

THE MARYLAND CONSTITUTION AT 150

A SYMPOSIUM AND APPRAISAL

John J. Connolly, Editor



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George W. Liebmann is a practicing lawyer in Baltimore and the president of the Baltimore Bar Library. He is the author of *Six Lost Leaders: Prophets of Civil Society* (Lexington Books, 2001), which contains a biographical sketch of George William Brown, as well as other books on law and government and numerous articles on constitutional and administrative law. He served as law clerk to Chief Judge Brune of the Court of Appeals of Maryland in 1963-64; as assistant attorney general of Maryland from 1967-69; and as executive assistant to Governor Hughes from 1980-81. He has also served on or chaired several Maryland study commissions.

James F. Schneider, a longtime member of the Bar Library's board, recently retired as judge and former chief judge of the U.S. Bankruptcy Court for the District of Maryland. He clerked for Judge Albert L. Sklar of the Supreme Bench of Baltimore City, and he has written histories of the U.S. District Court for the District of Maryland, the Bar Association of Baltimore City, the Baltimore Bar Library, and the Maryland State Bar Association. He is the co-founder of the Museum of Baltimore History with Judge Joseph H. H. Kaplan and the late General Philip Sherman. He served as the historian and archivist of the Supreme Bench/Circuit Court for Baltimore City from 1977-2017.

Introduction

In March of this year it occurred to me quite randomly that the unloved Maryland Constitution would celebrate its sesquicentennial birthday in September, most likely alone in a nursing home, accompanied only by the rhythmic rise and fall of a ventilator. Who would visit?

The directors of a Maryland legal institution even older than the 1867 Constitution, that's who. The Library Company of the Baltimore Bar was 27 at the birth of the Constitution, and its principal founder was one of the key participants in the 1867 convention. The current board of directors of the Library, led by president George W. Liebmann, readily agreed to sponsor a symposium on the Constitution, and we went about trying to round up authors. Ultimately we found fewer than desired, a consequence of our regrettably short deadline, if not our topic. Nevertheless, like the delegates at the Annapolis convention who often struggled for a quorum, we worked through the summer and now release our product to the public in September.

I think it safe to say that Mr. Liebmann was not anticipating the document that emerged, at least as expressed in my articles. Nor was I, entirely. As I researched my long article, *Habeas Corpus in Maryland*, I began reading in diary form the contemporaneous newspaper reports of the 1867 constitutional convention, chiefly as reported in the *American and Commercial Advertiser* (known to subsequent generations as the *Baltimore American*). The *American's* editorials, and to some extent its news reports of the convention, contrasted sharply with *The Sun's* reporting. *The Sun* has been far more influential in Maryland's constitutional history because its reports were collected in a volume that became the main resource for understanding the original intent of the convention delegates. But the newspapers of the day were openly political and partisan, and the *American* was a republican paper while the *Sun* was democratic (to use shorthand references for party names that were in fact more complicated and protean). The republican newspapers' attacks on the convention and its delegates were polemical, sardonic, and intemperate, but also incisive, well-written, and occasionally prescient.

One hundred and fifty years after the fact, with the racial debates of the Civil War long since settled, it is easy to side with the republican newspapers, and I have done so. The polemical article I prepared, *Toward a New Maryland Constitution*, is largely the result of reading the daily attacks on the convention by the republican papers and forming a judgment that however easily the attacks might have been dismissed as partisan, the convention delegates could not plead ignorance. They knew what they were doing.

Thankfully my dark (and admittedly amateur's) view of Maryland's constitutional history is not shared by everyone. Mr. Liebmann took one look at my polemical article and agreed to write a response, which appears in this volume as *Against a New Maryland Constitution*. Mr. Liebmann and Joseph W. Bennett, the current Bar Librarian, contributed articles (*George William Brown and the 1867 Convention* and *The Bar Library and the Maryland Constitution*) showing that not all delegates were the racists and scalawags caricatured by the republican newspapers, but were in fact thoughtful and accomplished leaders. Among them were the founders of the Bar Library. They faced an impossible task in framing an organic document that could govern a state riven by war and conflict. Mr. Liebmann's article on George William Brown serves as a good example of what a true leader can accomplish, and cannot accomplish, through democratic institutions during times of trouble.

Judge James F. Schneider, also a longtime member of the Library board, explains in *The Supreme Bench of Baltimore City and Other Quirks of Court in the 1867 Constitution* how the delegates revamped the court system in Baltimore City, which had so outgrown its sibling jurisdictions that it needed an entirely new system. By contrast, my article on *God and the 1867 Constitution* reflects the obsolescence of state-law treatment of religious rights, in light of the supremacy of federal law. Together these articles suggest that the chief purpose of state constitution-making is the structure of government rather than the protection of individual rights. Perhaps the 1867 delegates deserve some credit for understanding the practicalities of government better than the future of morality.

So happy birthday to you, Maryland Constitution. I will sit a safe distance from the ventilator plug, recognizing that your medical power

Introduction

of attorney is held by all Marylanders. I will even acknowledge that you always carried some good qualities. More important, after a difficult birth and childhood, you remade yourself into a responsible adult. Perhaps there is life in you yet.

John J. Connolly
September 2017