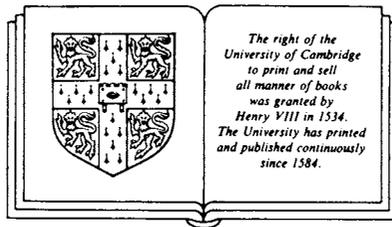


Foundations of Representative Government in Maryland, 1632–1715

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Introduction: “For the Good and Happy Government” of Maryland

On June 20, 1632, Cecilius Calvert, the twenty-seven-year-old second Lord Baltimore, received a proprietary charter for the vast domain in the New World that his father George Calvert had persistently sought for many years. King Charles granted to the Calverts and their heirs a princely territory of more than 10 million acres, to be called “Mariland” in honor of the queen, Henrietta Maria. Although the charter bestowed extensive prerogatives, Calvert’s extraordinary dominion was not totally unchecked. Recognizing the growing expectations of the English to have an active voice in their own governance, the document also extended to the settlers of Maryland a critical responsibility “for the good and happy Government of the said Province.” Lord Baltimore’s power to “ordain, Make and Enact Laws, of what kind soever, according to their sound discretions, whether relating to the Public State of the said Province, or the private Utility of Individuals” required “the Advice, Assent, and Approbation of the Free-Men of the same Province, or the greater part of them, or of their Delegates or Deputies whom We will shall be called Together for the Framing of Laws.”¹ Representative government in Maryland owes its origin and legitimacy to this clause of the Calverts’ charter which made their province the first permanent English colony on the North American continent to provide from its founding for an assembly of resident freemen.

The Lords Baltimore welcomed the existence of an assembly in their colony. George Calvert had consciously introduced the provision for a legislature into his charter of 1623 for Avalon and carefully retained that commitment in his subsequent plans for Maryland.² Cecilius Calvert con-

1. Francis Newton Thorpe, ed., *Federal and State Constitutions, Colonial Charters and Other Organic Laws*, 7 vols. (Washington, D.C., 1909), 3:1669–77 (in Latin), 1677–89 (in English; quotations, 1679–80).
2. For the text of the Avalon charter, consult John Thomas Scharf, *History of Maryland from Earliest Times to the Present Day*, 3 vols. (Baltimore, 1879), 1:39–40.

curred in his father's intentions, as eventually did Charles Calvert, who succeeded to the proprietorship in 1675. However, these men never envisaged the assembly as a strong, countervailing force to their own proprietary rule. Eventual legislative power in the colonial government of Maryland was the result, not the intention, of the charter's provision for an assembly.

Neither George nor Cecilius Calvert left any extensive explanation of his political views. Their convictions on government are nonetheless clearly discernible. Both men subscribed to the cherished rights and privileges of what J. G. A. Pocock has conveniently summarized as "the ancient constitution," with the central place of Parliament in that arrangement of government. The first Lord Baltimore demonstrated repeatedly in his public career a commitment to the legislature as the fundamental agent of representative government in the English system. He personally served in three Parliaments before his public avowal of Catholicism in 1625 led to his withdrawal from elective politics. Cecilius Calvert's Catholicism also rendered him ineligible to serve in Parliament, but by all indications, he fully shared his father's convictions regarding the importance of that institution.³

The Lords Baltimore did not conceive of the projected colony of Maryland as a replica of Stuart England, however, nor any assembly there as a miniature Parliament. Their new settlement could provide neither the social structure nor other conditions necessary to sustain the current political system of England and the role that Parliament played in that polity. The formidable challenge of establishing an English society in the New World suggested to the Calverts more appropriate models in England of an earlier age or in contemporary Ireland.

George Calvert, with his own extensive experience in politics, desired the greatest possible sovereignty and flexibility in governing a colony. He early decided to become an independent proprietor rather than to proceed through the more restrictive organization of a joint stock company,

3. John D. Krugler is engaged in a modern study of both men. See particularly his articles "Sir George Calvert's Resignation as Secretary of State and the Founding of Maryland," *Maryland Historical Magazine*, 68 (1973), 239-54; "'Our Trusty and Well Beloved Councillor': The Parliamentary Career of Sir George Calvert, 1609-24," *ibid.*, 72 (1977), 470-91; "'The Face of a Protestant and the Heart of a Papist': A Reexamination of Sir George Calvert's Conversion to Roman Catholicism," *Journal of Church and State*, 20 (1978), 507-31; and "The Calvert Family, Catholicism and Court Politics in Early Seventeenth Century England," *The Historian*, 43 (1981), 378-92. The best older biography is William Hand Browne, *George Calvert and Cecilius Calvert* (New York, 1890). See also J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (New York, 1967).

generally preferred by others for New World enterprises. Calvert prepared well for this new course, and his research located a promising precedent in pre-Tudor England, specifically in the palatinate of Durham during the 1300s. Calvert cleverly incorporated first into his charter for Avalon and more explicitly a decade later into the patent for Maryland the guarantee that the proprietor was to possess the equivalent powers that “any Bishop of Durham within the Bishopprick or County palatine of Durham in our Kingdome of England hath at anytime heretofore had” and that any interpretation of the charter’s provisions should be “beneficial, profitable and favorable” to the proprietor. The founders of later colonies recognized the genius of Calvert’s use of the bishop of Durham clause and frequently followed his example.⁴

This feudal model held many attractions. In addition to providing a “Royall Jurisdiction,” the Durham precedent embodied a finely graded social order, upon which the Lords Baltimore also placed a high value. Such a system might encourage more men of wealth and status to invest in Maryland and facilitate a smoother transition to a prospering, stable province. The manor could become the basic social, political, and economic institution, with Maryland’s lords providing leadership for this frontier community. Moreover, the Durham precedent ideally suited the purposes of the Calverts, who wanted to provide for the voice of the people in the political life of the colony but did not want proprietary authority much restricted by any expression of popular will. An assembly had gathered annually during the fourteenth century in Durham but sat without extensive legislative powers and possessed only limited control over taxation. Although barons and freemen had a voice in the government, the powerful bishop substantially circumscribed their role.

Acknowledging that the bishop of Durham clause conveyed powers obviously outmoded and intolerable in Stuart England, the Lords Baltimore claimed that these prerogatives were still timely and acceptable in a new colony across the ocean. Despite some strenuous objections to the terms of the charter, the king eventually concurred in its provisions. Two decades later, responding to renewed questions about this “Monarchical Government,” Cecilius Calvert offered the clearest surviving expression of the family’s philosophy. Although these powers “may not be convenient for any one man to have in England,” he explained in 1652, “yet

4. See the respective charters and Gaillard Thomas Lapsley, *The County Palatine of Durham: A Study in Constitutional History* (Cambridge, Eng., 1924), especially 106–55; David B. Quinn, “Introduction: Prelude to Maryland,” 11–25, in Quinn, ed., *Early Maryland in a Wider World* (Detroit, Mich., 1982); and Charles B. Andrews, *The Colonial Period of American History*, 4 vols. (New Haven, Conn., 1934–38), 1:308–12; 2:276–85.

they are necessary for any (whether one man or a Company) that undertakes a Plantation, in so remote and wild a place as Mariland, to have them there." The laws of the colony, he carefully continued, still had to have the consent of an assembly, "be consonant to reason, and be not repugnant or contrary, but, as neare as conveniently may bee, agreeable to the Laws of England." In Calvert's opinion, this provided the necessary check on what were otherwise essential deviations from contemporary English practices.⁵

The English experience in Ireland also influenced the founders of Maryland. George Calvert became a peer of Ireland in 1625 and owned a baronial estate there. In 1614, he had served on a special royal commission to examine the grievances of the Irish Parliament, which King James had summoned in 1613. The knowledge Calvert gained on this royal assignment undoubtedly returned to mind in the planning for his colonies. England's approach to the control of Ireland depended heavily on its colonization by numerous Englishmen of wealth and prominence and on the creation of new feudal estates for these immigrants. The first Lord Baltimore had even considered settling permanently in Ireland himself before he turned his attention more fully to America.⁶

This model remained before the Calverts through their continuing involvement in Ireland and through the activities of their good friend and adviser Thomas Wentworth, earl of Strafford, who served as lord deputy of Ireland from 1632 to 1640. Wentworth's views of the Irish Parliament, which sat again in 1634 with both Catholic and Protestant members, illuminate the attitudes of the Calverts as well. As Wentworth explained to the Irish Council, although the king called a Parliament in deference to the ancient ways, "he had absolute right and power to collect all the revenue he required without the consent of anybody and that their business as councillors was to trust their sovereign without asking questions."⁷ The

5. Clayton Colman Hall, ed., *Narratives of Early Maryland, 1633-1684* (New York, 1910), 173-74; William Hand Brown et al., eds., *Archives of Maryland*, 72 vols. to date (Baltimore, 1883-), 1:264 (cited hereafter as *Archives*). On the Calverts' intentions, in addition to the works cited in note 4, see particularly Russell R. Menard, "Economy and Society in Early Colonial Maryland" (Ph.D. diss., University of Iowa, 1975), especially 1-56, and John D. Krugler, "Lord Baltimore, Roman Catholics and Toleration: Religious Policy in Maryland During the Early Catholic Years, 1634-1649," *Catholic Historical Review*, 65 (1979), 49-75.
6. David Beers Quinn has influentially noted the importance of Ireland; others ably extend his work in K. R. Andrews, N. P. Cranny, and P. E. H. Hair, eds., *The Westward Enterprise. English Activities in Ireland, the Atlantic, and America 1480-1650* (Liverpool, 1978). Richard Bagwell, *Ireland Under the Stuarts and During the Interregnum*, 3 vols. (London, 1963), 1:108-17, discusses the Parliament of 1613-15 and Calvert's role.
7. Bagwell, *Ireland Under the Stuarts*, 1:211-314 (quotation, 212). Krugler, "The Calvert

Calverts were to voice similar sentiments about their government in Maryland. Like Wentworth, they saw no inconsistency in concurrently championing the rights of the English Parliament while also laboring to keep another legislature in a more subordinate role.⁸

Other models from the New World undoubtedly affected the Calverts' early thinking about the role of freemen. Rudimentary assemblies had evolved in Virginia, Bermuda, and Massachusetts from the structures of the joint stock companies that had founded the respective colonies. These institutions remained frail and their futures uncertain in 1632. Even so, if the Calverts were to compete successfully for immigrants, they had to offer no less an opportunity for the participation of freemen, especially since the awesome powers of a Catholic proprietor might initially discourage some prospective colonists.⁹

The Calverts, in implementing their philosophy on popular participation, resembled earlier English monarchs who had summoned the first Parliaments. Those rulers had set out not to establish a counterforce to their own power, but rather to acquire assistance and an endorsement of actions. However, just as discussion in Parliament led eventually to opposition and a limit on authority, so it would be with Maryland's assembly.¹⁰ Gradually, the freemen and their representatives came to expect an influence far surpassing that which the Calverts ever intended. The only model most of these Englishmen knew was their perception, however precise or accurate, of the Parliament of their own day. In fact, many early Marylanders displayed an astonishing knowledge of current parliamentary procedures and powers and the latest political developments in the mother country. Popular awareness of such issues was mounting throughout the English-speaking world. Following the Parliament of 1628, with its famous Petition of Right, debate over the proper place of that institution remained at the center of political discussion for the next

Family," 380-84, 388-90; and J. P. Cooper, ed., *Wentworth Papers, 1597-1628* (London, 1973), especially 291.

8. Wentworth's actions have puzzled historians who wish to categorize him neatly as a royalist or parliamentarian. Conrad Russell disputes the arguments of a court-country dichotomy among members of Parliament in this era and considers Wentworth in a more sophisticated fashion. I believe the same explanations apply to the Calverts. See Russell's "Parliamentary History in Perspective, 1604-1629," *History*, 61 (1976), 1-27, and *Parliament and English Politics, 1621-1629* (Oxford, 1979).
9. Andrews, *Colonial Period*, Vol. 1, extensively discusses the joint stock companies' roles in the governance of these colonies. Michael Kammen, *Deputyes & Libertyes. The Origins of Representative Government in Colonial America* (New York, 1969), 12-26, is also pertinent.
10. G. R. Elton, "The Body of the Whole Realm," in *Parliament and Representation in Medieval and Tudor England* (Charlottesville, Va., 1969), 16-17.

two decades, the very critical years of Maryland's founding and the start of its own representative assembly.¹¹

Immigrants to the Calverts' Chesapeake colony naturally wanted to replicate desirable aspects of the world they had left behind.¹² They especially brought the convictions of contemporary Englishmen engaged in a critical political debate. Liberties under assault in England, as King Charles tried to rule without a Parliament in the 1630s, assumed a special currency for colonists subject to a Catholic proprietor claiming monarchical powers himself. It is no wonder that the settlers of Maryland over the next century were to appeal to the precedent of Parliament and attempt in their assembly to emulate the House of Commons to a degree probably unmatched elsewhere in the New World.¹³

These political concerns surfaced almost immediately in the young colony. Settlers quickly asked "what Laws the Province should be governed by." By common understanding, the charter and instructions to the governor, as well as English common and statute law, were to provide the basic foundation for government, but some colonists wanted this understanding explicitly stipulated in legislation passed by their own assembly. Perhaps, others pondered, some provisions of English law were more appropriate and desirable than others, and local circumstances might require some unique statutes. Whatever their respective opinions on such questions, most freemen readily concurred that they should play a central role through the assembly in resolving these differences and in determining what the colony's laws were to be. Most freemen did not accept the proprietor's proposition that his bills would always necessarily make "wholesome laws and ordinances," nor were they anxious to acknowledge further or to enhance his powers. Rather, they desired a firm recognition of the role of the local assembly in keeping with their understanding of the position of Parliament with respect to the king.¹⁴

These sharply opposing perspectives on the Maryland assembly came

11. D. M. Hirst, *The Representative of the People? Voters and Voting in England Under the Early Stuarts* (Cambridge, Eng., 1975) and Russell, *Parliament and English Politics*, argue persuasively for the existence of an involved and enlightened citizenry in early seventeenth century England.
12. These themes of persistence and replication of English practices and beliefs have been explored by David Grayson Allen, *In English Ways: The Movement of Societies and the Transfer of English Local Law and Custom to Massachusetts Bay in the Seventeenth Century* (Chapel Hill, N.C., 1981), and by T. H. Breen in numerous essays, many recently collected in *Puritans and Adventurers* (New York, 1981).
13. Mary Patterson Clarke, *Parliamentary Privilege in the American Colonies* (New Haven, Conn., 1943), 21 (particularly n. 15).
14. *Archives*, 1:9, 10; 2:23; 3:50-51, 53. The application of English laws long remained a subject of debate. See George Leakin Sioussat, *The English Statutes in Maryland*, The Johns Hopkins University Studies in Historical and Political Science, Nos. 11 and 12 (Baltimore, 1903).

into open conflict in the 1630s and persisted for decades thereafter. The dimensions of the debate and the specific issues in dispute were transformed over the years, as Charles Calvert succeeded his father as third Lord Baltimore, as conditions altered both in the colony and in the mother country, and as the profile of the colony’s population and particularly the membership of the assembly likewise changed. Through the 1680s, proponents of a more active and representative assembly battled vigorously with two proprietors and their deputies over general procedures and prerogatives as well as particular legislative issues, and elected delegates futilely fought for a predominant role in the proceedings of the assembly. Gains were slow in coming, for the Calverts successfully withstood most pressures for many decades. Not until the overthrow of proprietary authority in the revolution of 1689 and the imposition of royal government in Maryland for a generation thereafter did the assembly realize the earlier claims of its supporters. Governors appointed by the Crown regarded the introduction of English parliamentary practices as both normal and desirable, and ironically these royal placemen aided the advancement of representative government.

No direct line of development, no steady “winning of the initiative” characterizes the history of the legislature in Maryland. Rather, it followed an irregular pace of development.¹⁵ The eventual shape of the assembly in its institutional forms and practices owes much to the model of Parliament, but the evolution of representative government in the colony also derives significantly from developments far removed from the political debates of the mother country. Demographic, economic, and social influences with a timing of their own profoundly influenced the course of Maryland’s political history, as did the particular and often peculiar personalities of individual colonists. Collectively, these forces of both the Old World and the New, the impersonal and the decidedly human factors interacted to shape the assembly from its first meeting in February of 1634/35 until 1715, by which time that legislative body had assumed most of those fundamental features and powers it was to possess through the years of the American Revolution.¹⁶

15. The phrase comes from Wallace Notestein’s celebrated essay, *The Winning of the Initiative by the House of Commons* (London, 1925). Recently, historians have postulated that the ascendancy of Parliament occurred later, less steadily, and without so conscious a dichotomy between the legislature and the Crown as usually argued. See particularly G. R. Elton, *Studies in Tudor and Stuart Politics and Government*, 2 vols. (Cambridge, Eng., 1974), and works cited in note 8. J. H. Hexter surveys this revisionist literature in “The Early Stuarts and Parliament: Old Hat and the Nouvelle Vague,” *Parliamentary History*, 1 (1982), 181–215.

16. All dates falling between January 1 and March 25, the start of a new calendar year in Old Style dating, will be rendered with a slash mark, as here in “February of 1634/35.”