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CONSTITUTIONAL REFORM FAILS IN
THE FREE STATE:

The Maryland Constitutional Convention of 1967-68*

JOHN P. WHEELER, JR.†

On May 14, 1968, the voters of Maryland dealt a crushing blow
to constitutional reform in The Free State. By a surprising vote of
367,101 to 284,033, they rejected a proposed constitution which had
been written by a popularly chosen Convention, endorsed by the
civic, political and business leadership of the state, and hailed by
civic reformers everywhere as one of the most forward looking docu-
ments to come out of the states. This vote was no freak result from
a small turnout. About 46 per cent of the electorate participated, an
outstanding turnout compared to normal votes in such elections,1
a vote that repudiated completely the Convention leadership's claim
that a turnout of 25 per cent or greater would insure passage of the
proposed constitution. Only in the two Washington suburban coun-
ties, Prince George's and Montgomery, did the constitution muster
majority support and even there the margins were smaller than hoped
for and expected. Populous Baltimore County turned in a 2 to 1
margin against the document in a turnout of nearly 124,000 voters.
Only 46.2 per cent of the voters in Baltimore City voted "Yes." The
electorates in the 16 rural counties of the Eastern Shore, Southern,
and Western Maryland are small, containing few of the state's voters,
but those voters turned out in amazingly large numbers producing
majorities against the constitution that varied from 68 to 85 per cent.

Few dreamed of defeat for the document, even among the oppo-

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*This article is adopted from a book written by Dean Wheeler and Melissa
Kinsey which will be published later this year by the National Municipal League.

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sultant to the National Municipal League on state constitutional matters and
previously served that organization as director of its State Constitutional Studies
Program.

2The total Maryland vote was 651,134 as compared to voter participation in
other recent constitutional referenda which averaged only 400,000.
expected, its magnitude was a total surprise. All tangible evidence pointed clearly to success for the proponents of change.

Several ad hoc groups had sprung up in opposition but few permanent interest groups gave battle to the document. Principally in opposition were those organizations whose members had tangible vested job interests—the state organizations of the sheriffs, registers of wills, and clerks of court. But almost every other interest group bureaucracy endorsed the proposed constitution—the labor unions, chambers of commerce, bar associations, League of Women Voters. Press coverage in the metropolitan area was sympathetic, although the rural press was, on the whole, opposed. The personal endorsements of the constitution read like a "Who's Who" of Maryland's business, civic, educational and political leadership. The "establishment" strongly backed the constitution.

Just six days before the fateful vote, the Evening Sun of Baltimore carried parallel stories of the campaign efforts of the proponents and opponents. The headlines reflect their messages: "SUPPORTERS ARE A WELL-KNIT ARMY, ABLY FINANCED, AND SURE OF VICTORY — ADVERSARIES ARE UNORGANIZED, HAVE LITTLE MONEY OR CONFIDENCE."2

That is the way things looked in early May.

And then came May 14th.

This article is basically a narrative, describing the principal events of the effort to achieve constitutional reform in Maryland. It is not an intensive analysis although some interpretations are offered. Part I describes the steps leading to the Constitutional Convention of 1967-68. Part II treats some of the features of that Convention, its organization and operation. The significant changes proposed by the Convention are dealt with in Part III. Part IV capsules the campaign over ratification of the Convention's product—the issues, their appeal, the contending forces. In the brief conclusion, the author's viewpoint on the causes of defeat is presented—with no apologies!

I. STEPS LEADING TO THE CONVENTION

Constitutions are so much a part of American life, so important to the functioning of government, state governments particularly, that the process of their revision or amendment can hardly be said to have a beginning or an ending. Indeed like the legislative process it is constant; the only variables are the particular stage at which the process might be and the intensity with which it might be pursued

at a given moment. Nevertheless, some facts about the recent effort in Maryland can be arbitrarily selected for emphasis.

In 1930 the voters of Maryland cast their ballots for the calling of a Constitutional Convention. The majority was small but clear—53.4 per cent, but the low turnout on this question—202,052—was a fraction of those voting in the election and since the controlling constitutional provision referred specifically to a "majority of voters at such election or elections" the General Assembly did not feel obligated to follow through with arrangements for such a gathering. There was a repeat performance in 1950 when the vote FOR overwhelmed that AGAINST, 200,439 to 56,998; and the results were exactly the same: legislative inaction. Throughout the 1950's, though, agitation continued both within the legislature and without, particularly as problems of apportionment became more acute and pressing upon the suburban majority. The breaking of the logjam on calling a convention had to await reapportionment and the unleashing of the reform pressures that reapportionment stimulated. In 1964, the Supreme Court of the United States ordered both Houses of the Maryland General Assembly reapportioned according to the principle of one-man one-vote, an action that brought dramatic and far-reaching shifts in the power structure of the State.

A. The Maryland Constitutional Convention Commission.

The appointment by Governor J. Millard Tawes of the Maryland Constitutional Convention Commission in June 1965 symbolized the break with past inaction. Governor Tawes, out of both personal conviction and a recognition of the handwriting on the wall, determined to push for constitutional revision. He asked the 1965 General Assembly to provide for a commission to study the constitution and prepare, if the need appeared, for a constitutional convention. The General Assembly rebuffed him, the recalcitrant Senate Judiciary Committee refusing to vote on the bill even though the House of Delegates had already passed it. Tawes reacted by appointing a twenty-seven member commission on his own authority with executive

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4E.g., The Southern and Eastern shores of Maryland had a total representation of 47 seats in the Legislature before reapportionment; after reapportionment the same area had a total representation of only 23 seats. Correspondingly, the representation in the urban and suburban areas of Baltimore and the suburban areas of Washington increased from 79 to 106. Report of the Constitutional Convention Commission of Maryland 68 (1967) (hereinafter cited as Commission Report).
funds on June 16, 1965. He named H. Vernon Eney chairman.\(^5\) Eney, a senior partner in one of Baltimore's most prestigious law firms, a former president of the Maryland Bar Association and a former member of several state commissions was at the time fifty-six years old. He is a conservative in taste and politics, a Democrat, but largely inactive in partisan affairs, a man dedicated to public service as an avocation. Eney's identification with the revision process over the next three years would be complete, his dedication full, his driving energy a source of inspiration to many, a cause of friction for some. The Maryland Constitutional Convention Commission would often be shortened to the "Eney Commission," its proposed draft to the "Eney Draft." This was more than newspaper license and popular abbreviation; to a considerable extent it was descriptive. For on that document, and indeed upon the entire process of constitutional revision in Maryland, the imprint of Vernon Eney is marked.

Governor Tawes instructed his commission "to conduct an inquiry into the necessity for, and extent and nature of, any amendment, modification or revision of the Constitution of Maryland, with particular respect to whether a constitutional convention should be held, the procedures for calling such a convention, the basis for representation at the convention and the procedures for the election of the delegates thereto."\(^7\) Simply stated, the Commission was charged with answering three questions: Does the 1867 Constitution of Maryland need amending or revising? If so, how should it be done? What substantive changes are needed? Actually, the first two questions were foregone conclusions. At its first meeting on July 21, 1965, the Commission concluded unanimously "that a complete revision of the Constitution of Maryland is urgently desirable and necessary."\(^8\) At its second meeting three weeks later, it concluded again unanimously that the revision should be done by convention. A committee of three was appointed by Eney to study the question of whether a complete new draft should be prepared by the Commission. At the third meeting of the Commission, this group recommended and the Commission approved the writing of a new document. Unlike the first two decisions of the Commission, this matter divided the members. Some regarded the Commission as only a study group and felt

\(^6\)Governor Tawes had named William Preston Lane, Jr., former Governor of Maryland and a highly regarded political figure as Honorary Chairman. Lane, however, died before the Commission finished its work, but he participated fully in its activities until his death.

\(^7\)Venable, Baetjer & Howard, Baltimore, Maryland.

\(^8\)Commission Report 419 (1967).

*Commission Report 3 n.6 (1967).*
it would be overly ambitious to undertake a project of such magnitude. Nevertheless, once the decision had been reached, committees were immediately appointed to study the specifics of the Maryland Constitution.

B. The Commission Draft

The Commission produced a draft shorter than the Model State Constitution and hardly one-third as long as the existing Maryland Constitution. The Declaration of Rights contains firm statements of those individual rights which are essential to the maintenance of individual liberty and sound democratic processes; statements in sufficiently precise language to protect rights which have evolved through the centuries; statements in sufficiently general language to allow these rights to expand to meet new needs. Both the executive and legislative departments are strengthened and made more visible to the voters who must pass upon the performances of the occupants of office. If the judiciary article is too long, too detailed, too complete, chalk that up to the zeal for reform of the lawyer-dominated Commission. Long efforts to modernize, particularly the courts of limited jurisdiction, had failed and apparently the members of the Commission did not trust the political branches of government to accomplish what they believed was necessary. Very little was done to change the financial powers of the State from those in the present constitution.

The Commission cleaned up, culled out, shortened and clarified but made few fundamental changes. The most significant proposals were made in the local government provisions. Home rule was mandated for the counties on the basis of “shared power” and the General Assembly was relieved of the burden of local legislation which consumed its time and attention, creating local governments without allowing local government. The Commission tried to anticipate future needs by providing—in far too much detail—for regional governments. Here, as in the judiciary article, the thrust was more

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10 This draft is reproduced in full in Commission Report 71-93 (1967). Following that presentation, there is an extended commentary with respect to these provisions.
11 Compare Maryland Const. art. II and III with Constitution of Maryland as adopted by the Convention art. 3 and 4 (1967) (hereinafter cited as Proposed Constitution).
12 Compare Maryland Const. art. III § 52 with Proposed Constitution art. 6 §§ 6.08-16.
13 Proposed Constitution art. 7 §§ 7.03-05 provide for the establishment of regional governments, changes in their structure, and in their power.
for specific institutional reforms than it was toward the development of a constitution that would allow the political branches to reform when the public demanded it or their wisdom dictated.

Overall, the Commission draft was a major improvement over the existing Constitution—if one accepts the philosophy that it purports to reflect. Likewise, it is a significant contribution to the literature of state and governmental reform in the United States. Perhaps the philosophy can best be understood by contrasting the old and the new. A constitution is preeminently a political document and only secondarily a legal one. In its simplest forms, it seeks to establish the "rule of the game" by which the society will make the decisions and take collective action. It prescribes what the community may do and prescribes what it may not do; it attempts to set that fine and forever shifting line between collective authority and individual freedom. That is the ideal. In practice the constitution as a political document, has reflected throughout history the interests, the theories, the felt needs, and the outlooks of its writers. More often than not a constitution is a reflection of the historical forces playing upon a society at a given time. Maryland's constitutions have mirrored the State's problems. The Constitution of 1867 continued the colonial fears of the executive power and of governmental power generally. It also reflected more pressing concerns resulting from the terrors, disruptions and damage of the Civil War, some of which was fought on Maryland soil. Subsequent developments in state government both in Maryland and elsewhere led to greater distrust of government and further restrictions upon political power. As a result the Constitution of 1867 as it exists today seeks to diffuse, rather than organize, the power of the state, places a premium upon a conservative confrontation of problems, reflects a comfort with old institutions and old ways of doing things, and elevates restraint upon governmental action above efficiency and responsibility. These are not goals to be lightly dismissed; they are and have been deeply imbedded in the American tradition. The question now arises whether adherence to these goals would not cost Maryland—not just in dollars but in democratic values—more than the people could afford to bear.

The Commission thought so. The overall cast of the twenty-seven members was conservative, but the conservatism was realistic and recognized that, to hold on to the truly fundamental values of the past, accommodations had to be made to contemporary problems and

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14See Constitution of Maryland as Adopted by the Convention (1968).
16Id. at iii.
demands. The Commission expressed its belief that the vast expansion of the national government has in part been due to the inability or unwillingness of state governments to meet the needs of the people. Only by strengthening state and local governments, the Commission argued, can the people retain the opportunity to shape their own destinies. This may not be a wholly accurate appraisal of the role of the states or the capacity of the national government for responsiveness and responsibility but it is wholly in accord with conservative thinking.

The Commission capsulized the philosophy which had developed out of their debates and actions:

[The Commission believes that the people of Maryland desire a constitution which will confer upon the three great coordinate branches of our state government and upon our local governments the full sovereign power of the State, subject only to those restrictions necessary to protect the individual citizen from an arbitrary, capricious and unequal exercise of that power. In the Commission's view it is only this type of state government which can solve the many problems of today, which, though they now seem overwhelming, are nevertheless only in embryonic stage. The basic concept and purpose of the draft constitution recommended by the Commission is to create a state government which will remain viable in a changing world.]

Despite the disastrous outcome of the revision effort in Maryland, the Commission's draft deserves far closer study than can be given in this article. The impact of the Commission's work upon that of the Convention can hardly be overemphasized. It provided at the outset basic materials for study and background. It gave the Convention a major head start in organization and getting underway. Most significantly it provided a draft constitution as a takeoff point, a draft that reflected sound principles. The "Eney" draft was not imposed upon the Convention as opponents were charged, but there was quiet opposition among the delegates using it. Some wanted to start afresh. As it worked out, the draft proved to be largely a point of beginning, not of ending, with the Convention changing or modifying it freely and creating anew when it desired. Its principal contribution was that it caused the delegates to think afresh about the problems of Maryland and not to begin from the existing constitutional structure would probably have encouraged a patching up rather than a rethinking.

17 Id. at 9.
18 Id. at 10.
C. Calling the Convention

The voters of Maryland approved the calling of a convention in a special election held at the time of the party primaries—September 12, 1966, a day known as Defenders Day in Maryland. By calling a special election the General Assembly avoided the question of whether a majority voting on the question constituted a majority voting in the election. A simple majority on the question was all that was needed. That majority was overwhelming—160,280 to 31,680—but there was an exceedingly small turnout of voters, less than 14 per cent of the total registered. The question carried handsomely in every county in the state and overwhelmingly in the Washington and Baltimore suburbs and in Baltimore City. Delegates to the Constitutional Convention were chosen in a special non-partisan election held June 13, 1967. A total of 735 candidates vied for the 142 delegates posts producing some ballots which contained up to 63 names. Voter interest did not match candidate interest and only slightly more than one-fifth of the registered voters turned out to cast ballots in this significant election.

Whether partly because of or wholly in spite of the confusion of candidacies in the small turnout, the election produced an amazingly competent group of delegates, with widely varying backgrounds but generally sharing the attributes of good education, civic as opposed to "political" involvements, substantial income, and a commitment to reform. A profile of the social backgrounds of the delegates reveals representation from almost every occupational category, income level, religion, educational background and age group. Yet this does not mean that the representation was evenly distributed. There was no typical delegate but the model delegate was a white, protestant, middle-aged lawyer of significant income who worked in the city and lived in the suburbs. He was far more likely to be a Democrat than a Republican but his political involvements in the past had been few. Fifty-one reported no previous involvement in any political activity—i.e., serving on a party committee, running for public office, or participating in any official capacity in a political campaign. Another thirty reported only limited contact such as serving on a special study commission or holding an appointed governmental position. Two delegates were sitting circuit judges, thirteen others had previously served on some court; one had been Chief Judge of the Court of Appeals. Only eleven delegates were incumbent legislators, although twenty-two others had previously served in the

Note 16 supra.
General Assembly. Compared to most constitutional conventions, political experience and involvement was not a mark of the Maryland delegate. This fact would ultimately have significant impact upon the outcome of the constitutional revision effort.

II. The Convention

A. Getting Under Way

Two significant actions were taken prior to the assembling of the delegates in Annapolis on September 12, 1967 to begin their deliberations.

First, in late June, barely two weeks after their election, the delegates were summoned by the Maryland Constitutional Convention Commission to gather for a special four-day orientation meeting on the campus of Goucher College just outside of Baltimore City. Surprisingly 139 of the 142 delegates responded to the extent of attending at least one session. Many stayed for the full program, some residing overnight in the dormitories of the college. Four, one and one-half hour sessions were held on the first and last days and six such sessions were held on each of the other two days. The delegates divided into three groups and rotated from one session to another, each program being presented three times. The format was fairly standard: a panel of experts—state officials, political scientists or other academicians or representatives from other organizations—described their activities or their offices or discussed general and specific problems of constitutional revision. One common theme emerged from nearly all presentations by state officials: they congratulated the delegates upon their election, commented favorably upon the need for constitutional revision in Maryland, and commended the delegates to the great task remaining before them, but assured them that in their particular area of operation everything was fine and no change was needed. The primary purpose of the seminar was to acquaint the delegates with the actual operation of the state government under the present constitution; other equally important functions were byproducts. However, it also gave them an opportunity to become acquainted with each other and provided the occasion for some “politiking.” At that point Eney, who had been elected a delegate from Baltimore county was clearly considered the frontrunner for the convention presidency. Both a liberal and conservative faction began to form in opposition but no agreement was reached at Goucher concerning candidates. Indeed most of the delegates, while listening to all, made no commitment. Eney proscribed any personal quest for
the presidency and refused to give his blessings to efforts on his behalf. But the efforts were nevertheless made, particularly by some of the eleven members from the Commission who had been chosen delegates. Principally, the delegates were given an opportunity to meet Eney and to see the kind of organization that he could arrange and administer.

The second event of significance was a one-day organizational session held on July 11, 1967. The rules were adopted and the officers chosen thus allowing a full two months for the leadership of the Convention to provide for the organization and staffing of the Convention prior to its formal assembly on September 12, 1967. The rules adopted by the Convention after only two hours of debate varied only slightly from those drawn up and recommended by the Commission. Certainly the thrust was the same. They provided for a strong president with broad appointive powers over committees, committee chairmen and staffs, and charged him with general supervision of the Convention operation. The rules also called for a procedure designed to expedite action while at the same time protecting the rights of individual delegates and the minorities that would form in the Convention.

B. The Leadership

The rules called for the election of an honorary president, a president and two vice-presidents, all of whom would be delegates, but the central control of the Convention's organization and procedure was clearly to be in the hands of the president. The honorary president was strictly that. The duties of the vice-presidents were limited to presiding over the sessions of the Convention in the absence of the president and to consulting with him on the appointment of committee chairmen and committee members. Neither would succeed to the office of president should a vacancy occur but would preside only temporarily until the Convention could elect another president. There were other officers called for: a secretary, a chief clerk, a sergeant at arms, a parliamentarian and an historian, but these positions were not to be filled by delegates. Later a Convention resolution directed the president to fill these places by appointment.

J. Millard Tawes, the ex-Governor who had initiated the process finally leading to the calling of a Convention, was chosen honorary president of the Convention. The office had originally been established with him in mind. The election of the president took place with cliff-hanging suspense. The usual tedium resulting from the slow calling of the roll of 142 names disappeared and indeed was
replaced with increasing excitement as numerous delegates and spectators kept their own running tallies. Seventy-two votes were needed for election by a constitutional majority, although with four delegates missing or abstaining only 138 votes would be cast. The first ballot produced a sizable plurality for Eney, but his sixty-five votes fell short of the needed majority of seventy-two. James Clark of Howard County, a State Senator of liberal leanings, drew thirty-eight and William S. James, the President of the Senate, polled thirty-five. There were flurries on the floor to modify the voting rules to allow the dropping of the third man if the next ballot failed to produce a majority, but this was ruled out of order. The second roll call began. The spectators again began their tallies. The score this time: Eney seventy-one; James, thirty-six; Clark, thirty-two. The Convention was preparing for a third ballot when James moved for Eney's election by acclamation. Clark seconded. The rules still forced a roll call and Eney was unanimously chosen.

Clark and James were then chosen first vice-president and second vice-president, respectively.

C. The Committee Structure

Only eight substantive committees and three housekeeping or procedural committees were called for in the rules. Later, a fourth housekeeping committee on public information would be added. Each substantive committee was given a wide area of responsibility and no committee was set up to deal with a limited issue. There was no committee, for example, on natural resources as in the Alaska Convention of 1955 or a committee on public welfare as in the New York Convention of 1967. This ideal arrangement forced consideration of fundamental issues and discouraged consideration or inclusion of detailed materials that best could be left to the legislature. The substantive committees with their size as determined by the president were:

- Preamble and Personal Rights (17 members)
- Suffrage and Election (15)
- Legislative Branch (19)
- Executive Branch (19)
- Judicial Branch (19)
- State Finance and Taxation (15)
- Local Government (19)
- General Provisions (15)\textsuperscript{20}

\textsuperscript{20}This committee dealt with such diverse areas as public education, natural resources and the oaths of office.
The other committees called for were:

- Rules, Credentials and Convention Budget (11 members)
- Calendar and Agenda of the Convention (8)
- Style Drafting and Arrangement (11)
- Public Information (15)

D. Staffing

Eney spent a good deal of time between the organizational session and the opening of the Convention putting a staff together. This is not an easy task, for a Convention while a temporary affair, is sufficiently long to seriously interrupt the usual vocational activities and responsibilities of job candidates. The brief two months available plus the pressures of other planning problems—for example, the selection of committee chairmen and the appointment of committees—complicated Eney's task. He probably contributed to his own problems through his efforts to interview personally or at least to pass upon every person hired. Certainly both the Secretary of the Convention and the Chief of Staff felt restrained in their recruiting efforts by the necessity of having to clear the appointments with Eney.

In a convention structured on a partisan basis, staffing is relatively easy for the central leadership: Most of the responsibility is delegated to the parties. However, confidence and accountability may be sacrificed. For the effort at hand the Convention had limited funds, and none existed to be wasted on patronage appointments. The Convention needed competent, dedicated workers and the standard of appointment was merit. Some appointees came directly from the staff of the Maryland Constitutional Convention Commission.21 The Convention finally filled 103 of the 105 staff positions that Eney authorized. The authorized positions included 30 on the administrative staff, 28 on the committee and research staff, 40 secretaries and 7 duplicating operators. In addition to the 105 staff positions there were the

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21 The Secretary, Robert J. Martineau, had been a member and secretary of that body. John C. Brooks, the Chief of Staff, had been Executive Director of the Commission. Professor Garrett Power, of the University of Maryland Law School who had served as Reporter for the Commission's Committee on the Executive Department signed on as the adviser to the Convention's Committee on the Executive Branch. Goucher College political scientist, Robert D. Lovey, had been a consultant to the Commission and became adviser to the Committee on the Legislative Branch. Some other research, secretarial and clerical personnel moved from the Commission to the Convention. But on the whole, the majority of the staff had to be recruited anew.
pages who were high school students employed for short periods. Delegates were not provided personal secretarial assistance.22

E. The Delegates and their Work

Less than one-fourth of the delegates had had any previous experience in the legislative body. Some may have had a comparable experience in private organizations, but overall, the group that assembled in Annapolis for the purpose of writing a new constitution for Maryland was composed largely of amateurs in parliamentary procedure and novices in politics. Given the limited life of the Convention as prescribed by the enabling legislation 23 and the magnitude of the job to be done, one might legitimately have had doubts about the future success of the undertaking. A convention is definitely not a legislature but it must function somewhat like one. The rules of procedure are the essential elements in the process of making constitutional or statutory law and they can be used as weapons of politics by experienced individuals. However, this happened rarely in the Maryland Convention.

Delegates behaved neither as partisans nor as representatives of geographical constituencies. Indeed many of them strained to avoid any appearance of responding to such connections. One innovation in the Convention organization which was not only symbolically important but had a significant effect upon delegate orientation was that which required seating in alphabetical order. There was never any question of partisan seating or partisan organization of the Convention. However, there were pressures to recognize the county constituencies of the various delegates. Alphabetical seating was a way of discouraging the formation of any political groupings along county or regional lines. Efforts made to change this pattern, which had been recommended by the Commission and by the Convention's Rules Committee, were soundly rejected by the delegates.

On the whole, the Convention ran smoothly, far more so than one could have expected. Occasionally it bogged down but it quickly

22The Governor's budget approved by the General Assembly provided $2 million dollars for the Convention. A small amount of this, $20,000, was to be used to finish the work of the Commission; another $750,000 was to pay the cost of the special referendum on adoption of the draft constitution. These subtractions left $1,230,000 in the coffers for the operation of the Convention and its post-Convention activities. Delegates were paid a flat $2,000 for the duration of the Convention, and, in addition each received $25 per day in expenses.

pulled itself out. It failed by nearly a month to make its original deadline of December 12th, but that deadline was wholly unrealistic. The legislature had provided 90 days for the life of the Convention. It also provided, however, that the Convention could extend its own life by 30 days if the time was needed, a privilege it exercised in early December. The Convention adjourned *sine die* on January 10, 1968.

The final vote on the adoption of the Constitution was 121-3. While as many as twenty delegates would ultimately oppose the Convention's product, the agreement within the Convention was surprising.

III. THE SUBSTANCE OF CHANGE

Maryland's present constitution contains about 42,000 words, making it the eighth longest state constitution. Yet seven states have managed to maintain a functioning government, insure domestic tranquility and secure the blessings of liberty with documents of less than 10,000 words. Length, of course, is not in itself important, but it does indicate detail and detail indicates restrictions. And restrictions, when carried too far, defeat the essential purposes of a constitution.

No state constitution is a candidate for a Pulitzer award. Most, including that of Maryland, are long and tedious, cluttered with statutory material and obsolete with archaic provisions. They empower less than they hamstring. On the whole, the documents are dull, although something occasionally catches the reader's eye, e.g., both the Maryland and South Carolina Constitutions ban dueling, truly a burning issue.

Let the emphasis be clear—the goal in writing a constitution is not to draft a pretty and interesting document. Constitutions uncluttered by deadwood and superfluous language may be preferred but such matters really have little significance in the lives of men. What should trouble Americans are constitutional provisions that keep governors from governing, legislators from legislating, judges from adjudicating and the people from passing meaningful judgments on the actions of these public servants.

This is what troubled the members of the Convention as they looked at the Constitution of 1867. They wanted Maryland to have

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See *The Book of The States* 15 (1968) which lists the seven longer constitutions as: Alabama, Arkansas, California, Louisiana, New York, Oklahoma and Texas.

See *The Book of The States* 15 (1968) which lists the seven shorter constitutions as: Connecticut, Indiana, Kansas, New Hampshire, Rhode Island, Tennessee and Vermont.

MARYLAND CONST. art. III § 41; S. C. CONST. art. I § 11.
a stronger state government, a more representative one, a state government that was more visible, more responsible and responsive. The constitution they wrote and adopted was not perfect but it offered great hope for improvement and presented a model for other reform-minded states to consider.

Their efforts failed. The constitution was rejected by the people for reasons associated with the document and for reasons wholly extraneous to it. That document will never become law but it deserves careful study both for its strength and weaknesses.

Three Main Branches of State Government

A. Improving the Legislature

Legislative reform—along with the strengthening of local government—provided the principal thrust for the constitutional reform movement in Maryland. What the Convention did in expanding legislative powers and responsibilities can be disposed of quickly. So far as the legislature has plenary powers to act in the absence of constitutional restraint, almost any constitutional statement becomes a limitation and any removal of language an expansion. Two specific actions should be noted. First, more than any other single proposal the endorsement of the "shared powers" concept for local home rule laid the basis for the legislature to concentrate its concern upon statewide problems. The massive amount of local legislation that pours annually from the General Assembly does not produce legislative power over local government—in the collective sense—but merely serves to buttress the political power of certain legislators, to distract the legislature as a whole from its general responsibilities, and to undermine the principle of home rule. The second action was really inaction, for the Convention refused to abandon the extremely tight Executive Budget System effective in the state since 1915 in favor of expanded legislative power. Under the present system the legislature may not increase appropriations provided for in the executive budget or add new appropriations without imposing a specific tax to provide the income. Thus the legislature, in effect, is limited to cutting the Governor's budget. It may not even cut in one area to reassign to another.

27The shared power concept grants to local governments all powers except those which are denied by the constitution, the Legislature or the local charter. The local governments are free and empowered to govern locally; the opportunities of such a system are obvious, local government may effectively handle local problems and the state legislature is freed to handle State problems. See J. Dillon, Commentaries on the Law of Municipal Corporations 173 (5th ed. 1911).
effort to give the Maryland General Assembly the traditional legislative controls over the purse strings failed by a large margin and did not secure even a majority vote of the eleven legislators among the delegates.

The structural changes proposed for the legislature were most important. The Convention decreed single-member districts for the election of all members of the General Assembly. Without question this issue was the most bitterly divisive one in the legislative article and one of the few that scarred the Convention and the proposed constitution. Currently, Maryland legislative districts are a mixture of multi- and single-member districts. The latter result not from any commitment to single-member district but simply from using the county as the basic unit of representation. The nine smallest counties have one delegate each in the House of Delegates. Six counties have two each, one county three, and three counties four each. Baltimore City and the larger counties are divided into districts varying from two members to eight. In all, fifty-eight delegates are chosen from districts selecting seven or eight at-large delegates each. In the Senate there are seventeen single-member districts and thirteen from which two senators are chosen. This distribution is not that which is called for in the present constitution, a badly apportioned scheme declared unconstitutional in 1964, but primarily results from statute. The Commission had not endorsed single-member districts but suggested a limit of two on the number of senators and a limit of six on the number of delegates from a district, a proposal that would hardly have affected the present arrangement. Convention opponents of single-member districts sought to allow as many as three delegates to be chosen from a particular district. This effort was defeated handily. The single-member district proposal was a product of the liberal reformers who wanted to strike at the heart of political organizations in Baltimore City and in Baltimore County. The politicos rallied to the opposition. This decision served to alienate further the politicians from the constitutional reform effort and certainly made them lukewarm in support where they did not openly oppose.

The less debatable reforms in the legislature involved a decrease in the size of the House of Delegates from 142 to 120 and in the Senate from 43 to 40. Even that slight drop in the size of the House, though, promised to eliminate the tradition of county representation, for the smallest counties could no longer justify individual delegates. This

28 Proposed Constitution art. 3 § 3.03.
reform served to increase the hostility of these areas toward the new document. Legislative salaries were taken out of the constitution and left to statute. Currently the salary is $2,400 plus $25 per day living expenses which has been added by statute. In the schedule of legislation attached to the constitution and voted on at the same time there was a provision calling for initial salary of $8,000 for legislators. The provision on legislative sessions was changed from an annual 70 day session to an annual 90 day session. In addition, it provided two possible extensions: one of thirty days upon the vote of a majority of the members of each house and the second of thirty additional days upon a three-fifths vote. In addition, the presiding officers of the two houses acting in concert were given the power to call special sessions. The Governor retained his discretionary power to call special sessions, although not limited to thirty days as at present, and the Convention provided that he must call a special session upon the written request of three-fifths of the members of each house. Thus, while rejecting continuous sessions as the Commission had previously done, the Convention developed a plan whereby the legislature through its leadership, or bypassing that through the members directly, could have all the time it feels it needs to do its job. The Convention rejected unlimited sessions in theory but adopted them in fact.

B. The Executive

Of the changes in the Executive Article, three represented major improvements: (1) reconstructing the Board of Public Works and the Office of Comptroller, (2) limiting the number of principal departments and broadening the appointive powers of the Governor, and (3) granting to the Governor the power to initiate executive reorganization. Compared to many states Maryland has a fairly short ballot; at the state level only a Governor, a Comptroller, and an Attorney General are elected. Yet in few states is executive power so diffused as in Maryland. Vast constitutional and statutory powers are vested in the Comptroller and the Attorney General and, in addition, the political structure of the state and the ladders of political advancement insure conflict between these top officials. The matter is serious enough when all belong to the same political party; party differences magnify the conflict. In the past half century Republicans have occupied the Governorship for a total of twenty years, but Republicans have rarely controlled either house of the legislature or elected a

30 Proposed Constitution art. 3 § 3.15.
Comptroller or Attorney General. In that period only three Governors had not served previously as Comptroller or Attorney General—Republicans Nice, McKeldin, and Agnew. Executive authority is further diffused through the Board of Public Works, consisting of the Governor, the Comptroller and the State Treasurer, who is a part-time official chosen by the General Assembly. Although the constitutional duties of the Board of Public Works are largely archaic and obsolete, statutes have assigned to the Board considerable control over capital expenditures. Both in theory and in fact the Governor may see some important programs and proposals scuttled if the other two members of the Board oppose him.

The Commission dropped mention of both the Comptroller and the Attorney General and, of course, the Board of Public Works. The Committee on the Legislative Branch of the Convention after several tie votes, voted by a majority of one to follow the Commission recommendation. On the floor of the Convention the issue was so divisive that several tie votes resulted and the leadership became convinced that some acceptable compromise had to be worked out. That compromise, which was overwhelmingly accepted, left both the Comptroller and Attorney General as constitutional officers but the functions of the Comptroller greatly reduced. He was transformed into a "paymaster" in the words of one delegate. A Board of Review replaced the Board of Public Works and the new membership consisted of the Governor, the Comptroller, an "an officer in the executive branches designated by the Governor." This arrangement preserved the essential function from the conservatives' point of view by providing a way to insure publicity of Board actions while removing the capacity of the Board to block a Governor's program or to embarrass his administration.

The second change was designed to give the Governor greater control over the administrative branch. Maryland currently has over 240 Boards, Departments and Commissions. This proliferation and the resulting diffusion of executive authority has produced major problems in coordinating governmental activities, maintaining internal communication, and insuring responsibility. The sheer number alone has led to an overlapping of functions and duties and to a general inefficiency in the operation of the Executive Department as a whole. The administrative structure is at present wholly determined by the

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31Md. Const. art. XII §§ 2,3.
33Proposed Constitution art. 4 § 4.25.
General Assembly; the Governor is limited to making specific recommendations for change. His role is further watered down by his limited control over administrative officials. His appointive powers are broad, limited only by the necessity for senatorial confirmation. But the terms of such officials are set by law and are not coterminous with the term of the Governor. This permits them to enjoy a significant degree of independence and with immunity to respond or not as they see fit to the Governor's program. The Convention decreed that all functions, powers and duties of the Executive Branch were to be assigned according to major purpose to principal departments not to exceed 20 in number. The General Assembly could increase the maximum number only by a vote of three-fifths of the members of each house. In addition, the Governor was empowered to take the initiative in executive reorganization. Following the Federal pattern and that set in a small number of states, the Governor was given the power to frame reorganization plans which would become effective if not vetoed by either house of the General Assembly within fifty days.

C. The Judiciary

Had the proposed constitution prevailed on May 14, Maryland would have a four tiered court system administratively headed by the Chief Judge of the Court of Appeals with all judges appointed by the Governor from lists presented by nominating committees. All judges would be lawyers and would be paid well by the state and fully employed. The dominant majority in the Convention set about to bring order to the judicial chaos of Maryland, to embue the whole system with professionalism, and to centralize the administration of justice in the state.

A study of the Maryland judicial system released just shortly before the Convention assembled in 1967 described the Maryland system in sharp tones:

Maryland's court system is very complex, and unnecessarily so. There are no less than 16 types of courts with little uniformity from one community to another. A lawyer from one county venturing into another is likely to feel almost as bewildered as if he had gone into another state with an entirely different system of courts. A case which would be handled in

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*Id.*

*Proposed Constitution* art. 5 § 5.14.
the people's court of one county is handled by a trial magistrate in another, by the municipal court in another, and by the circuit court in still another...37

The Convention, as the Commission before it, set about to reform the court system. Here, as with the executive budget system, the ranks of the constitutional purists, viz., those fighting for a simple constitution largely devoid of detail with broad grants of power to the legislature to fashion state institutions and wield power, shrank to their smallest number. To the leadership the stakes here seemed too high to trust to the legislature; the system had to be spelled out in sufficient detail to insure true reform. The system that emerged followed closely the proposals of the American Bar Association and earlier recommendations of the Pennsylvania Bar Association.38 Several on the Committee on the Judicial Branch were active participants in Association activities; Eney himself had been President of the Maryland Bar Association.

Actually the dispute that arose in the Convention and that was carried into the referendum fight centered on the minor judiciary; there was little dispute over the application of the principles to the other levels of the judiciary, particularly the appellate levels. The smaller counties fought bitterly against losing their courts and state senators were not happy with losing the patronage that accrued to them with the trial magistrates as a result of senatorial courtesy. Yet it was not only the small counties that fought back; the Baltimore County Democratic Organization felt threatened by these damages and this probably accounts for the opposition of Dale Anderson, Baltimore County's executive who became one of the most vigorous and the most prominent antagonists of the new document.

Sheriffs and registers of wills lost their constitutional status in the proposed draft and the method for the selection of court clerks was significantly changed. The Orphans Courts, manned by laymen and handling probate matters, were dropped, their jurisdiction presumably to be absorbed by the superior courts, thereby eliminating in each county three positions considered political prizes. These changes aggravated a large number of incumbents in the positions affected, and their respective state organizations fought effectively against the constitution, particularly in the rural areas and also in Baltimore County and Baltimore City.

D. Local Government

The Convention produced a local government article that promised significant improvement for Maryland. Hammered out in committee where sharp disagreements gradually melded through compromise and understanding into consensus, the article seemed to catch the imagination and the support of the vast majority of the delegates. It emerged from committee with near unanimous endorsement, one member dissenting on several points. It faced no minority report since 20 per cent of the committee was required to produce one. Few amendments were offered and fewer still survived committee opposition on the floor. By far, shorter than the articles on the legislature, the executive or the judiciary, local government consumes less than seven hundred words in the draft. The article aims at five goals: (1) to mandate home rule for all counties, (2) to establish the doctrine of "shared powers" as the controlling feature of state-local relations, (3) to get the legislature out of strictly local matter, (4) to provide a workable relationship between municipalities, the counties and the state, and (5) to lay the basis for confrontation of regional problems. The present situation in Maryland has been described as follows:

Local state relations in Maryland are characterized by extensive state administrative control...[but]...of far greater significance have been the nature and scope of legislative control. Within constitutional limits the power and role of the legislature in the enactment of legislation for local government have particularly dominated local state relations and have brought about a system of local legislative relations uniquely characteristic of the Maryland governmental system.39

Various counts produced different results but there is no doubt that a substantial proportion of Maryland's annual legislative product is local legislation. The problem is, of course, more than one of legislative efficiency. It cuts at the heart of the concept of home rule. It deflects the attention of the legislature from issues of statewide concern. It vitally affects the political structure of the state. Such pictures are seldom completely black and this one is no exception. It has been pointed out that "[t]his system has been of particular value in permitting considerable legislative freedom and flexibility."40 Maryland certainly has progressed and its existing system of local government would be an improvement for some states if it could

39 Bureau of Governmental Research, Contemporary Local Government in Maryland 142 (1965).
40 Id. at 17.
be transplanted intact. Yet Maryland is a state of change and contrast and civic and political leaders alike have grown increasingly concerned about the capacity of the system to solve the present emerging problems of the Free State.

E. Citizen Participation in Government

The delegates to the Convention of 1967-68 took a fresh look at the Declaration of Rights they had inherited from the founding fathers of 1867 and the refounding and amending fathers of the preceding 100 years. The results of their study and action were clarification, modernization of language, improvement of form, removal of meaningless or non-constitutional verbiage and a few significant improvements in substance.

Despite the irresponsible charges from the opposition about the document, the delegates hued close to the existing constitution of Maryland and resisted urgings to move beyond the traditional political and civil rights of the American constitutional tradition into new and untried fields. They rejected, for example, several delegates proposals on social and economic matters relating to guaranteed employment and standards of living based upon “decency, dignity and health.”

In regard to suffrage, the principal proposed change was to drop the age for voting from 21 to 19. This proved to be an unpopular provision with the voters, coming as it did at a time of great turmoil on some American college campuses. While it is hard to register the impact of various provisions on the electorate's decision, there is no doubt that this one weighed heavily.

The writers attempted to achieve a better balance between representative government and direct democracy by modernizing provisions relating to the referendum. For a half century Maryland has permitted legislative actions to be petitioned to referendum. Currently a petition signed by 3 per cent of the number of voters casting ballots in the previous gubernatorial election is sufficient to subject to popular vote any act of the General Assembly. If a majority vote against it, the act is dead. The writers sought to raise the petition requirement to 5 per cent. This action aggravated the ultra-conservatives who saw in the referendum a device for upsetting legislative action on social and economic matters.

Above all the delegates sought to increase the visibility of government by simplifying, by providing more direct access, and by insuring a proper and fairer presentation. The delegates tried to give the citizens of Maryland a clearer view of government action and actors and thus to provide a better basis for citizen judgment.
F. The Shape of the Document

The resort to a short, simple constitution which focused on the granting of broad powers and general restraints enabled the Convention to drop much verbiage from the draft. The removal of five articles dealing with Baltimore City—its elections, the development of its port, off-street parking, local legislation, and land development and redevelopment, alone eliminated over 4,000 words and expanded both the city's and the legislature's power to deal with such problems. Dropping the provision preserving the inviolability of the "school fund" at first upset some educators but had no effect other than shortening the constitution since no "school fund" existed. Broadening legislative powers eliminated the need for provisions dealing with the Treasury Department, the Commission of the Land Office, and the State Librarian, as well as elisors and notary publics, if, indeed, the need ever really existed for having them in the constitution. Despite the lengthy and detailed treatment of the judicial branch in the proposed document these provisions are less than one-half as long as their counterparts in the present constitution.41 The process of culling and generalizing and removing detail, however, had its less salutory side as many would have missed the colorful constitutional districts in Wicomico County. Witness, for example:

Beginning at the point, where Mason and Dixon’s line crosses the channel of Pocomoke River, thence following said line to the channel of the Nanticoke River, thence with the channel of said river to Tangier Sound, or the intersection of Naticoke and Wicomico Rivers, thence up the channel of the Wicomico River to the mouth of Wicomico Creek, thence with the channel of said creek and Passerdyke Creek to Dashield’s or Disharoon’s Mills, thence with the mill pond of said mills and Branch following the middle prong of said Branch, to Meadow Bridge, on the road, dividing the Counties of Somerset and Worcester, near the southwest corner of the farm of William P. Morris, thence due east to the Pocomoke River, thence with channel of said river to the beginning . . . 42

IV. The Campaign

The opponents of the proposed constitution, however poorly organized and poorly financed, seized the initiative in the campaign

41 Compare Md. Const. art. IV with Proposed Constitution art. 5.
42 Md. Const. art. XIII § 2.
for ratification and never relinquished it. The proponents, slow in starting and late in organizing, were placed on the defensive immediately and remained there. The opponents actually began before the Convention with the efforts of an ultraconservative organization called "Save Our State" (S.O.S.) which produced a draft constitution in response to the Commission's product, a draft that was hardly more than a slight patching up of the present Constitution. The opposition campaign quieted considerably during the Convention but opened again with telling effect after its adjournment. In a capsule, the opposition campaign, or more accurately, the campaigns of the oppositions since the opposing forces never formed an effective central organization, mounted a political attack utilizing slogans, exploiting frustrations, and stirring fears. The proponents ran an educational campaign largely sober in tone, often defensive, occasionally apologetic, a campaign that relied heavily upon endorsements from prominent citizens, political leaders and organizations, a fact transformed into an opposition charge that "the establishment" was trying to cram the new document down the throats of the "little people." The proponents were woefully slow in starting their campaign. Not until March did "Pro Con," the statewide organization pressing for approval, get organized and start the painfully difficult job of mounting a statewide campaign. The constitution reform effort which had run so smoothly, effectively and professionally for over two years seemed to come to a grinding halt in the days immediately following the adjournment of the Convention. The major cause of the problem was failure to make adequate preparations during the Convention itself so that the campaign could begin immediately upon adjournment. However, this would have been difficult since the principal leaders of the reform effort were in the Convention, which consumed their full time and attention. Yet it seems there could have been some citizens group already formed outside the Convention that could have laid the groundwork for an intensive campaign. For weeks throughout the winter, opponents grabbed the headlines throughout the state. It is true that during this period numerous Convention delegates were busy on their own in their respective areas appearing before civic groups and participating in panel discussions and debates, some of them in effect devoting almost their full time to these activities; but little was done of an organized nature.

Researchers into political behavior say that there are two levels of issues. The first is composed of those issues which are verbalized, articulated, and discussed. They are the ones that a campaign focuses
upon. Sociologists refer to these as "manifest" issues. The second level contains those that are not articulated and that are rarely discussed but are nevertheless probably the more important. Sociologists call these the "latent" issues. The political strategist often uses the manifest issues to stimulate public relations based on the latent ones. Certainly the Maryland experience in the constitutional referendum seems to offer a case study of this political strategy.

A. The Manifest Issues

The principal verbal issues dealt with the costs that the proposed document would mean to the taxpayer; the "undemocratic" nature of the new constitution; the "national conspiracy" to impose upon Maryland the different system; and regional governments.

Costs. The opponents charged the new constitution would cost $154 million. As preposterous as this charge was it had a ring of authenticity since it came out of the Comptroller's office. A subordinate in that department produced this figure, but it would not be surprising if incumbent comptroller Louis Goldstein participated because he was sorely piqued by the Convention's downgrading of his position. The figure included $130 million for county court houses, based on the fact that if the state were taking over the judiciary system, it would have to furnish its own court houses! The Convention leadership rightly branded the statement as politically motivated and stimulated the production of other estimates which were varied downward from $12.2 million to $2.4 million. The latter figure was produced by the Director of the State Department of Fiscal Research who added that overall savings might actually be incurred as a result of the elimination of existing inefficiencies. But these more reasonable estimates failed to dent the opposition's campaign. How deeply the charge cut is difficult to tell but that it severely hurt the constitution cannot be doubted. The impact of the charge was magnified by poor timing of the referendum, one of the few factors of poor timing that should have been foreseen. The vote on the new constitution was taken on May 14. Hardly a month before the state had made its first collection of a newly imposed graduated income tax designed to increase revenues by $120 million. In addition to the state levy, the counties and Baltimore City were authorized to impose their own levy up to 50 per cent of the amount of the state's. So from a flat rate of 3 per cent the new rates moved, counting state and local, to a maximum of 7.5 per cent. Thus, it hardly mattered from a political point of view whether the cost of the new constitution
was $154 million or $2.4 million or any other figure; the cost of government was going up. Given the timing of the referendum in respect to the tax collection, the constitution suffered from the reactions to the new tax.

The Convention also invited trouble on this score by going beyond the removal from the constitution of stated salaries for the Governor and the legislators. In the schedule of legislation attached to the draft and to be voted upon at the same time, considerable increases in salary were provided for the Governor and the members of the General Assembly. The Governor had had a raise in 1966 to $25,000 and now the constitution writers sought to boost that to $40,000. Legislative salaries were boosted from $2,400 to $8,000. These proposed salaries were certainly reasonable but, coming as they did along with the charge of excessive costs, they provided the opponents with additional ammunition.

Detriment to democracy. “Your basic individual rights are being reduced from 45 to only 18 articles,” charged an S.O.S. Pamphlet. That many of those matters dropped were hortatory and judicially unenforceable seemed to matter little. Two articles culled, for example, were those repeating verbatim the supremacy clause and the tenth amendment to the United States Constitution. These articles hardly diminished the civil rights of Marylanders. Opponents criticized the dropping of a hortatory article on separation of powers and then, seemingly with no inconsistency, criticized other changes in the Legislative, Judicial and Executive articles which would have made separation of powers more of a reality than ever before in Maryland history.

The principal charges levied against the new draft as destructive of Maryland “democracy” related to the strengthening of the Governor and the abolition of competitive election of judges. “I am not ready to vote for the coronation of Spiro I,” protested Judge Phil Dorsey before the Committee on the Executive Branch, a variation on the theme that he and others would often play during the campaign. Downgrading the Comptroller and the emasculation of the Board of Public Works figured prominently in the opponents’ attack upon the document. Equally aggravating to the supporters of “democracy” was the shift to the Missouri Plan (or the Niles Plan as it is known in Maryland) for the selection of judges at all levels, which eliminated Maryland’s traditional mixed plan of gubernatorial appointment and

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43 Md. Const. art. 2.
44 Md. Const. art. 3.
popular election. "Democracy" also suffered from the dropping of the sheriff from mention in the document and from the abolition of the registers of wills and the Orphans Court. Whether democracy suffered or not, these positions are of symbolic value in the rural counties and are of considerable importance to the local political structure almost everywhere. Politically, the reformers pressed too hard for purity; some tempering of change and some compromise with the traditional local power structure may have served to offset some of the intense hostility generated, particularly from the job holders themselves. What would have been lost in substance is minor since there was little likelihood that the legislature would actually abolish such offices.

National conspiracy. "Mail order constitution," was a catchy slogan that S.O.S. dreamed up and drove home to the voters of Maryland. Elizabeth Chestnut Barnes, the President of "Save Our State" and wife of a judge on the Court of Appeals, was the originator of this charge, presenting it in an article in the DAR Magazine for February, 1967. In only six pages, Mrs. Barnes tied together the National Municipal League, the International City Manager's Association, the organizations at "Terrible 1313," the Committee on Economic Development and the Rockefeller, Ford and Carnegie Foundations into a massive conspiracy to impose city managers, metro-type government and dictatorial state governments upon the unsuspecting American people. Reprints of this article received wide distribution during the campaign.

The conspiracy charged hit with heavy impact. It was impossible to refute, mainly because from a warped point of view there was some truth to it. Most of the organizations referred to were engaged in a nationwide effort to upgrade the states along the very lines advocated by the Commission and the Convention. Those inclined to see bogies in the closets and under the bed can label this "conspiracy." The Maryland experience raises the question of how far outside organizations and "experts" can go in aiding state reform efforts without laying down the basis for this kind of irrational attack.

Regional governments. The opponents used "regional government" as an effective bludgeon in the suburban area surrounding Baltimore. The issue had considerably less impact in Montgomery and Prince George's counties because there was no central city that could be pictured as a cancer that would devour the cells of grass roots government. But the Baltimore area was a different matter. Confronted with all the pressing problems of central cities in this country—vast physical needs, increasing Negro population, rising crime rates, inadequate public services—Baltimore City was pictured by county
opponents of the proposed constitution as poised to strike the suburbs once the new constitution presented the opportunity. Scott S. Bair, Jr., County Commissioner of Carroll County, charged that, "[i]t would be a matter of days before my friend Tommy (Baltimore Mayor Thomas J. DeAlesandro, Jr.) would be calling for a new super government to include this county." The principal attack centered on the absence of a requirement for a mandatory referendum on the formation of regional governments. The new constitution left this as a discretionary matter with the legislature. The referendum is deeply embedded in the political traditions of the people of Maryland and the manipulation of the symbol always has political impact. Whether the opposition on this point could have been undermined by a different approach to more rational schemes of local government is a matter of conjecture. Certainly regional governments did not have to be dealt with in the constitution; the writers could have concentrated on removing any obstacles that might have existed to legislative action. They had in effect handed the opponents a tailor made weapon to be used against the new document. Here the writers were intent on establishing a policy direction, not just on freeing the legislature to decide in its wisdom and as the result of the political process what the patterns of local government should be in the state.

B. The "Latent" Issues

Race. Race determined the votes of many in this referendum, whether consciously or subconsciously. The strategists of the opposition played on race, not directly but indirectly. When some said "regional governments" they were communicating "race." When they pointed to other provisions, they communicated "race." Race and timing, alone and in combination, played major roles in destroying the proposed constitution. Already cited is the unfortunate juxtaposition of the referendum on adoption and the rise in the income tax that went into effect in April, 1967. There are other examples. The Reverend Martin Luther King was killed on the night of April 4; his death set off waves of riots, looting and burning in both Baltimore and Washington, causing untold damage to property and claiming many lives. This violence was suppressed only by the overwhelming force of Maryland National Guardsmen and regular army troops. But that suppression did not soften the conservative reaction that swept many sections of Maryland giving impetus to the politics of frustration

[Baltimore Evening Sun, April 3, 1968 at 1.}
and despair. To some, constitutional change was associated with liberalism and liberalism in turn was associated with rights for Negroes. Thus, reactions against Negro rioting were manifested in negative votes on constitutional revision.

These immediate events occurred on top of much longer range changes which had transformed the political structure of the state and threatened further changes in the society itself. Reapportionment had hit Maryland hard, almost devastating the existing power structure at the state level and dramatically shifting legislative power from the rural areas of the state to the Washington and Baltimore suburbs. The fastest growing parts of the state, and indeed among the fastest growing in the nation, are Montgomery and Prince George's counties, filling up with outsiders who serve the federal government and who look principally to Maryland for a bedroom and a school. These people are suspect in the eyes of provincial Marylanders and the sharp increase in their numbers portended dreadful changes for the state.

Maryland is a border state which really means that she is part southern and part northern and she has had to absorb open housing legislation and other civil rights measures in recent years. As one weekly newspaper editor put it:

I think the opposition capitalized on fear which is pretty effective ammunition. I think the voters rejected it because they have had change up to their you-know-whats. So much has happened to upset the status quo over the past decade that given an opportunity to reject one element of change the voters did just that.

The "Single Package Deal." The Convention prepared a new constitution, a whole document, integrated in its parts. It had to be voted upon as a document; the voter could not choose those parts he favored and reject those he opposed. No delegate was completely happy with everything the Convention did. Thus it is hardly surprising that few citizens were. Everyone could find something to disagree with; the strategy of the opponents was built almost entirely upon this fact. Except for a general ideological attack mounted by S.O.S., the thrusts of the opponents were aimed at specifics. Some opposing groups based their opposition on a single item. These people were not inclined to adhere to the admonition to determine whether the good outweighed the bad; to them one apple tainted the whole barrel.

46Note 4 supra.
47Letter from Emory Dobson, Managing Editor of the County Record of Denton, Maryland to Edward H. Seneff, Managing Editor of Publishers Auxilliary.
Maryland Constitutional Reform

The points in this constitution that aggravated entrenched interests were single ones, scattered throughout the document. The only way to avoid that aggravation was to veto the whole document. If some way could have been found to isolate these factors and to provide separate votes upon them, it is conceivable that all might actually have been adopted. But when you add to the opponents of 19-year-olds voting, those local officials upset by losing their constitutional status and throw in the politicians agitated by the single-member district imposition as well as the regional government opponents, the opposition quickly swells in size. This is not to argue that this constitution as written could have been offered in pieces; only a small number of parts might have been isolated for separate submission. Very definitely, to accomplish this the document would have to be written in a different way. However this could have been done if it had been planned for. The result may not have been as attractive a document, but it might now be the law of Maryland.

The Unbending Reformers. The final latent issue resulted from the character of the delegates themselves and their general approach to constitutional revision. Surely there were men of considerable political experience and stature in the Convention but the majority of these had already retired from the political arena. The majority of delegates eschewed politics in the common sense of the term and indeed seemed to feel that any concession in the name of politics was a compromise of their fundamental responsibilities. A decidedly anti-political atmosphere pervaded the Convention and its total operation. Men active in the political affairs of the state at the legislative, local government and party level were heavily suspect in Convention chambers. Delegates obviously distrusted their motives, suspected their interests and tended to regard their criticisms of specific Convention actions as self-serving. This feeling was probably not as strong as the politicians themselves felt, but without question the politicians felt ill at ease in the Convention environs and tended to stay away except when some matter of specific interest was being discussed.

The document the delegates fashioned challenged both the operators of the political system of the state in Annapolis and in the counties and cut drastically at the powers and symbols of the people in the more bucolic areas without providing compensating concessions. The Convention was dominated by the urban and suburban based anti-political civic reformers. These groups understandably were committed to significant change. They were tired of the shenanigans of politicians. They were determined that the long awaited reapportion-
ment of the legislative power would have a meaningful impact upon the state policy.

The political establishment felt threatened by the transformation of the Comptroller's office. Political organizations, particularly in Baltimore City, faced radical change, if not total extinction, as a result of the imposition of the single-member district. The attack was most sharply felt in the rural areas which were still reeling from the impact of reapportionment. Except for the partial compromise on the size of the legislature, a compromise won only over the bitter opposition of the suburban reformers and with the help of some urban area delegates of the political type, the document contained little that seemed to the rural dwellers of the state to offset what they were required to give up. Jacksonian democracy with its plethora of elected officers may be suspect in the suburbs but it still grasps the public's imagination in the wide open spaces. To rural and small town America, registers of wills, clerks of courts, judges of Orphans Courts and sheriffs have high status in the community. The officials prize their electoral status and neither they nor the citizens view their positions as merely civil service.

The idea of voluntarily passing control over to an urban-dominated government, even though that urban area is the majority, and the consequent surrender of local offices to an unknown quantity is not an easy one to sell. A document insensitive to the felt needs of a particular group of people is not likely to draw much support from that group of people. Timed as the referendum was, shortly after the urban riots in Baltimore and Washington, the prospect of urban control was something less than appealing to the conservatives of small town and rural Maryland. Efficient government for all does not really answer the old political question of "What have you done for me lately?" Whether the constitution would have passed had the grass-roots politicians and the rural folk been more mollified is a matter of conjecture. That their disaffection contributed mightily to the defeat of the document is beyond question—while containing only 21 per cent of Maryland's population, the rural areas voted 71.6 per cent against the new constitution and produced 29 per cent of the opposing votes.

V. CONCLUSIONS

Underneath it all the failure in Maryland was a failure of the democratic process. Both the leaders and the people fell short of what the democratic system demands of them.
The leaders of reform failed too often to trust the people, to take
them into their confidence, to consult realistically with their grass
roots political leadership, to recognize the very unrepresentativeness
of the group chosen to write the constitution.

The grass roots political leadership failed by refusing to recognize
the value implicit in the proposed document and thus to put them-
selves forcefully into the campaign for approval. Many of them now
say, “We tried to tell those reformers....” But this begs the question.
Politicians worth their salt are more than bellwethers of public
sentiment; they are educators. Surely, their job was to express their
concerns to the drafters; but it was also to tell the people that the
draft constitution was the hope of Maryland. Certainly there were
personal risks involved, but the public stakes were high.

The leaders of the opposition failed. Many of the opponents
opposed for selfish reasons; to save a job, to protect an interest. Others
sincerely feared the kind of government that the new constitution
might bring—active, vital, responsive government—and they were
conservative and fearful of bigger government. Yet their choice was
not between big and little government, but only between the kinds
of big government. Their efforts to defeat this draft contributed to the
achievement of what they feared the most, big Federal government.
Politics, like nature, abhors a vacuum. Contraction of the state func-
tions invites expansion of national functions.

And perhaps most frustrating of all, the people failed. They
listened to the soothsayers, the misinformers. They voted their pre-
judice and not their rational interest or the public interest. They
vented their spleen against “the establishment” not weighing the
advantages they might derive from the constitutional document regard-
less of who wrote it.

The principal question that lingers from the entire Maryland
experience is whether the democratic process will permit extensive,
one-shot confrontation of broad problems of government, or only
patchwork, half-way pragmatic solutions to specific problems as they
arise. Perhaps the Maryland defeat results largely from poor timing
as suggested above. Perhaps also this era, in which the political
factions are encouraged to manipulate the symbols of frustration and
fear, may pass and society may once again enjoy and reflect greater
optimism and idealism. Whatever be the answers to these funda-
mental questions, for the foreseeable future the cause of state consti-
tutional revision and of governmental reform, whether constitutional
or otherwise, has been greatly set back by the failure of the demo-
cratic process in the state of Maryland.