LEONARD W. LEVY, ORIGINS OF THE FIFTH AMENDMENT 266-313 (1968).

³⁵² This provision originally was enacted as Article X (Miscellaneous), Section 5 of the Maryland Constitution of 1851, which provided, "[i]n the trial of all criminal cases the jury shall be the judges of law as well as fact." MD. CONST. of 1851, art. X, § 5. This was regarded as a check against the arbitrary power of judges. See *Brooks v. State*, 472 A.2d 981, 983 (Md. 1984) (discussing evolution of Maryland constitutional provision guaranteeing right to jury trial). The identical provision became Article XII (Schedule), Section 4 in the 1864 Constitution, and Article XV (Miscellaneous) in the 1867 Constitution. The provision, and its results, particularly in removing limiting issues available on appellate review, were criticized heavily. See *Wyley v. Warden*, 372 F.2d 742, 745-46 (4th Cir. 1967) (listing critics of the rule, but upholding its constitutionality).

³⁵³ The Court of Appeals of Maryland has interpreted Article 23 as making the trial judge's instructions on the law binding upon the jury. See *Montgomery v. State*, 437 A.2d 654, 657 (Md. 1981) (discussing circumstances when instructions are binding or non-binding). There is, however, a single, small, and rapidly diminishing exception to this rule, applicable in circumstances where there are legitimate conflicting interpretations of the substantive law of the criminal offense charged. In such circumstances, the trial judge's instructions are advisory only. See *Stevenson v. State*, 423 A.2d 558, 565 (Md. 1980) (stating that judge's comments respecting substantive "law of the crime" and "legal effect of the evidence" are advisory only, but instructions on all other law are binding); *Barnhard v. State*, 587 A.2d 561, 567-68 (Md. Ct. Spec. App. 1991) (reaffirming that court's instructions on law are binding absent dispute on "law of the crime"); *White v. State*, 502 A.2d 1084, 1093 (Md. Ct. Spec. App. 1986) (finding judge's instructions advisory where dispute exists over proper interpretation of criminal law); *Allnutt v. State*, 478 A.2d 321, 325 (Md. Ct. Spec. App. 1984) (holding judge's instructions on law binding unless rare instance of dispute over "law of the crime" exists).

³⁵⁴ The Indiana Constitution provides that juries are "to determine the law and facts." IND. CONST. art. I, § 19. The Oregon Constitution and the former Louisiana Constitution provide that juries are to determine both law and fact, but under the direction of the court as to the law. LA. CONST. of 1921, art. XIX, § 9 ("The jury in all criminal cases shall be the judges of the law and of the facts on the question of guilt or innocence, having been charged as to the law applicable to the case by the presiding judge."); OR. CONST. art. I, § 16 ("In all criminal cases whatever, the jury shall have the right to determine the law, and the facts under the direction of the Court as to the law, and the right of new trial, as in civil cases.").

³⁵⁵ See also MD. CONST. art. 5. Both this Article and Article 5 guarantee the right to trial by jury. The Court of Appeals of Maryland appears to have adopted the view that the jury trial right herein preserved are those rights that existed in 1776. See *Houston v. Lloyd's Consumer Acceptance Corp.*, 215 A.2d 192, 198 (Md. 1965) (citing with approval Judge Pearce's opinion in *Knee v. Baltimore City Pass. Ry. Co.*, 40 A. 890 (Md. 1898), stating that right to trial by jury was right as it existed when Constitution of Maryland first was adopted).

³⁵⁶ Act of Nov. 7, 1950, ch. 407 1949 Md. Laws 965-66 (proposing amendment to Article 15, Section 5 of constitution, ensuring that jury would be judges of law as well as fact in criminal trials); Act of Nov. 3, 1970, ch. 789, 1969 Md. Laws 1704 (proposing amendment to Article 15 to ensure right to jury trial); Act of Nov. 7, 1978, ch. 681, 1977 Md. Laws 2749 (proposing amendment to Article 23 of Declaration of Rights ensuring trial by jury); Act of Nov. 3, 1992, chs. 203-4, 1992 Md. Laws 2222-23 (proposing amendment to Article 5 ensuring at least six jurors in a civil trial).

³⁵⁷ Provision renumbered by Act of Nov. 7, 1978, ch. 681, 1977 Md. Laws 2743, 2748.

³⁵⁸ After a thirty-seven year tradition of applying a real and substantial relationship test to evaluate cases under substantive due process, the Court of Appeals of Maryland returned to its historical application of the rational basis standard for evaluating cases under this Article (and Article 19, the other "due process" provision), which comports with the United States Supreme Court's modern rational basis jurisprudence. See *Governor of Md. v. Exxon Corp.*, 370 A.2d 1102, 1111 (Md. 1977) (stating "judicial deference to legislative judgment is appropriate when reviewing legislation dealing with economic problems"). For a discussion of substantive due process analysis under the Maryland Constitution, see TOLLEY, *supra* note 186, at 111-23.

³⁵⁹ The drafters of the proposed 1967-68 Constitution would have deleted this provision, considering its function absorbed by sections 1.03, 1.07 and 1.13. COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 5. The proposed constitution was rejected by voters.

³⁶⁰ *Id.* Articles 19 and 24 of the 1867 Constitution were slated to be replaced by Section 1.03 of the proposed 1967-68 Constitution, which states, "[n]o person shall be deprived of life, liberty, or property without due process of law, nor be denied the equal protection of the laws, nor be subject to discrimination by the State because of race, color, religion, or national origin." *Id.* The proposed constitution was rejected by voters.

³⁶¹ This provision has long been held to contain a guarantee of the equal protection of the laws. See TOLLEY, *supra* note 186, at 75-77 (discussing equality guarantee in Maryland Constitution).

³⁶² Compare this provision with U.S. CONST. amend. XIV, § 1.

³⁶³ See NILES, *supra* note 135, at 46-48. Professor Niles placed this Article in Class B (exact duplications of United States Constitutional provisions), although he acknowledged that from independence until passage of the Fourteenth Amendment in 1868 it belonged in Class C (analogous limitations of state and federal power). *Id.* This is a major problem with Niles' analysis, because the difference between Class B and Class C is the Supreme Court's determina-

tion of the incorporation of a federal right against the states. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

³⁶⁴ An amendment to add the phrase "on no pretext whatsoever" was defeated without recorded debate. PERLMAN, *supra* note 91, at 141.

³⁶⁵ A proposal to reinstate "free," ostensibly to restore the language of the *Magna Carta* was defeated. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 236-39.

³⁶⁶ Scharf indicates that the final clause was deleted from Article 23 to conform with Article 24, a new article abolishing slavery. 3 SCHARF, *supra* note 23, at 583. The deletion of the material regarding the "free colored population" was recommended by the Committee. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 124, at 80. A floor amendment would have reinscribed this denial of due process to free African-Americans, but was defeated. *Id.* at 236-39.

³⁶⁷ There was a proposal to change the words "freeman" to "citizen" to exclude "free Negroes" from this right. It ultimately was determined that by adding a final clause to the article, it could be ensured that no due process rights would attach to the deprivation of the property of "free Negroes" if the legislature chose to withhold such rights. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 194-98, 259-60. This amended Article was adopted. *Id.* at 199.

³⁶⁸ The rights of "free Negroes" apparently had been an important issue for the convention delegates. The Convention of 1850 had appointed a committee to investigate "some prospective plan, looking to the riddance of this State, of the free negro, and mulatto population thereof, and their colonization in Africa." Harry, *supra* note 44, at 60. The colonization in Africa of free African Americans had been state policy since 1831, when the state legislature incorporated the Maryland State Colonization Society. *Id.*

³⁶⁹ The United States Supreme Court interpreted this provision in *Bank of Columbia v. Okely*, 17 U.S. (4 Wheat.) 235 (1819):

As to the words from *Magna Carta*, incorporated into the constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has at length settled down to this: that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice.

Id. at 244. Justice Johnson's opinion in *Okely* is remarkable, not only because of the Supreme Court's attempt to analyze a provision of a state constitution, but also because of its application of the Seventh Amendment of the United States Constitution against the states. See Akhil Reed Amar, *The Bill of Rights and the Fourteenth Amendment*, 101 YALE L.J. 1193, 1203 (1992) (discussing early view of Bill of Rights as imposing restrictions on state power).

³⁷⁰ This right was derived from the *Magna Carta*, ch. 39: "No free man shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land." HOWARD, *supra* note 254, at 388; *see also id.* at 211-12 (documenting incorporation of *Magna Carta* into constitutional thought).

³⁷¹ This provision was deleted by Act of Nov. 7, 1978, ch. 681, 1977 Md. Laws 2743, 2748.

³⁷² Professor Niles appears to have erroneously used the word "thereof" rather than "therefore." NILES, *supra* note 135, at 48.

³⁷³ The compensation for slave "property" taken was an important and emotional issue at the constitutional conventions of both 1864 and 1867. While in both instances it was decided that the state government would not compensate for the losses of the slave owners, the 1867 Convention inserted a provision enabling the legislature to promulgate measures so it could demand compensation from the national government. See Myers, *supra* note 85, at 122.

³⁷⁴ Professor Niles placed this provision in Class B (exact duplications). NILES, *supra* note 135, at 48-49. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

³⁷⁵ The drafting committee proposed changing this provision to read, "[s]lavery shall not be permitted in this State." PERLMAN, *supra* note 91, at 79. A minority of the Committee objected both to the substance of the provision and that it was passed without a vote. *Id.* at 89-90. After much debate, however, this substitute was adopted. *See id.* at 141-44, 148-50, 382.

³⁷⁶ Slavery was permitted under the 1851 Constitution of Maryland, which provided, "[t]he Legislature shall not pass any law abolishing the relation of master or slave, as it now exists in this state." Myers, *supra* note 55, at 12 (quoting MD. CONST. of 1851, art. III, § 43).

³⁷⁷ At the conclusion of the Civil War, slave owners struggled to find methods to retain slave labor. One such effort, creating "apprenticeships" for young African Americans was held not to violate this provision in *Brown v. State*, 23 Md. 503 (1865). This result is criticized by Professor Niles. NILES, *supra* note 135, at 49 (arguing that apprenticeship laws would now be violative of Thirteenth Amendment of United States Constitution).

³⁷⁸ This Article was proposed by the Committee. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 80. A minority report opposed its adoption. *Id.* at 81-82. This provision required substantial debate. *Id.* at 538-60, 563-618, 620-64, 665-712, 713-42.

³⁷⁹ Having first determined that the Eighth Amendment's excessive fines clause had never been "officially" incorporated to the states, the Court of Appeals of Maryland recently adopted a new test for the excessive fines clause of Article 25. See *Aravanis v. Somerset County*, 664 A.2d 888, 898 (Md. 1995) (holding constitutional prohibition against excessive fines requires consideration of whether forfeited item was an instrumentality of crime as well as factors comparing gravity of offense with extent of owner's loss experienced by forfeiture); *see also* Note, *On Constitutional Limitations of Civil In Rem Forfeiture and the Double Jeopardy Dilemma: Civil In Rem Forfeiture Constitutes Punishment and Subject to Excessive Fines Analysis*, 26 U. BALT. L. REV. 155 (1996).

³⁸⁰ The proposed 1967-68 Constitution would have replaced Articles 16, 25 and 27 with a single provision, proposed Section 1.11: "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Conviction of crime shall not work corruption of blood or forfeiture of estate." COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 123. The proposed constitution was rejected by voters.

³⁸¹ See TOLLEY, *supra* note 186, at 199-207 (discussing constitutionality of death penalty under Article 25).

³⁸² Although most state constitutions include some limitation on acceptable punishments, the formulation of those limitations varies. The most common is the prohibition against "cruel and unusual" punishments. *See, e.g.,* U.S.

CONST. amend. VIII (stating that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted"); COLO. CONST. art. II, § 20 (same); VA. CONST. art. I, § 9 (same). Several, like Maryland, prohibit "cruel or unusual" punishments. *See, e.g.*, CAL. CONST. art. I, § 17 (stating that "[e]xcessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishment be inflicted"); MICH. CONST. art. II, § 15 (same); WYO. CONST. art. I, § 14 (same). Still others prohibit only "excessive" punishments. *See, e.g.*, DEL. CONST. art. I, § 11 (stating that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor punishments inflicted"); PA. CONST. art. I, § 13 (same). The distinctions potentially are significant. *See People v. Bullock*, 485 N.W.2d 866, 872 n.11 (Mich. 1992) ("[I]t seems self-evident that any adjectival phrase in the form 'A or B' necessarily encompasses a broader sweep than a phrase in the form 'A and B.' The set of punishments which are either 'cruel' or 'unusual' would seem necessarily broader than the set of punishments which are both 'cruel' and 'unusual.'"); *see also Harmelin v. Michigan*, 501 U.S. 957, 966-67 (1991) (finding Eighth Amendment choice of "and" rather than "or" significant).

³⁸³ Professor Niles placed this provision in Class C (analogous limitations). NILES, *supra* note 135, at 49. *See supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

³⁸⁴ There was no recorded debate prior to re-adoption of this Article. PERLMAN, *supra* note 91, at 150.

³⁸⁵ Although the relationship between this Article and Article 14 (1851) (the modern Article 16) was subject to debate, *see supra* note 278, it was re-adopted without recorded debate here, 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 239.

³⁸⁶ It is unclear what was intended by the change from singular to plural.

³⁸⁷ This provision was re-adopted without recorded debate. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 199.

³⁸⁸ The English Bill of Rights (1689) provided that "excessive bail ought not to be required, nor excessive fines imposed nor cruel and unusual punishments inflicted." English Bill of Rights (1689), *reprinted in* 1 SOURCES AND DOCUMENTS, *supra* note 20, at 133 (1982). The Virginia Bill of Rights (1776) provided a verbatim copy of the English provision. VA. CONST. of 1776, bill of rights, § 9.

³⁸⁹ The phrase "by the court of law" did not exist in the original August 27, 1776, committee draft. From this information, I theorize that this final phrase was intentionally added and, therefore, disagree with the Court of Appeals determination in *Bartholomey v. State*, that the phrase was "superfluous." *Bartholomey v. State*, 273 A.2d 164, 170 (Md. 1971). I argue that Article 25 is directed to the judiciary's sentencing determinations, while Article 16 is directed to the legislative branch in its lawmaking capacity. *See supra* note 278. Language in the Massachusetts and New Hampshire constitutions is similar and supports this construction. *See MASS. CONST.* pt. 1, art. 26 (stating that "[n]o magistrate or court of law shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments"); N.H. CONST. art. I, § 33 (same).

³⁹⁰ The proposed 1967-68 Constitution would have replaced this provision with Section 1.05, designed to improve upon the Fourth Amendment to the United States Constitution:

[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches, seizures, interceptions of their communications, or other invasions of their privacy, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized, or the communications sought to be intercepted.

COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 121. The proposed constitution was rejected by voters.

³⁹¹ *See TOLLEY, supra* note 186, at 90-94 (discussing Maryland Court of Appeals' refusal to adopt federal "good faith exception" to exclusionary rule).

³⁹² This Article protects against general warrants. *See infra* note 393. In contrast, many state constitutions contain a single provision that, like the Fourth Amendment to the United States Constitution, protects both against unreasonable searches and seizures and against general warrants. *See, e.g.*, ALASKA CONST. art. I, § 14; ARK. CONST. art. II, § 15; CAL. CONST. art. I, § 19; FLA. CONST. art. I, § 12; GA. CONST. art. I, § 1, ¶ 8; IND. CONST. art. I, § 11; IOWA CONST. art. I, § 8; LA. CONST. art. I, § 7; ME. CONST. art. I, § 5; MICH. CONST. art. I, § 11; MINN. CONST. art. I, § 10; NEB. CONST. art. I, § 7; NEV. CONST. art. I, § 18; N.Y. CONST. art. I, § 12; N.D. CONST. art. I, § 18; OHIO CONST. art. I, § 14; S.C. CONST. art. I, § 16; UTAH CONST. art. I, § 14; W. VA. CONST. art. III, § 6; WIS. CONST. art. I, § 11.

³⁹³ The Court of Appeals of Maryland has made abundantly clear that it regards this Article as providing an identical protection to that afforded by the Fourth Amendment to the United States Constitution. *See Givner v. State*, 124 A.2d 764, 771 (Md. 1956) (finding that United States Supreme Court decisions regarding unlawful searches and seizures entitled to great respect when deciding state court cases involving searches and seizures). The *Givner* court's conclusion is not supported by the text of the Article. The Fourth Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV. Under traditional Fourth Amendment jurisprudence, it may be said that searches and seizures may be made in either of two ways: with a valid warrant, or under certain limited circumstances where it would be unreasonable to require a warrant. *See Coolidge v. New Hampshire*, 403 U.S. 443, 444 (1971) (holding that under certain circumstances the police may seize evidence absent a warrant). Such a dichotomy cannot be found in Article 26. First, Article 26 does not, on its face, require warrants at all; rather, it mandates that any warrants that are used must be specific and may only issue on oath or affirmation. The Court of Appeals of Maryland long ago read the equivalent of a warrants requirement into Article 26, stating: "If a general search warrant is condemned, how much more obnoxious must be an authorization to conduct a general and indiscriminate search of persons and property without any warrant." *Miller v. State*, 198 A. 710, 716 (Md. 1938). Second, if this provision is interpreted to always require warrants for the conduct of a search or seizure, it lacks a "reasonableness" test that is the hallmark of the United States Supreme Court's interpretation of the Fourth Amendment. Using the reasonableness requirement, the Supreme Court has found numerous exceptions to the warrant requirement. *See, e.g., Schneckloth v. Bustamonte*, 412 U.S. 218, 248-49 (1973) (permitting warrantless searches when consent is given); *Coolidge v. New Hampshire*, 403 U.S.

443, 465 (1971) (permitting warrantless seizure of evidence in "plain view"); Terry v. Ohio, 392 U.S. 1, 30 (1968) (permitting warrantless searches in "stop and frisk" cases); Schmerber v. California, 384 U.S. 757, 770 (1966) (permitting warrantless seizures of "evanescent" evidence); Camara v. Municipal Court, 387 U.S. 523, 539 (1959) (permitting warrantless administrative searches); Carroll v. United States, 267 U.S. 132, 147 (1925) (permitting warrantless searches of automobiles); Weeks v. United States, 232 U.S. 383, 398 (1914) (permitting warrantless searches incident to lawful arrest). Each of these decisions is predicated explicitly or implicitly on the premise that given the extraordinary nature of the circumstances presented, such a search or seizure is not "unreasonable." Maryland has adopted each of these exceptions, although generally without any mention of Article 26 of the Maryland Declaration of Rights other than to say that it is *in pari materia* with the Fourth Amendment. See, e.g., State v. Bell, 638 A.2d 107, 112 (Md. 1994) (permitting warrantless searches of automobiles); Carroll v. State, 646 A.2d 376, 385 (Md. 1994) (permitting warrantless searches incident to lawful arrest); State v. Wilson, 367 A.2d 1223, 1230 (Md. 1977) (permitting warrantless seizure of evidence in plain view); Duncan v. State, 378 A.2d 1108, 1113 (Md. 1977) (permitting warrantless searches of automobiles); Howell v. State, 318 A.2d 189, 193 (Md. 1974) (permitting warrantless searches incident to lawful arrest); Griffin v. State, 92 A.2d 743, 746 (Md. 1952) (permitting warrantless seizure of evidence in plain view); Johnson v. State, 66 A.2d 504, 512 (Md. 1949) (permitting warrantless searches incident to lawful arrest); Derricott v. State, 611 A.2d 592, 595 (Md. Ct. Spec. App. 1990) (permitting warrantless searches in "stop and frisk" case); Cahill v. Montgomery County, 528 A.2d 527, 530 (Md. Ct. Spec. App. 1987) (permitting warrantless administrative searches); Jarrell v. State, 373 A.2d 975, 979 (Md. Ct. Spec. App. 1977) (permitting warrantless searches when consent given); Dent v. State, 365 A.2d 57, 62 (Md. Ct. Spec. App. 1976) (permitting warrantless searches when in "hot pursuit"); Whitman v. State, 336 A.2d 515, 522 (Md. Ct. Spec. App. 1975) (permitting warrantless searches when consent given); England and Edwards v. State, 320 A.2d 66, 69 (Md. Ct. Spec. App. 1974) (permitting warrantless automobile searches); Bailey v. State, 294 A.2d 123, 134-35 (Md. Ct. Spec. App. 1972) (permitting warrantless searches when in "hot pursuit"). In this manner, Maryland appellate courts have amended Article 26 to include a "reasonableness" test analogous to that of the Fourth Amendment. See Givner v. State, 124 A.2d 764, 775 (Md. 1956) (finding that reasonableness of search must be determined according to facts of each case).

³⁹⁴ Professor Niles placed this provision in Class C (analogous limitations). NILES, *supra* note 135, at 49. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

³⁹⁵ There was no recorded debate prior to re-adoption of this Article. PERLMAN, *supra* note 91, at 150.

³⁹⁶ This provision was re-adopted without recorded debate. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 239.

³⁹⁷ This provision was re-adopted without recorded debate. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 199.

³⁹⁸ The first state constitutions dealt with the problem of general warrants in three ways. The Virginia Constitution simply denounced general warrants. Maryland and others declared general warrants to be illegal. Pennsylvania and Massachusetts "foreshadowed" the Fourth Amendment to the United States Constitution by declaring a general right against unreasonable searches and seizures. William Cuddihy, *From General to Specific Warrants: The Origins of the Fourth Amendment*, in THE BILL OF RIGHTS: A LIVELY HERITAGE 85, 91-93 (Jon Kukla ed., 1987).

³⁹⁹ Compare this provision with VA. CONST. of 1776, bill of rights, § 10, which provides:

That general warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

Id. Also compare this provision with PA. CONST. of 1776, decl. of rights, art. I, § 10:

That the people have a right to hold themselves, their houses, papers, and possessions free from search or seizure, and therefore warrants without oaths or affirmation first made, affording a sufficient foundation for them, and whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his or their property, not particularly described, are contrary to that right, and ought not to be granted.

Id.

⁴⁰⁰ The proposed 1967-68 Constitution would have replaced Articles 16, 25, and 27 with a single provision, proposed Section 1.11: "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Conviction of crime shall not work corruption of blood or forfeiture of estate." COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 123. The proposed constitution was rejected by voters.

⁴⁰¹ Similar provisions exist in other state constitutions. See ALA. CONST. art. I, § 19; ALASKA CONST. art. I, § 15; ARIZ. CONST. art. II, § 16; COLO. CONST. art. II, § 9; GA. CONST. art. I, § 1, para. XX; ILL. CONST. of 1870, art. II, § 11; IND. CONST. art. I, § 30; KAN. CONST. bill of rights § 12; MINN. CONST. art. I, § 11; MO. CONST. art. I, § 30; MONT. CONST. art. II, § 30; NEB. CONST. art. I, § 15; OHIO CONST. art. I, § 12; OKLA. CONST. art. II, § 15; OR. CONST. art. I, § 25; S.C. CONST. art. I, § 4; TENN. CONST. art. I, § 12; TEX. CONST. art. I, § 21; WASH. CONST. art. I, § 15; W. VA. CONST. art. III, § 18; WIS. CONST. art. I, § 12.

⁴⁰² Professor Niles placed this provision in Class D (concrete, peculiar rules) although he acknowledged that it was unlikely to be imposed. NILES, *supra* note 135, at 50. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

⁴⁰³ The return to the 1851 language was suggested by the Committee and adopted without recorded debate. PERLMAN, *supra* note 91, at 150.

⁴⁰⁴ The 1864 Convention was held during the Civil War. The punishments of corruption of blood and forfeiture of estate were authorized for the crime of treason—joining or supporting the Confederacy. Shelby Foote, the pre-eminent popular historian of the Civil War, described the situation in the North in 1862 with regards to treason in this way: "Treason was a much-used word these days. . . . The syllables had a sound that caught men's ears, overtones of enormity that went beyond such scarehead words as rape or arson or incest. Observing this, the radicals had made it their watchword, their cry in the night, expanding its definition in the process."

SHELBY FOOTE, THE CIVIL WAR, A NARRATIVE: FORT SUMTER TO PERRYVILLE 247 (1958).

⁴⁰⁵ The changes were not proposed by the Declaration of Rights Committee, but by floor amendment. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 239-47, 249-71.

⁴⁰⁶ The Bill of Rights Committee recommended re-adopting the language of the 1776 Constitution, but even though the convention body felt that forfeiture of estate was too harsh a penalty for murder, it was not too harsh for treason. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 199-200 (striking forfeiture of estate from realm of possible punishments for murder).

⁴⁰⁷ In the proposed 1967-68 Constitution, Articles 28-32 would have been combined into a single Section 9.05 regarding the militia:

[t]he General Assembly may provide by law for a militia. The governor shall be its commander in chief and shall appoint its officers. The governor may order the militia into active service to repel invasions, to suppress insurrections, to enforce the execution of the laws, and to provide assistance when great destruction of life or property may be threatened or may have occurred. The military authority of the State shall be and remain subject to civil control in the person of the governor at all times. Only a member of the militia may be subject to a military trial and then only for offenses committed while in actual service.

COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 6. The proposed constitution was rejected by voters.

⁴⁰⁸ See MD. CONST. art. II, § 8 ("The governor shall be the commander-in-chief of the land and naval forces of the State; and may call out the Militia to repel invasions, suppress insurrections, and enforce the execution of the Laws; but shall not take the command in person, without the consent of the Legislature."); MD. CONST. art. IX (providing for organization of militia).

⁴⁰⁹ Similar, although not identical, expressions are found in several other state constitutions. See ALASKA CONST. art. I, § 19; GA. CONST. of 1877, art. X, § I, para. 1; HAW. CONST. art. I, § 15; LA. CONST. art. I, § 8, art. XVII, § 1; MASS. CONST. pt. I, § 10; N.H. CONST. pt. I, § 24; N.C. CONST. art. I, § 30; S.C. CONST. art. I, § 20; TENN. CONST. art. I, § 24; VA. CONST. art. I, § 13.

⁴¹⁰ Professor Niles placed this provision in Class C (analogous limitations). NILES, *supra* note 135, at 50-51. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

⁴¹¹ A floor amendment would have added: "and every citizen has the right to bear arms in defense of himself and the State." It was rejected. PERLMAN, *supra* note 91, at 150-51. The Attorney General of the State of Maryland has opined that the text of the article as currently written does not include a right to bear arms. 79 OP. MD. ATT'Y GEN. 69 (February 25, 1994).

⁴¹² This provision was re-adopted without recorded debate. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 356.

⁴¹³ This provision was re-adopted without recorded debate. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 201.

⁴¹⁴ The phrase "and safe" appeared in the August 27, 1776, draft, as it does in the Virginia Bill of Rights. VA. CONST. of 1776, bill of rights, § 13. That language was dropped for the September 17, 1776, draft.

⁴¹⁵ The rights contained in Articles 25, 26, and 27 of the 1776 Maryland Declaration of Rights (Articles 28, 29, and 30 today) are similar to the rights provided in a single Article in Virginia:

That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free state; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

VA. CONST. art. I, § 13. Similarly, the Pennsylvania Constitution provides:

That the people have a right to bear arms for the defence of themselves and the state; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; And that the military should be kept under strict subordination to, and governed by, the civil power.

PA. CONST. art. I, § 21. Many historians agree that the Second Amendment is intended to ensure the existence of a state militia, as opposed to a standing national army, in defense of the country. The amendment probably was not intended to assure private citizens of a right to carry weapons. Lawrence Delbert Cress, *A Well-Regulated Militia: The Origins and Meaning of the Second Amendment*, in *THE BILL OF RIGHTS: A LIVELY HERITAGE* (Jon Kukla ed., 1987); but see Robert E. Shalhope, *The Ideological Origins of the Second Amendment*, 69 J. AM. HIST. 599 (1982-1983) (arguing that right to bear arms and right to form militia are distinct rights and Framers intended individuals to have right to bear arms for personal defense and defense of state).

⁴¹⁶ See *supra* note 407 for the text of the 1967-68 proposal to combine Articles 28-32 of the Maryland Constitution into a single section, 9.05.

⁴¹⁷ Although many state constitutions prohibit or limit standing armies, the provisions most similar to Maryland's are those of Alabama, Delaware, Kentucky, Maine, Massachusetts, New Hampshire, Pennsylvania, and South Carolina. See ALA. CONST. art. I, § 27; DEL. CONST. art. I, § 17; KY. CONST. bill of rights, § 22; ME. CONST. pt. I, § 17; MASS. CONST. pt. I, § 17; N.H. CONST. pt. I, art. 25; PA. CONST. art. I, § 22; S.C. CONST. art. I, § 20.

⁴¹⁸ Professor Niles placed this provision in Class A (abstract principles). NILES, *supra* note 135, at 51. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

⁴¹⁹ There was no recorded debate prior to re-adoption of this Article. PERLMAN, *supra* note 91, at 151.

⁴²⁰ This provision was re-adopted without recorded debate. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 356.

⁴²¹ This provision was re-adopted without recorded debate. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 201.

⁴²² The English Bill of Rights provided, "[t]hat the raising or keeping a standing army within the kingdom in time of peace, unless it be with the consent of parliament [sic], is against law." English Bill of Rights (1689), *reprinted in 1 SOURCES AND DOCUMENTS*, *supra* note 20, at 133.

⁴²³ See *supra* note 407 and accompanying text for the language of proposed Section 9.05 regarding the militia.

⁴²⁴ Forty-nine of fifty states have similar provisions in their constitutions. INDEX DIGEST OF STATE CONSTITUTIONS (Richard A. Edwards ed., 2d ed. 1959).

⁴²⁵ Professor Niles placed this provision in Class A (abstract principles). NILES, *supra* note 135, at 51. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

⁴²⁶ There was no recorded debate prior to re-adoption of this Article. PERLMAN, *supra* note 91, at 152.

⁴²⁷ This provision was re-adopted without recorded debate. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 356.

⁴²⁸ This provision was re-adopted without recorded debate. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 201.

⁴²⁹ Many other states have similar provisions. See, e.g., ALA. CONST. art. I, § 28; ALASKA CONST. art. I, § 20; ARIZ. CONST. art. II, § 27; ARK. CONST. art. II, § 27; COLO. CONST. art. II, § 22; CONN. CONST. art. I, § 17; DEL. CONST. art. I, § 18; FLA. CONST. art. X, § 2; IDAHO CONST. art. I, § 12; KAN. CONST. bill of rights, § 14; LA. CONST. art. XIX, § 7; MASS. CONST. decl. of rights, § 27.

⁴³⁰ An excellent source on the Third Amendment to the United States Constitution and its history is Tom W. Bell, *The Third Amendment: Forgotten But Not Gone*, 2 WM. & MARY BILL OF RTS. J. 117 (1993). It should be noted that Bell has stated erroneously that Delaware's 1776 Constitution predates Maryland's. *Id.* at 127 n.96. For the correct time sequence, see *supra* note 99.

⁴³¹ Professor Niles placed this provision in Class C (analogous limitations). NILES, *supra* note 135, at 51. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

⁴³² A small amendment was proposed, but rejected. PERLMAN, *supra* note 91, at 151-52.

⁴³³ This Article was changed in 1864 to "correspond[] literally with the third amendment to the Constitution of the United States." Myers, *supra* note 55, at 64. This makes Article 31 the only Article of the Maryland Declaration of Rights for whose meaning the United States Constitution is a direct source. Edward Dumbauld, *State Precedents for the Bill of Rights*, 7 J. PUB. LAW 323, 330 (1958).

⁴³⁴ The Committee proposed the change in the final sentence from "as the Legislature shall direct" to "in the manner prescribed by law." 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 80. I suspect that this was a response to fears arising from the "rebel" assembly of 1861. A proposal to restore the old language was defeated. *Id.* at 356-60.

⁴³⁵ The Committee report proposed omitting the word "only." 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 142. The word was reinserted by floor amendment. *Id.* at 201.

⁴³⁶ This right clearly is descended from the English Petition of Right, 3 Car. I, c. 1 (1627). Petition of Right (1627), reprinted in 10 HALSBURY'S STATUTES OF ENGLAND AND WALES 26 (Andrew Davies et al. eds., 4th ed. 1995) [hereinafter HALSBURY'S STATUTES]; see also 1 HOWARD, *supra* note 3, at 29; HOWARD, *supra* note 254, at 211 (indicating Petition of Right of 1627 to be ban on quartering troops by populace during peacetime). An excellent history of the problem of "billeting" troops is provided by B. Carmon Hardy, *A Free People's Intolerable Grievance: The Quartering of Troops and the Third Amendment*, in THE BILL OF RIGHTS: A LIVELY HERITAGE (Jon Kukla ed., 1987).

⁴³⁷ For similar provisions, see ME. CONST. art. I, § 14; MASS. CONST. decl. of rights, § 28; N.H. CONST. bill of rights, § 34; S.C. CONST. of 1868, art. I, § 27; VT. CONST. art. I, § 17; W. VA. CONST. art. III, § 12.

⁴³⁸ Professor Niles placed this provision in Class C (analogous limitations). NILES, *supra* note 135, at 51-52. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

⁴³⁹ There was no recorded debate prior to re-adoption of this Article. PERLMAN, *supra* note 91, at 152.

⁴⁴⁰ The debate on this Article centered on a proposed grammatical correction. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 361-62 (inserting "to" after "case" so as to read, "ought in any case to be subject"). An amendment to Article 19 would have added a provision about courts martial. It should be consulted in conjunction with this Article. *Id.* at 228-35.

⁴⁴¹ This provision was re-adopted without debate. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 201.

⁴⁴² See MD. CONST. art. IV, §§ 4, 4A, 4B (concerning removal of judges).

⁴⁴³ See MD. CONST. art. IV, § 6 (prohibiting fees in addition to salary).

⁴⁴⁴ The proposed 1967-68 Constitution would have replaced this provision with Section 5.25,

[n]o judge shall practice law, or seek public elective office other than the judicial office he then holds, or contribute to or hold office in a political party or political organization, or participate in a partisan political campaign, or serve as officer, director, or employee of any business formed with the intention of making a profit. No retired judge while practicing law or holding any public office of profit shall be paid any pension for his judicial service.

COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 185. The proposed constitution was rejected by voters.

⁴⁴⁵ Act of Nov. 6, 1990, ch. 61, 1990 Md. Laws 405 (extending exception to members of executive and legislative branches).

⁴⁴⁶ This phrase was changed to make its provisions consistent with the removal provisions found in Article IV of the Constitution. PERLMAN, *supra* note 91, at 382.

⁴⁴⁷ The Attorney General has opined that this comma, between "political trust" and "or employment," was added erroneously by a "scrivener/editor" and was not approved by the convention. As a result, the Attorney General has arrived at "the conclusion that the word 'political' was intended—and, therefore, should be read by us—to modify both 'trust' and 'employment.' Consequently, in our opinion, only 'political . . . employment . . . under the . . . Laws of this State' is prohibited by this portion of Article 33." 65 OP. MD. ATT'Y GEN. 285, 288-90 (May 8, 1980).

⁴⁴⁸ Professor Niles placed this provision in Class D (concrete, peculiar rules). NILES, *supra* note 135, at 52-53. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

⁴⁴⁹ There was some discussion of the form that an impeachment proceeding should take in the General Assembly, and an amendment proposed to clarify the procedure, but it was defeated. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 362-64, 367-68.

⁴⁵⁰ The committee report used "ought to" here, as did the 1776 provision. A floor amendment changed it to "shall" to make it "expressly prohibitory." 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION

TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 201. It leaves one to wonder why a similar change was not made throughout the entire Declaration of Rights.

451 Delegate James L. Ridgely of Baltimore County proposed the amendment to add the phrase "or political trust or employment of any kind whatever." *Id.* at 201. It was amended again, *id.*, and then the debates show that it was defeated. *Id.* at 204. An erratum, *id.* at 260, makes it clear that the language was adopted.

452 A proposal to prohibit judges from sitting in constitutional conventions required much debate, but was defeated. *Id.* I suspect that this was a lightly veiled attack on Delegate (and Circuit Court Judge) Ezekiel F. Chambers of Kent County, the leader of the anti-reformers in the convention.

453 Fletcher Green equates this provision with Maryland's separation of powers. GREEN, *supra* note 39, at 82.

454 These amendments ("and the said chancellor and judges shall be removed for misbehaviour, on conviction in a court of law, and may be removed by the governor upon address of the general assembly" and "[p]rovided that two-thirds of all the members of each house concur in such address") were added on November 1, 1776. PROCEEDINGS, *supra* note 29, at 304-05; *see also* THE DECISIVE BLOW, *supra* note 40 (November 1, 1776).

455 A proposal to replace this clause with "that a liberal salary ought to be secured to the chancellor during his continuance in office, and that the judges be paid *per diem* for their services during their term of sitting" was rejected on November 1, 1776. *Id.*

456 One possible source for this provision is the English Act of Settlement, 12 & 13 Will. 3 c.1 (1700). Act of Settlement (1700), *reprinted* in 10 HALSBURY'S STATUTES, *supra* note 436, at 40; *see also* HOWARD, *supra* note 254, at 210 (noting value of independent judiciary as recognized by English Act of Settlement).

457 Act of Nov. 7, 1978, ch. 681, 1978 Md. Laws 2749-50 (re-adopting Article 34 without change).

458 The proposed 1967-68 Constitution would have deleted this principle and replaced it with Section 4.02, a provision that merely limited terms: "... [n]o person elected governor for two full consecutive terms shall be eligible to hold that office again until one full term has intervened." COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 7. The proposed constitution was rejected by voters.

459 This provision is effectuated by the provision of the constitution limiting the consecutive terms of office for the governor. *See* MD. CONST. art. II, § 1 (prohibiting governor who has served two consecutive terms from succeeding him or herself after second term).

460 The wording of this provision is unique among state constitutions, but the concept is not. Many state constitutions limit the number of times a person is eligible for the office of governor. *See* ALA. CONST. art. V, § 116; ALASKA CONST. art. III, § 5; DEL. CONST. art. III, § 5; FLA. CONST. art. IV, § 5, cl. 6; GA. CONST. art. V, § I, para. 1; IND. CONST. art. V, § 1; KY. CONST., § 71; LA. CONST. art. IV, § 3, cl. 8; ME. CONST. art. V, pt. I, § 2; MISS. CONST. art. V, § 116; MO. CONST. art. IV, § 17; N.J. CONST. art. V, § 1, 5; N.M. CONST. art. V, § 1; N.C. CONST. art. III, § 2; OHIO CONST. art. III, § 2, art. XVII, § 2; OKLA. CONST. art. VI, § 4; OR. CONST. art. V, § 1; PA. CONST. art. IV, § 3; S.C. CONST. art. IV, § 2; TENN. CONST. art. III, § 4; VA. CONST. art. V, § 69; W. VA. CONST. art. VII, § 4.

461 Professor Niles placed this provision in Class A (abstract principles). NILES, *supra* note 135, at 53. *See supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

462 There was no recorded debate prior to re-adoption of this Article. PERLMAN, *supra* note 91, at 152.

463 There was no recorded debate about the re-adoption of this provision. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 368.

464 This provision was re-adopted without recorded debate. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 206.

465 This provision is part of Maryland's conception of the separation of powers. GREEN, *supra* note 39, at 82. *See supra* note 196 for a discussion of separation of powers in Maryland.

466 Professor Howard suggests that the historical antecedents of the concept of rotation in offices of trust dates to ancient Athens and Rome. HOWARD, *supra* note 3, at 82-83.

467 The Pennsylvania Constitution of 1776 provided:

VI. That those who are employed in the legislative and executive business of the State, may be restrained from oppression, the people have a right, at such periods as they may think proper, to reduce their public officers to a private station, and supply the vacancies by certain and regular elections.

PA. CONST. of 1776, decl. of rights, art. VI (repealed 1790).

468 *See infra* Article 33 of the August 27, 1776, draft. This provision probably was considered redundant and therefore deleted for the September 11, 1776, draft.

469 Act of Nov. 3, 1964, ch. 129, 1964 Md. Laws 354-55 (declaring notary public not an office of profit).

470 Act of Nov. 6, 1990, ch. 61, 1990 Md. Laws 405 (declaring reserves and militia service are not offices of profit).

471 The proposed 1967-68 Constitution would have replaced this Article with Section 9.03: "[n]o person shall hold at the same time more than one office of profit created by this Constitution or the laws of this State, except as may be prescribed by law. COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 7. The proposed constitution was rejected by voters.

472 The prohibition on dual office holding also is found in the body of the Maryland Constitution. MD. CONST. art. III, §§ 10, 11 (prohibiting holding dual office).

473 Many other states prohibit dual office holding. *See, e.g.,* ALA. CONST. art. XVII, § 280; ARK. CONST. art. XIX, §§ 6, 26; DEL. CONST. art. III, § 11; FLA. CONST. art. XVI, § 15; KY. CONST. § 165; ME. CONST. art. IX, § 2; MASS. CONST. art. VI, § 2; MISS. CONST. art. I, § 2; NEB. CONST. art. IV, § 2; N.H. CONST. art. II, § 94; N.C. CONST. art. XIV, § 7; TEX. CONST. art. XVI, § 33; VT. CONST. art. II, § 50; W. VA. CONST. art. V, § 1.

474 Professor Niles placed this provision in Class D (concrete, peculiar rules). NILES, *supra* note 135, at 53. *See supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

475 A floor amendment changed both incidences of "ought" to "shall." PERLMAN, *supra* note 91, at 152.

476 The convention considered and rejected an exception for justices of the peace. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 368-69.

477 The Committee had proposed changing this to "presents," but the convention returned it to the original "present." *Id.* at 81, 368.

⁴⁷⁸ This provision was re-adopted without recorded debate. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 206.

⁴⁷⁹ This was originally a separation of powers provision. See GREEN, *supra* note 39, at 81-82. Today, this likely would be regarded more as a "good government" provision.

⁴⁸⁰ This provision is discussed in *Horace Mann League v. Board of Public Works*, 220 A.2d 51, 60 (Md. 1966).

⁴⁸¹ I theorize that this provision is in fundamental conflict with the decisions of the United States Supreme Court governing death penalty juror qualification. See, e.g., *Wainwright v. Witt*, 469 U.S. 412 (1985); *Witherspoon v. Illinois*, 391 U.S. 510 (1968). Put simply, *Witherspoon* and *Wainwright* require the dismissal of jurors who are philosophically and steadfastly opposed to the death penalty. Article 36 prohibits dismissing jurors who are "otherwise competent" because of their religious beliefs. Given that the phrase "otherwise competent" was added only so as to permit the General Assembly to prohibit African Americans from serving as jurors, see *infra* notes 486, 488, it is possible that the rights of a potential juror are infringed if the juror is denied the right to serve on a death penalty jury due to an opposition to the death penalty based on a religious belief or doctrine.

⁴⁸² This provision was held to violate the First Amendment to the United States Constitution. *Schowgurow v. State*, 213 A.2d 475, 480 (Md. 1965).

⁴⁸³ The proposed 1967-68 Constitution would have replaced Articles 36, 37, and 39 with sections 1.02 and 9.01. COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 230. Article 38 would have been deleted altogether. *Id.* Section 1.02 would have provided that "[n]o law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof." *Id.* at 7. Section 9.01 would have provided a single oath for all offices:

[e]very person elected or appointed to any office of profit or trust under the Constitution or laws of this State, before he enters upon the duties of such office, shall take and subscribe to the following oath or affirmation, the parenthetical language being optional: '(In the presence of Almighty God) I, [name here], do swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of Maryland and support the Constitution and laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice execute the office of [office name here], according to the Constitution and laws of this State.' No other oath or affirmation shall be required. Should any person elected or appointed to an office of profit or trust refuse or neglect to take the oath or affirmation, then such office shall be vacant, and shall be filled as prescribed by this Constitution or by law.

Id. at 8-9. The proposed constitution was rejected by voters.

⁴⁸⁴ Act of Nov. 3, 1970, ch. 558, 1970 Md. Laws 1625-26 (allowing reference to or reliance upon belief in supreme being in governmental or public activities).

⁴⁸⁵ See TOLLEY, *supra* note 186, at 54 (discussing free exercise); see also Kenneth Lasson, *Free Exercise in the Free State: Maryland's Role in the Development of First Amendment Jurisprudence*, 18 U. BALT. L. REV. 81 (1988) (focusing on important state cases contributing to First Amendment jurisprudence).

⁴⁸⁶ This was included as a compromise, to allow the legislature to determine the competency of African Americans. See MD. CONST. art. III, § 53 (subsequently repealed by Act of Nov. 7, 1978, ch. 681, 1977 Md. Laws 2750).

⁴⁸⁷ Professor Niles placed this provision in Class C (analogous limitations). NILES, *supra* note 135, at 54-55. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

⁴⁸⁸ This provision spawned the most discussion of any of the provisions of the Declaration of Rights in 1867. At issue was permitting African Americans the right to testify as witnesses in trials. The Committee on the Declaration of Rights proposed that the last phrase should read "nor shall any person be deemed incompetent as a witness on account of race or color." PERLMAN, *supra* note 91, at 90. A minority of the Committee objected. *Id.* at 89-90, 92-93. Eventually a compromise was adopted. *Id.* at 154-64, 171-72. There was also a side debate about the meaning of the rest of the provision, which one delegate described as "only toleration, not religious liberty." *Id.* at 153. Concern was expressed to ensure that the legislature maintained the right to pass laws of morality. *Id.*

⁴⁸⁹ The convention body considered and ultimately rejected a proposal to remove from the legislature the right to deem witnesses incompetent based on a lack of religious belief. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 369-71.

⁴⁹⁰ The last phrase was not included in the committee draft, but added by floor amendment. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 208-216.

⁴⁹¹ See also MD. CONST. of 1776, art. 37 ("No . . . minister or preacher of the gospel, of any denomination . . . shall have a seat in the [G]eneral [A]ssembly or the [C]ouncil of this [S]tate."). Carl Everstine notes that Article 37 of the Maryland Constitution of 1776 and its successor, Article III, Section 11 of the Maryland Constitution of 1867, were intended as insurance of the disestablishment of the Church of England. Carl N. Everstine, *Maryland's Toleration Act: An Appraisal*, 79 MD. HIST. MAG. 99, 113 (1984). Article III, Section 11 was held unconstitutional in *Kirkley v. State*, 381 F. Supp. 327 (D. Md. 1974), and deleted from the Constitution by Act of Nov. 7, 1978, ch. 681, 1977 Md. Laws 2756.

⁴⁹² The following passage was added as a result of an amendment offered to Article 34 on November 2, 1776: any particular place of worship, or any particular ministry; yet the legislature may, in their discretion, lay a general and equal tax for the support of the christian religion, leaving to each individual the power of appointing the payment over of the money collected from him, to the support of any particular place of worship or minister, or for the benefit of the poor of his own denomination, or the poor in general of any particular county.

PROCEEDINGS, *supra* note 29, at 307; see also THE DECISIVE BLOW, *supra* note 40, (November 2, 1776).

⁴⁹³ Compare this provision with VA. CONST. bill of rights, § 16, which provides:

That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise Christian forbearance, love, and charity towards each other.

Id. Also compare this provision with PA. CONST. decl. of rights, art. II, which provides:

That all men have a natural and unalienable right to worship Almighty God according to the dictates of their consciences and understanding: And that no man ought or of right can be compelled to attend any religious

worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against, his own free will and consent: Nor can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments or peculiar mode of religious worship: And that no authority can or ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner controul, the right of conscience in the free exercise of religion.

Id.

⁴⁹⁴ Maryland's history of broad religious toleration may be traced to George Calvert, the first Lord Baltimore, a convert to Catholicism, whose son Cecil Calvert received the land grant which became Maryland from the Anglican King of England, Charles. BRUGGER, *supra* note 23, at 3-7. An indirect result was Maryland's Toleration Act (1649), frequently regarded as the first expression of religious toleration in the new world. The Toleration Act, Act of April 21, 1649. For a critical, but realistic review of the Toleration Act, as well as a substantial reprint of the Act itself, see Everstine, *supra* note 491, at 99-115.

⁴⁹⁵ This provision was found to violate the First Amendment to the United States Constitution in *Torcaso v. Watkins*, 367 U.S. 488 (1961).

⁴⁹⁶ See MD. CONST. art. I, § 9 (prescribing oath of office).

⁴⁹⁷ See *supra* note 483 for sections of the proposed 1967-68 Constitution that would have replaced Articles 36, 37, and 39. The proposed constitution was rejected by voters.

⁴⁹⁸ The Oklahoma constitution is the only other state constitution to prohibit explicitly religious tests. OKLA. CONST. art. I, § 2 (stating that "no religious test shall be required for the exercise of civil or political rights").

⁴⁹⁹ Professor Niles placed this provision in Class D (concrete, peculiar rules). NILES, *supra* note 135, at 55-56. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

⁵⁰⁰ The drafting committee had proposed the following: "That no other test or qualification ought to be required on admission to any office of trust or profit, other than such oath of office and qualification as may be prescribed by this constitution, or by the laws of the State, and a declaration of belief in the Christian religion, or in the existence of God, and in a future state of rewards and punishments." PERLMAN, *supra* note 91, at 81. On the floor of the Convention the amendment was adopted in order to permit "Israelites" to participate in government. *Id.* at 172-73. This also removed from the legislature the power to create additional oath requirements. See *Davidson v. Brice*, 48 A. 52, 54-55 (1900).

⁵⁰¹ This clause permitted the so-called "iron-clad" oath that was used to prevent Confederate sympathizers from voting or holding office. SCHARF, *supra* note 23, at 584-85; see *supra* note 83 for a discussion of "iron-clad" oaths. These oaths became very unpopular and were a leading cause of the call for a new constitutional convention in 1867. It was adopted without debate as a floor amendment. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 381-82.

⁵⁰² The specific reference to "Jews" is deleted in the 1864 Constitution, thus allowing all persons to make the requisite oaths. Myers, *supra* note 55, at 64-65.

⁵⁰³ The Committee proposed retaining the 1851 language intact. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 81. Jewish citizens had complained about being singled out in this Article, and a floor amendment was adopted to create a single test for non-Christians. *Id.* at 371-81.

⁵⁰⁴ Although clearly a successor to MD. CONST. of 1776, decl. of rights, art. 35, this provision originally was deleted and then added back through an amendment. 2 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 785-88.

⁵⁰⁵ Harry mentions the changes in this Article as particularly "worthy of notice," as for the first time "Jews and others" were permitted to hold office in Maryland. Harry, *supra* note 44, at 72.

⁵⁰⁶ For earlier versions of this provision, see MD. CONST. of 1776 decl. of rights, art. 35.

⁵⁰⁷ Acts of 1977, ch. 681, ratified November 7, 1978. The Article number is not reassigned.

⁵⁰⁸ Niles placed this provision in Class D (concrete, peculiar rules), stating that it was probably the second most important right in the Declaration. NILES, *supra* note 135, at 56-60. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

⁵⁰⁹ Act of Apr. 25, 1947, ch. 623, 1947 Md. Laws 1557-58, virtually repealed this provision, in that prior legislative disapproval became necessary to prevent a transfer, rather than prior approval being necessary to legitimate a transfer to the church. See CONSTITUTIONAL REVISION STUDY DOCUMENTS, *supra* note 43, at 32. The 1977 amendments finished the job and deleted this provision entirely. Act of Nov. 7, 1978, ch. 681, 1977 Md. Laws 2743-82.

⁵¹⁰ There was a proposal on the floor of the 1867 Convention to strengthen this provision by removing the power of the General Assembly to permit such property acquisitions. This proposal was rejected. PERLMAN, *supra* note 91, at 173-74.

⁵¹¹ The proposed 1967-68 Constitution would have deleted this provision. COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 7. The proposed constitution was rejected by voters.

⁵¹² The amendment permitting subsequent authorization substantially weakened this provision. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 382-86.

⁵¹³ A proposal to remove this provision as unnecessary was defeated. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 216-18.

⁵¹⁴ This was a unique provision in the Maryland Declaration of Rights that banned categories of gifts to the church. The intent was to prevent the church from acquiring property in perpetuity. In this respect it was analogous to British mortmain statutes. See 9 Geo. II, ch. 36 (1736). See CONSTITUTIONAL REVISION STUDY DOCUMENTS, *supra* note 43, at 32.

⁵¹⁵ The concept of this Article is continued, in the September 17, 1776, draft as Article 36, below.

⁵¹⁶ See MD. CONST. of 1851, art. 34.

⁵¹⁷ Although no court has addressed specifically the constitutionality of Article 39, it is likely that it is unconstitutional under the holding of *Torcaso v. Watkins*, 367 U.S. 488 (1961) (holding Article 37 of Declaration of Rights is invasion of freedom of religion and unenforceable); see also Charles A. Rees, *State Constitutional Law for Maryland Lawyers: Individual Civil Rights*, 7 U. BALT. L. REV. 299, 304 n.41 (1978).

⁵¹⁸ See *supra* note 483 for sections of the proposed 1967-68 Constitution which would have replaced Articles 36, 37, and 39. The proposed constitution was rejected by voters.

⁵¹⁹ Act of Nov. 7, 1977, ch. 681, 1977 Md. Laws 2743 (removing or correcting obsolete, duplicative, inaccurate, invalid, or unconstitutional provisions of Maryland Constitution, and proposing renumbering of Maryland Constitution).

⁵²⁰ Professor Niles placed this provision in Class A (abstract principles). NILES, *supra* note 135, at 60-61. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

⁵²¹ This provision was re-adopted without any recorded floor debate. PERLMAN, *supra* note 91, at 174.

⁵²² An amendment to make the oath more personal was rejected: "That the manner of administering an oath or affirmation to any person, ought to be such as is most in accordance with and most binding upon the conscience of the person to whom such oath or affirmation may be administered." 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 386.

⁵²³ See 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 218 (presenting debate after dropping last part of amendment).

⁵²⁴ This language permitted Quakers to testify in criminal cases, other than those for which the death penalty was sought. This was apparently traditional law in England. See 1 HOWARD, *supra* note 3, at 105 (explaining that the Quakers adopted only some of the English Common Law rules).

⁵²⁵ This Article, as written, originally was proposed from the Convention floor on November 3, 1776, although the concept is carried forward from that embodied in Article 36 of August 27, 1776, draft.

⁵²⁶ This Article was re-adopted without recorded debate. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 218.

⁵²⁷ The text of this Article does not seem to require state action in preventing the speech, a requirement of the Federal Constitution's First Amendment. See G. Alan Tarr, *Understanding State Constitutions*, 65 TEMP. L. REV. 1169, 1172-73 n.28 (1992) (explaining that forty-four state constitutions provide affirmative right to free speech, rather than merely restraint on state action).

⁵²⁸ This provision was held to be *in pari materia* with the First Amendment to the United States Constitution. See *Sigma Delta Chi v. Speaker*, Md. House of Delegates, 310 A.2d 156, 158 (Md. 1973) (citing cases supporting proposition).

⁵²⁹ The 1967-68 Constitutional Convention proposed combining the concepts of Articles 10, 13, and 40, into two new sections, 1.01 and 3.14. COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 3. Section 1.01 would have provided that "[t]he people shall have the right peaceably to assemble and to petition the government for a redress of grievances. Freedom of the press and freedom of speech shall not be abridged, each person remaining responsible for abuse of those rights." *Id.* Section 3.14 would have provided for immunity of legislators, in that "[w]ords used by a member of the General Assembly in any of its proceedings, including the proceedings of any committees and sub-committees, shall be absolutely privileged, and a member shall not be liable therefor in any civil action or criminal prosecution." *Id.* The proposed constitution was rejected by voters.

⁵³⁰ See TOLLEY, *supra* note 186, at 63-66 (describing freedoms of speech and press under Maryland Constitution).

⁵³¹ Similar provisions exist in other state constitutions. See ALA. CONST. art. I, § 4; CAL. CONST. art. I, § 9; COLO. CONST. art. II, § 10; CONN. CONST. art. I, § 5; GA. CONST. art. I, para. 15; IOWA CONST. art. I, § 7; LA. CONST. art. I, § 3; MO. CONST. art. I, § 8; NEV. CONST. art. I, § 9; N.Y. CONST. art. I, § 8; OHIO CONST. art. I, § 11; PA. CONST. art. I, § 7; TENN. CONST. art. I, § 19; TEX. CONST. art. I, § 8; VA. CONST. art. I, § 12; UTAH CONST. art. I, § 1.

⁵³² Professor Niles placed this provision in Class C (analogous limitations). NILES, *supra* note 135, at 61-62. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

⁵³³ This provision was re-adopted without any recorded floor debate. PERLMAN, *supra* note 91, at 174. I have been unable to find any information regarding the change of the final word from "liberty" to "privilege."

⁵³⁴ Scharf describes this change thus, "Article 40 was a blow at the dreaded liberty of the press; to the affirmation of which was added the clause that those using it were 'responsible for the abuse of that liberty.'" 3 SCHARF, *supra* note 23, at 584.

⁵³⁵ The Committee would have continued the 1851 Article without amendment. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 386. An amendment to add a free speech right to the first clause was rejected. *Id.* at 386-87. Later, a new Article was proposed, but eventually that proposed article was grafted onto this provision as the second clause. *Id.* at 393-400.

⁵³⁶ This Article was re-adopted without recorded debate. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 218.

⁵³⁷ Compare this provision with the Virginia Bill of Rights (1776): "[t]hat the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments." VA. CONST. of 1776, bill of rights, § 12, *reprinted in* 10 SOURCES AND DOCUMENTS, *supra* note 20, at 50 (1979). Also compare this provision with the Pennsylvania Declaration of Rights (1776): "[t]hat the people have a right to freedom of speech, and of writing, and publishing their sentiments; therefore the freedom of the press ought not to be restrained." PA CONST. of 1776, decl. of rights, § 12, *reprinted in* 8 *id.* at 279 (1979).

⁵³⁸ The proposed Constitution of 1967-68 would have deleted this provision. COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 9. The proposed constitution was rejected by voters.

⁵³⁹ In *Grempler v. Multiple Listing Bureau*, the Court of Appeals of Maryland gave a limited interpretation to this provision. *Grempler v. Multiple Listing Bureau*, 266 A.2d 1, 4 (Md. 1970). This interpretation is far narrower than previous, more expansive interpretations given this provision. See *Raney v. County Comm'rs*, 183 A. 548, 554 (Md. 1936) (holding statute unconstitutional because it tended to create monopoly prohibited by Article 41).

⁵⁴⁰ Similar anti-monopoly provisions are a part of many other state constitutions. See ARK. CONST. art. II, § 19; N.H. CONST. pt. II, art. 83; N.C. CONST. art. I, § 31; OKLA. CONST. art. II, § 32; S.D. CONST. art. XVII, § 20; TENN. CONST. art. I, § 22; TEX. CONST. art. I, § 26; WASH. CONST. art. XII, § 22; WYO. CONST. art. I, § 30.

541 Professor Niles placed this provision in Class D (concrete, peculiar rules). NILES, *supra* note 135, at 62-63. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

542 This provision was re-adopted without any recorded floor debate. PERLMAN, *supra* note 91, at 174.

543 There was no recorded debate about the re-adoption of this provision. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 387.

544 This Article was re-adopted without recorded debate. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 218.

545 Historian Gordon Wood suggests that Articles 39 (prohibiting monopolies) and 40 (prohibiting titles of nobility) of the Maryland Declaration of Rights, 1776, are examples of a whiggish, republican ideology of equality, whereby the colonial aristocracy would be replaced by a system in which people would be distinguished only by individual merit. GORDON S. WOOD, THE CREATION OF THE AMERICAN REPUBLIC, 1776-1787, at 72 & n.57 (1993). Wood identifies legislation prohibiting entail, primogeniture, and monopolies, as well as laws establishing public education as examples of this ideology. *Id.* When examined in light of such ideology, the consecutive placement of these two provisions seems less arbitrary although the placement of Article 41 (the August 27, 1776, draft) is unexplained.

546 This provision was defeated in the committee as a whole, but H. H. Walker Lewis finds it to be a very liberal proposal, particularly because the committee members responsible for drafting the provision were slave owners. LEWIS, *supra* note 39, at 46. Lewis's admiration for this provision probably is misplaced. A prohibition on the importation of slaves creates a scarcity that accrues to the economic advantage of slave owners. See JOHN R. ALDEN, A HISTORY OF THE AMERICAN REVOLUTION 367 (1969).

547 The proposed Constitution of 1967-68 would have deleted this provision. COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 9. The proposed constitution was rejected by voters.

548 Despite the fact that it is prohibited by the United States Constitution for a state to grant any title of nobility, U.S. CONST. art. I, § 10, most states continue to prohibit hereditary titles. See e.g. ALA. CONST. art. I, § 29; ARIZ. CONST. art. II, § 29; CONN. CONST. art. I, § 20; DEL. CONST. art. I, § 19; IND. CONST. art. I, § 35; KAN. CONST. bill of rights, § 19; KY. CONST. §§ 19, 23; ME. CONST. art. I, § 23; N.C. CONST. art. I, § 30; OHIO CONST. art. I, § 17; OR. CONST. art. I, § 29; PA. CONST. art. I, § 24; S.C. CONST. art. I, § 8; TENN. CONST. art. I, § 30; WASH. CONST. art. I, § 28; W. VA. CONST. art. III, § 19.

549 Compare this provision with U.S. CONST. art. I, § 9, cl. 8: "[N]o Title of Nobility shall be granted by the United States. . . ."

550 Professor Niles placed this provision in Class B (exact duplications). NILES, *supra* note 135, at 63. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

551 This provision was re-adopted without any recorded floor debate. PERLMAN, *supra* note 91, at 174.

552 There was no recorded debate about the re-adoption of this provision. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 387.

553 This Article was re-adopted without recorded debate. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 218.

554 See *supra* note 545 for a discussion of Historian Gordon Wood's suggestions regarding Articles 39 and 40 and each article's relation to whiggish ideology of equality.

555 See MD. CONST. art. VIII (establishing free public school education).

556 Act of Mar. 23, 1960, ch. 65, 1960 Md. Laws 186-87 (regarding farm assessments).

557 The proposed Constitution of 1967-68 would have replaced this provision with Section 8.01:

{[t]he General Assembly by law shall provide for a statewide system of free public schools. The system shall be headed by a governing board whose members shall be appointed by the governor. The General Assembly by law shall provide also for such other public educational institutions and services as may be necessary or desirable for the intellectual, cultural, and occupational development of the people of this State.

COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 217. Section 6.03 of the proposed constitution dealt with the issue of agricultural assessments: "[a]ssessments with respect to any tax shall be made pursuant to uniform rules and pursuant to classifications of property, taxpayers, and events prescribed by law, which classes shall include agricultural property as defined by the General Assembly by law." *Id.* at 195. The proposed constitution was rejected by voters.

558 Professor Niles placed this provision in Class A (abstract principles). NILES, *supra* note 135, at 63. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

559 This provision was re-adopted without any recorded floor debate. PERLMAN, *supra* note 91, at 174.

560 The addition of this clause was proposed by the Committee. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 81.

561 There was no recorded debate about the re-adoption of this provision. *Id.* at 387.

562 This provision was not proposed by the Committee but by a floor amendment. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 222-25.

563 The General Assembly is prohibited by the state constitution from suspending the writ of habeas corpus. MD. CONST. art. III, § 55.

564 The West Virginia Constitution provides a similar protection. W.VA. CONST. art. I, § 3.

565 The proposed Constitution of 1967-68 would have replaced this provision with Section 1.17:

The provisions of this Constitution shall not be suspended, except that the General Assembly by law shall provide for the temporary suspension of specific provisions during an emergency caused by disaster or enemy attack. Any suspension shall be for the period of the emergency only, and only provisions of this Constitution concerning state and local public offices and government operations may be suspended.

COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 9. The proposed constitution was rejected by voters.

⁵⁶⁶ Myers states unequivocally that "[t]his was a direct condemnation of the war policy of President Lincoln." Myers, *supra* note 85, at 120. See PERLMAN, *supra* note 91, at 61, for a nearly identical draft of this Article. There were no further discussions of the provision recorded. *Id.* at 174.

⁵⁶⁷ Professor Niles placed this provision in Class A (abstract principles). NILES, *supra* note 135, at 64. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

⁵⁶⁸ Judge W. Mitchell Digges of the Court of Appeals of Maryland took an expansive view of the application of this provision. In *Kenly v. Huntingdon Building Ass'n*, 170 A. 526 (Md. 1934), a party argued that the onset of the economic depression of 1929 made enforcement of a pre-existing contract inequitable. *Id.* Judge Digges concurred in the decision to hold the parties bound to their contractual obligation. He wrote separately, in part to base his opinion on Article 44 of the Declaration of Rights, stating, "it is our duty to protect and enforce every clearly defined legal right, and this without regard to the presence or absence of real or fancied emergencies." *Id.* at 529 (Digges, J., concurring). In this manner, Judge Digges suggested that this provision was not limited to issues of war and peace, but also to other crises.

⁵⁶⁹ The proposed 1967-68 Constitution, Section 1.18, would have substituted a slightly different construction of this right: "The enumeration of rights in this Constitution shall not be construed to impair, disparage, or deny others retained by the people." COMPARISON OF PRESENT CONSTITUTION AND CONSTITUTION PROPOSED BY CONVENTION, *supra* note 126, at 9. The proposed constitution was rejected by voters.

⁵⁷⁰ Professor Niles placed this provision in Class C (analogous limitations). See NILES, *supra* note 135, at 64-65. See *supra* note 135 for a discussion of Professor Niles' division of the provisions of the Maryland Declaration of Rights into four categories.

⁵⁷¹ This provision was re-adopted without any recorded floor debate. PERLMAN, *supra* note 91, at 174.

⁵⁷² There was no recorded debate about the re-adoption of this provision. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 387.

⁵⁷³ It is unclear what construction should be given to this provision. Maryland courts have never construed the provision. It is similar, but not identical linguistically, to the Ninth Amendment to the United States Constitution. The Ninth Amendment, however, serves to remind that the federal government is limited to those powers granted to it by the United States Constitution. By contrast, the Maryland Constitution is a document of limitation, limiting power that is otherwise plenary. It is therefore unclear what the function of this provision is in the Maryland Declaration of Rights. See generally Note, *Unenumerated Rights Clauses in State Constitutions*, 63 TEX. L. REV. 1321 (1985).

⁵⁷⁴ Brought by floor amendment and adopted by the convention. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 225-26.

⁵⁷⁵ The Committee on the Declaration of Rights proposed continuing the language from the 1851 Constitution. 1 DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, *supra* note 121, at 81. Delegates believed that the provisions of Articles 1 and 44 of the 1851 Constitution were contradictory in that Article 1 declared the right of the people to change their government at will, while this Article limited the right. *Id.* at 143-46. In the end the question of the right of the people to amend or replace the constitution was deleted from this provision, leaving that question to Article 2. This Article then was modified to become a check on the power of the legislature. *Id.* at 387-91.

⁵⁷⁶ The provisions governing amendments to the Maryland Constitution now are contained at Md. CONST. art. XIV.

⁵⁷⁷ Adopted as Article 41. This Article was re-adopted without debate. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION, *supra* note 52, at 219.

⁵⁷⁸ This provision explicitly made the constitution supreme to legislative law. Although this concept is apparent today, it was an issue of disagreement in the colonial period. GREEN, *supra* note 39, at 51-52. Thomas Jefferson's critique of the Virginia Constitution of 1776 specifically criticizes that document because it was subject to amendment by the legislature. THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA 121-25 (William Peden ed., 1955).

⁵⁷⁹ Originally adopted in Act of Nov. 7, 1972, ch. 366, 1972 Md. Laws 1225, this provision was later amended. Act of Nov. 7, 1978, ch. 681, 1977 Md. Laws 2751 (codified as amended at Md. CONST. art. 46).

⁵⁸⁰ State supreme courts have adopted a variety of standards for the review of classifications under their respective "little ERAs." Utah, Virginia, and Louisiana have adopted the least restrictive rational basis test. *The Maryland Equal Rights Amendment: Eight Years of Application*, 9 U. BALT. L. REV. 342, 349 (1980). That interpretation leaves less protection under a state "little ERA" than exists under the Equal Protection Clause of the Federal Constitution. U.S. CONST. amend. XIV; *Craig v. Boren*, 429 U.S. 190 (1976) (adopting intermediate scrutiny for gender discrimination, thus rendering state constitutional provision nugatory). A majority of states has adopted "strict judicial scrutiny" as the standard of review. *The Maryland Equal Rights Amendment: Eight Years of Application*, *supra*, at 350. This test is the same as that applied by the federal courts in cases of racial discrimination. Finally, the courts of Pennsylvania and Washington have adopted a third standard, the absolute standard. This standard is "based on a perception that even [the strict scrutiny] standard permits too much discretion and might allow some classifications to survive." Note, *Burning Tree Club, Inc. v. Bainum—State Action, Strict Scrutiny, and the "New Judicial Federalism"*, 47 MD. L. REV. 1219, 1231 (1988). Prior to its first ERA case, the Court of Appeals suggested in *Maryland State Board of Barber Examiners v. Kuhn*, 312 A.2d 216, 222 (Md. 1973), that the strict scrutiny standard would be applied. When the first case arrived, however, the Court of Appeals adopted an absolute standard. *Rand v. Rand*, 374 A.2d 900, 905 (Md. 1977). That standard was short-lived. *Burning Tree v. Bainum*, 501 A.2d 817, 822 (Md. 1985) ("Burning Tree I") (plurality decision) (indicating that strict scrutiny should be applied); see also Note, *Burning Tree Club, Inc. v. Bainum, State Action, Strict Scrutiny, and the "New Judicial Federalism"*, *supra*, at 1221. The strict scrutiny standard then was adopted, if obliquely, by the Court of Appeals. *State v. Burning Tree*, 554 A.2d 366 (1989) ("Burning Tree II"). The adoption of this standard was clarified in subsequent cases. See *Tyler v. State*, 623 A.2d 648, 651 (Md. 1993) (holding that under Article 46, sex, like race, is suspect classification subject to strict scrutiny analysis); *Murphy v. Edmonds*, 601 A.2d 102, 109 n.7 (Md. 1992) (applying strict scrutiny analysis); *Briscoe v. Prince George's County Health Dep't*, 593 A.2d 1109, 1115 n.7 (Md. 1991) (holding gender based classifications subject to strict scrutiny).

⁵⁸¹ For an excellent example of state constitutional scholarship and a thorough review of New Jersey's equal rights provision, see Robert F. Williams, *The New Jersey Equal Rights Amendment: A Documentary Sourcebook*, 16 WOMEN'S RTS. L. REP. 69 (1994).

⁵⁸² Act of Nov. 8, 1994, 1994 Md. Laws 1195-96 (proposing addition of victim's rights article to Declaration of Rights).

⁵⁸³ The first judicial interpretation of this provision came in *Cianos v. State*, 659 A.2d 291 (Md. 1995).