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THE BALTIMORE POLICE CASE OF 1860

By H. H. WALKER LEWIS*

Recent events have given renewed currency to the hundred year old decision of the Court of Appeals in *Baltimore v. State*,¹ upholding the transfer of the Baltimore police to the control of the State.

The legislation² effecting this transfer was adopted February 2, 1860. Its passage occasioned an outcry from City Hall the like of which had not been heard since the days of the Sabine women. But the wails gained no sympathy from the courts. On March 13, 1860, the Act was upheld by the Superior Court of Baltimore City, and on April 17, by the Court of Appeals.

No one would quarrel today with the principal holding of the case, that a municipality was legally a creature of the State and that the legislature had power to control its police and other functions. But the court hurdled other obstacles in a manner that seemed to demonstrate more agility than deliberation. Obviously, the circumstances exerted overwhelming compulsion. Indeed, the main interest of the case stems from its background.

THE IMMIGRATION EXPLOSION

After the dust had settled from the War of 1812, immigrants came pouring into the country in ever-increasing numbers, giving rise to problems that were in part religious, part economic, and part political. Many of the new arrivals were Roman Catholic, and in the areas of their greatest concentration they brought alarm to the established Protestant order. Some of the ministers reacted with vigor. Rather curiously, the most violent were those who were later to lead the abolitionist movement; for example, the Reverend Lyman Beecher of Boston, who became a leading abolitionist in his own right and sired Henry Ward Beecher, as well as Harriet Beecher Stowe, author of

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1. 15 Md. 376 (1860).

2. LAWS OF MD. ch. 7 (1860). See also LAWS OF MD. ch. 203 (1966) and LAWS OF BALTIMORE ch. 526 (1949).

Uncle Tom's Cabin. So loudly did Beecher thunder against what he called "the whoredom of Babylon" and the "foul beast of Roman Catholicism," that he is sometimes given credit for the anti-Catholic mob which raged through Boston for three days in 1829 and sacked the Ursuline Convent in neighboring Charlestown.³

Baltimore also received its share of Irish Catholics, together with a multitude of Germans. Their descendants include many of our most substantial citizens, but in the 1840's their numbers caused consternation among the laboring and artisan classes with whom they came into competition. By 1850, some 135,000 foreigners had entered America through the port of Baltimore.⁴ Quite naturally, they liked the City, and at the time with which we are concerned they constituted a fourth of the total population.

Politicians soon sponsored measures to curry their special favor. The most explosive was the Kerney bill of 1852 to provide public funds for the support of parochial schools. Protestants rose in their wrath and smothered the plan, but it highlighted the growing political power of what were then regarded as alien groups, and triggered a violent reaction among the natives.

A rising spirit of intolerance spawned a political party and a spate of secret societies with such choice names as the Rip Raps, the Plug Uglies, the Wampanoags, and the Blood Tubs. Officially, they called their political organization the American Party, but the name by which they were better known reflected the answer they were sworn to give to questions about their societies: "I know nothing."

THE GROWTH OF VIOLENCE AND THE INADEQUACY OF THE POLICE

The Know Nothing societies operated with a violence that today seems incredible. In their more sporting moods, they fought with bricks and paving stones, of which the streets and sidewalks furnished a plentiful supply. Against serious opposition they used revolvers, sawed-off shotguns, and even small cannon.

In their dealings with the voting public, or more correctly with the foreign-born public whom they aimed to keep non-voting, a mere show of force was usually sufficient to effect intimidation. But in their jurisdictional rivalries, their fighting became ferocious. Lest anyone doubt the vigor with which they expressed their differences of opinion, let him read Scharf's *Chronicles of Baltimore* in which some of these incidents are reported. For example:

On the 12th of September [1856] a bloody and disgraceful riot took place at the Seventeenth Ward House, kept by James

3. See BEALS, BRASS KNUCKLE CRUSADE — THE GREAT KNOW-NOTHING CONSPIRACY: 1820-1860, at 25-36 (1960), for these quotations and events.

4. These and other facts relating to the Know Nothing movement in Baltimore are drawn primarily from two monographs: SCHMECKEBIER, HISTORY OF THE KNOW NOTHING PARTY IN MARYLAND 145 (Johns Hopkins University Studies in History and Political Science Series XVII Nos. 4-5, 1899); TUSKA, KNOW NOTHINGISM IN BALTIMORE, 1854-1860, at 217 (Catholic History Review, vol. 5, 1925).

Clark, on Light street, nearly opposite Warren. The house was attacked by the "Rip-Rap" and "Wampanoag" Clubs, and there commenced a bloody and desperate affray. . . . The streets where the contest took place presented the appearance as if cart-loads of bricks had been strewn about. . . . During the melee one man was killed and some twenty badly wounded, some of them fatally.⁵

During the 1840's and 1850's this form of exuberance was accepted as an inescapable adjunct of urban life, much as we today regard manslaughter and mayhem as inevitable by-products of the automobile. Volunteer fire companies had been fighting each other for years, and had recruited gangs of toughs for this express purpose. At first, no doubt, they did so in self-defense. Later the rougher elements took control, sounding false alarms and setting fires so that they could ambush their rivals in the streets. Scharf reports one of these intramural contests as follows:

[O]n Saturday night, August 18th, 1855, . . . the New Market fire company, in colleague with the United, had formed a plot whereby they designed giving the Mount Vernon Hook and Ladder company a severe thrashing, and accordingly the bell of the New Market sounded an alarm of fire at ten o'clock on that night, and the members ran with the apparatus in a northerly direction. Upon returning, the New Market fell in behind the Hook and Ladder. . . . They proceeded along Franklin street, until about midway between Howard and Eutaw streets, . . . the Hook and Ladder ahead and New Market following. At this juncture the United turned out of Eutaw street into Franklin, immediately in front of the Hook and Ladder company, and the onslaught commenced upon them from the front and rear. Pistols were fired, bricks thrown, and axes, picks and hooks used in the most desperate manner. . . . During the melee two men were mortally wounded and a greater number severely.⁶

The New Market fire company, which engineered this ambush in 1855, received its come-uppance a year later. This time it was not a mere firemen's frolic, but a battle with one of the Know Nothing gangs. This is how Scharf tells the story:

About 12 o'clock [on Oct. 8, 1856] a desperate struggle took place between the "Rip-Rap" Club and the New Market Fire Company in the Lexington Market, . . . The firing was as regular as if it were by platoons. A great many persons were wounded and carried from the ground, and the drug shops near the scene of action were filled with the wounded and dying. The New

5. SCHARF, *THE CHRONICLES OF BALTIMORE* 549 (1874). Considerable variation exists in the reports of casualties in these affrays. One suspects that the gangs liked to minimize their losses, and that the count of the dead was limited to the bodies left on the field of battle. The fatally injured who could get or be carried away were probably recorded in the vital statistics as victims of bad blood, lead poisoning, or what have you.

6. *Id.* at 548.

Market Company were driven from the market-house and dispersed. Their engine-house was entered by the "Rip-Raps" and . . . sacked.⁷

At least four men are said to have been killed, over 150 wounded.

Where, might we ask, were the police during these events? It would be more appropriate to ask, "What police?"

In 1848 responsibility for the peace of Baltimore reposed in the High Constable, one regular and two special policemen for each ward, and the night watchmen, who carried large wooden rattles, like those that we sometimes see or hear at football games. When rotated these made an unearthly clatter, summoning help and at the same time deadening the footfalls of escaping miscreants.⁸

The watchmen made their rounds much as they had in colonial days, crying the hours and obliging the citizenry with occasional weather reports, such as "Five o'clock, and raining." In 1843, newspapers complained that these public announcements of the whereabouts of the guardians of the law made life too easy for burglars, and the practice was discontinued.

In 1857 the police were reorganized on a more modern footing, but the new men who were recruited to build up the force were drawn largely from the Know Nothing gangs and remained subservient to their old leaders. Indeed, the gangs had by this time attained such power as to defy restraint. The impotency of the police is summed up in a single statistic. In 1857 twenty-five arrests were made on the charge of shooting at police officers. No figures were given for the number of such shootings which did not result in arrests.

THE DEATH OF FREE ELECTIONS

The inability to protect life and limb was bad enough, but it was the election practices of the Know Nothings that triggered the transfer of the police to State control.

Until 1865 voters were not registered.⁹ Citizens merely lined up at the polling place and handed in their ballots. As each ward contained only one voting place, it would have been impossible for the election judges to know who was and was not entitled to vote, even had they desired to do so. And during the period we are considering, it is safe to say that few, if any, election judges had any such desire.

This led to an interesting practice known as "cooping." For some days before an election, the stalwarts of the party in control of the ward would round up drunks and hoboes, or for that matter anyone they could intimidate, and imprison them in a convenient cellar, or

7. *Id.* at 549-50.

8. For these and other details of the Baltimore police, see generally DE FRANCIS FOLSOM, *OUR POLICE* (1888); McCABE, *HISTORY OF THE BALTIMORE POLICE DEPARTMENT, 1774-1909* (1910). See also FREY, *REMINISCENCES OF BALTIMORE* (1893), an excellently written and illuminating local history by one who made his career in the Police Department and was its marshal.

9. See STEINER, *CITIZENSHIP AND SUFFRAGE IN MARYLAND* 21, 47 (1895), for the development of election practices in Maryland.

“coop,” near the polling place. The victims were kept drunk or drugged until election day. Then they were formed into squads, armed with ballots, and marched to the polling place. If transportation was available, they would be taken to all the voting places which were manned by friendly election judges. Then the process would be repeated, the same individuals being voted many times during the course of the day. As a concession to election judges who might be inclined to be fastidious, the victims were sometimes forced to swap clothing between ballotings.

Edgar Allan Poe's death is generally attributed to a “cooping.” Passing through Baltimore a few days before the election of October 3, 1849, he had a drink with a friend and disappeared. On election day he was found lying near the Fourth Ward polling place at 44 E. Lombard Street, unconscious and in shoddy clothing not his own. He was taken to the Washington College Hospital (now the Church Home and Infirmary), where he died on October 7 without regaining coherence.¹⁰ His “cooping,” if such it was, is believed to have been the work of Whigs, but after the Know Nothings obtained dominance they adopted and expanded the practice. The Know Nothing “coops” added an extra feature. They used as guards friendly policemen who invoked the majesty of the law to keep the victims from escaping.

The anonymity of the voters in the eyes of the election judges did not carry with it anonymity as to their voting intentions. The law required the use of ballots, and further required that they be folded so that they could not be read, but the political organizations printed their own and evaded secrecy by placing colored stripes on the backs. This device, also originally Whig, was appropriated by the Know Nothings, so that they could tell at a glance whether a prospective voter was with them or against them.

All the Know Nothing gangs were adept at discouraging adverse voting, but the Blood Tubs made it their specialty. The name derived from their practice of placing large tubs of slaughterhouse blood outside the polling places, into which they dipped headfirst anyone having the temerity to approach the poll with a ballot of the wrong color. This proved especially persuasive with the Germans, who by and large were a peaceable lot and had little taste for blood.

By means such as this, it did not take the Know Nothings long, once they acquired dominance, to dampen the election ardor of their opponents. At the City Council election of October 14, 1857, they virtually eliminated Democratic voting in all wards but the Irish Eighth, which they never succeeded in subduing.¹¹ In the 11th, the Democrats polled only two votes; in the 14th, eight; in the 17th, ten; and in the 20th, one.¹² These token figures may have been designed to avoid the

10. Poe's whereabouts and activities immediately prior to his death are not known with certainty, and there may well have been exaggeration or untruth in the stories of his “cooping” and multiple voting. The known facts are detailed and analyzed in QUINN, EDGAR ALLAN POE, A CRITICAL BIOGRAPHY 637-40 (1941).

11. In those days the City went no farther north than Eager Street and was split into two main divisions by Jones Falls. The eighth ward was east of Jones Falls (now the Fallsway), between Hillen Street on the southeast and Eager Street on the north.

12. SCHARF, *op. cit. supra* note 5, at 558.

undesirability of recording zeroes, which would open the door to attack by individuals who could prove that they voted for the losers. Or they may have represented people whom the Know Nothing leaders had some special reason to treat with respect. Like all political parties, the Know Nothings liked to assert their respectability. They tried hard to get men of standing to head their tickets, and they preferred not to injure individuals whom they regarded as "genuine swells." For example, they admitted George William Brown and Severn Teackle Wallis to their polling places in 1859, while strong-arming away lesser members of the Reform party.

THE KNOW NOTHING TAKE-OVER

It was not until 1854 that the Baltimore Know Nothings put a ticket in the field. At the City election on October 11 of that year they elected the Mayor and a majority of both branches of the then bicameral City Council.¹³ The next year they gained control of thirteen of the twenty-one counties. They still were meeting strong competition, however, and in 1856 they undertook to suppress this by force. In the resulting election disorders, fourteen men were reported killed and hundreds wounded.

In the process, they elected Thomas Swann Mayor of Baltimore. He had been president of the Baltimore & Ohio Rail Road and was later to be Governor of the State and a member of Congress. His standing and ability were such that many, including the *Baltimore Sun*, expressed confidence that he could bring the Know Nothing gangs under control. But although his administration brought other important benefits to the City, including the elimination of the volunteer fire companies, a reorganization of the police force, and the acquisition of Druid Hill Park, he was unable to bring about fair and open elections. Perhaps he did not really have his heart in this. He would not have been the first reformer, or the last, to compromise with his conscience with respect to election practices, on the theory that he could do more good in office than out of it, even if he had to cut corners to get there.

The Democratic governor of the State, Thomas Watkins Ligon, attempted to get Mayor Swann to use the militia to quell election disorders and assure open voting. In 1857 Governor Ligon himself called out the militia. But the Mayor was not only uncooperative; he was adamantly opposed to any such plan, and denied the legal right of the Governor to invoke it. The Governor's power was indeed unclear. The statute expressly authorized the Mayor, the Judge of the Criminal Court, and the Judge of the Superior Court of Baltimore to call on the militia in order to maintain local peace, but it said nothing about the Governor's doing so. Accordingly, it was argued that this excluded the exercise of such power. Resort was had to the old game of getting prominent attorneys to express their opinions, and with the usual result. One long string of leading lawyers lined up behind the

13. SCHMECKEBIER, *op. cit. supra* note 4, at 19, 29.

Governor, another behind the Mayor. The militia also exhibited great lack of enthusiasm for the Governor's call, and rather than risk further doubt and disorder he withdrew it.

In the ensuing election, Democrats were so effectively barred from the polls that the Know Nothings swept the State, gaining control of the governorship as well as both houses of the State legislature.¹⁴ One of the first acts of the new governor, Thomas Holliday Hicks of Dorchester County, and of the legislature was to publicly condemn Governor Ligon's efforts to intervene in the police or election affairs of the City of Baltimore.

THE REFORM ASSOCIATION AND THE ELECTIONS OF 1859

Not all Baltimoreans were chicken. In 1858 a group of them organized the City Reform Association, declaring "their conviction that the only positive security . . . is the combined and resolute actions of the citizens themselves, within the limits of law." A guiding spirit in this was George William Brown, successful practicing lawyer, then aged 47, later to be Mayor of Baltimore and Chief Judge of the Supreme Bench. With him was Severn Teackle Wallis, four years younger and also destined for a long and distinguished career in the law.

Two elections were due in the fall of 1859, one in October for the City Council, another in November for the State legislature and other offices. The Reform Association girded for them, getting up slates of candidates, developing ward organizations, recruiting poll watchers, and sponsoring a mass meeting in Monument Square to whip up enthusiasm and support. The results were gratifying. On October 13, in spite of fraud and intimidation, they elected six of their candidates to the City Council.¹⁵

This was not sufficient to control the Council but it was enough to arouse the Know Nothings, who organized a counter-demonstration the week before the November election. At this meeting, in Monument Square, their new weapon was officially unveiled. Some bright soul in Baltimore or elsewhere had discovered the perfect instrument with which to discourage voters, a shoemakers awl. It was cheap, easy to conceal and to use, excruciatingly painful to the victim, and non-lethal. Some enthusiasts strapped them to their knees, so as to puncture the backside of the victim by a simple move of the leg. Others favored manual operation, attaching the awl to a rubber band which would snap it up the sleeve after use. Both methods were admirably calculated to induce a distaste for voting.

At the Know Nothing rally the Blood Tubs carried a sign, or transparency, portraying the head of a reformer streaming with blood. Others showed reformers being pursued with awls, and during the speeches a giant awl four feet long was conspicuously displayed over the speakers' platform. There was even a mobile blacksmith shop

14. *Id.* at 88.

15. *Id.* at 101.

which busily manufactured and distributed awls during the course of the festivities.

Henry Winter Davis, who has been called the greatest orator of his day, delivered the principal address. He flayed the reformers. It so happened that he belonged to a group of twelve lawyers, known as the Friday Club, which met once a month at each other's homes to read and discuss legal papers in convivial surroundings. Most, if not all, of the other members were leaders of reform, including George W. Brown, Severn Teackle Wallis, and Frederick W. Brune, Jr. So personal and scathing were Davis' remarks that the Club minutes for November, 1859, circumspectly record that "a correspondence took place between the Club and Mr. Davis, which resulted in his resignation."¹⁶

At the State election in November the Know Nothing gangs outdid themselves. The following descriptions are from the sworn testimony of witnesses at the later legislative investigation.

WARD 10

Mr. S. Teackle Wallis testified:

There was not, at any part of the time while I was there, free access to the window for all voters; . . . there was a wilful obstruction by a party of men not engaged in voting, who rallied under the cry of "Regulators," and came in a body from the house of Erasmus Levy, two doors south of the polls; about twenty minutes or a half an hour after the polls were opened, they were taken forcible possession of by the same party of rioters with a volley of bricks and a discharge of firearms; from that time until I left, no man was permitted access to the polls, except at the pleasure of the parties who had so taken possession of them. . . . The bricks were thrown and the firearms were discharged . . . at and into the midst of the members of the Reform party, who were standing north of the window and on the sidewalk, and in the street near it; . . . a gentleman standing by my side called my attention to the fact that a large portion of the bricks had been removed altogether from the sidewalk in front of the house, between Levy's and the polls; . . . Levy . . . came rushing out, at the head of a crowd, . . . crying out, "Wade in, Regulators, wade in, we will take the polls, God damn you," and phrases of similar character; for the moment the Reformers stood their ground, and then the party who had rushed out . . . discharged a volley of bricks, and fired a considerable number of revolvers into the Reform party; . . . Mr. Weaver, the sexton of Christ Church, was struck by my side; the attack was so violent and so sustained; no interference made by the judges, and no policeman visible on the ground, that there was no alternative for the Reformers but to leave the ground or sacrifice their lives uselessly; . . .¹⁷

16. The minute book of the Friday Club is at the Maryland Historical Society.

17. MARYLAND HOUSE DOCUMENTS, DOC. U. and MARYLAND SENATE DOCUMENTS, DOC. L, *Papers in the Contested Election Case from Baltimore City 175-77* (1860).

Severn Teackle Wallis, whose home and law office were at 37 St. Paul Street, had written the stirring Reform Address to the Citizens of Baltimore. W. C. BRUCE,

WARD 14

Mr. Charles D. Hinks, of the fourteenth ward, testified:

[S]hortly after the polls opened . . . there was a discharge of firearms in the crowd, and I saw a man who, I understood, was called "Sonny White," fall mortally wounded; the firing was very rapid, and the crowd scattered; I saw Gregory Barrett draw his pistol and fire five times, but being intently engaged watching him, I did not see at whom his pistol was pointed; after he had discharged all the barrels of his pistol, he called for rifles; he and some of his party raved like madmen, swearing that they would kill the Reformers, and I heard McGonnigan, one of the Rip Raps, swear that no Reformer should vote; except over his dead body, this he said with horrid oaths and imprecations, which I do not care to repeat in giving testimony; . . .¹⁸

WARD 15

Mr. George H. Kyle, of the fifteenth ward, testified:

I went to the polls at half-past eight o'clock A.M., and was within two feet of the window; remained there about five minutes, with my brother. I had a bundle of tickets under my arm, and one man walked up to me and asked me what it was that I had. I told him tickets; he made a snatch at them, and I avoided him and turned round; as I turned, I heard my brother say, "I am struck, George!" At the same time I saw my brother raise his stick, and strike at some one; the same, I suppose, that had struck him; at that moment, I was struck from behind a severe blow on the back of the head, which would have knocked me down, but the crowd which had gathered round us, some thirty or forty in a cluster, was so dense that I was, as it were, kept up; after I received this blow I drew a dirk knife, which I had in my pocket, with which I endeavored to strike the man, who, as I supposed, had struck me, I then felt a pistol placed right close to my head, so that I felt the cold steel upon my forehead; at that moment, I made a little motion of my head, which caused the shot of the pistol to glance from my head; my hat showed afterwards the mark of a bullet, which I supposed to have been from that shot; the discharge of the pistol, which blew off a large piece of the skin of my forehead and covered my face with blood, caused me

RECOLLECTIONS 138 (1936) said: "Not only was Wallis the most brilliant public speaker that I have ever known, but his mind was the most highly cultivated mind that was ever brought to my knowledge. . . ." And at 145 the author further elaborated: "[H]e does not seem to me to have ever had his superior in the entire history of the Maryland Bar. . . ." The eulogy goes on at 147: "He was a game cock to the last feather. When one of the most murderous desperadoes of the Know Nothing reign of Fraud and Violence urged him to leave the polls, where he had taken his post, as a watcher, saying that, if Wallis did not do so, even he would be unable to save Wallis' life, the only reply that he got was the cool reply: 'That is your responsibility, not mine!'"

18. *Id.* at 243-44. Charles D. Hinks was a flour merchant, at 41 S. Howard St., and was later named by the legislature to the Board of Police Commissioners. His brother and partner, Samuel Hinks, had been elected Mayor of Baltimore in 1854 on the Know Nothing ticket.

to fall; when I arose I saw my brother in the middle of the street, about ten feet from me, surrounded by a crowd, who were striking at him and firing pistols all around him; he was knocked down twice, and at one time while he was down, I saw two men jump on his body and kick him; he had no other weapon in his hand than his stick; in the meantime, I drew my pistol, and fired into the crowd, which was immediately in front of me, every man of whom seemed to have a pistol in his hand, and was firing as rapidly as he could; in this crowd there were fully from forty to fifty persons; I saw at the second story windows of the Watchman Engine-house building, in which the polls were held, cut-off muskets, or large pistols, protruding, and observed smoke issuing from the muzzles, as though they were being fired at me; I then turned towards my brother, and endeavored to get to him; when within a few feet of him, I saw him fall, placing his hand on his groin as if badly hurt; at the same moment, a shot struck me in the shoulder, which went through my arm and penetrated into my breast; from the direction the ball took, I am satisfied that the shot was fired from the second story of the engine-house; when I got up, my brother was still lying on the ground immediately opposite the door of the house into which he afterwards managed to get; I supposed that he was dead, and transferred my pistol from my right hand, which was disabled, to my left hand, and holding it in front of me, backed down towards Lee Street, the crowd following me; as I backed in that way, just as I got near Lee Street, a fellow ran out with a musket from under a shed, and I pointed my pistol at him, which made him change his position a little; as I continued to back off, a brick struck me in the breast, and I fell; just at that moment the musket was discharged, and the ball whizzed over me as I was falling; while I was so retreating, the crowd was firing at me constantly; when I arose there was no further trouble offered me, and in a few moments some one came up, with whom I went off; there were seven bullet holes in my coat, and the coat was cut as if by knives in various places; the pantaloons had also the appearance of having been cut by bullets; during all this time I saw no police officers, and it was only when I was on my way home that an officer came up and asked me my name; my brother died that evening from the effect of injuries received there.¹⁹

According to the witnesses, the police not only made no attempt to protect voters but in some instances assisted the Know Nothings in their work of intimidation. For example, the Baltimore *American and Commercial Advertiser* for November 3, 1859, gave this account of Tenth Ward activities:

A few minutes after the polls were opened a party of men from the "Regulators" Tavern attacked the Reformers with awls. Mr.

19. *Id.* at 255-66. George H. Kyle was a partner in the firm of Dinsmore & Kyle, wholesale grocers and commission merchants, at 156 W. Pratt Street.

R. B. Fisher, of the firm of James I. Fisher & Sons, fired at his assailant. Paving stones were thrown at them, and six or seven men armed with rifles and horse pistols rushed out of Levy's [Erasmus Levy's tavern]²⁰ and commenced an indiscriminate firing, but fortunately no one was injured. Messrs. Fisher and Morris were both arrested, but their assailants were not troubled.

THE POLICE REFORM BILLS

As was to be expected, the recorded votes in Baltimore City heavily favored the Know Nothings. But the spreading knowledge of their practices had brought about a revulsion of feeling in the counties. Both houses of the legislature became Democratic; the Senate by the narrow margin of 12 to 10; the House by 46 to 28.²¹ By the time the legislature met in January, the Reform Association lawyers had been hard at work and presented a series of three bills: (1) to place the Baltimore police under the control of a State Board of Commissioners; (2) to reform election procedures and make them a responsibility of the police; and (3) to eliminate the alleged restriction on the right to call the militia to preserve the peace.

The Know Nothing members of the Assembly set out to sabotage or kill the bills. In the House they were relatively powerless and could do no more than effect delay. But in the Senate the Democratic margin was paper thin.

The Know Nothing strategy was to amend the police bill to death and, in the process, to postpone final action in the hope that some of the Democratic senators would get sick, go home or submit to Know Nothing pressure. In the Senate alone forty-two amendments were offered, one at a time, and a record vote was demanded on almost every one, eating up legislative days and staving off final passage. Only one succeeded in breaking the ranks of the Democratic majority. It was sponsored by Senator Anthony Kimmel of Frederick County, an opponent of the bill, and provided "That no Black Republican, or endorser or approver of the Helper Book, shall be appointed to any office under said Board."²² The "Helper Book" was the product of H. Rowan Helper of North Carolina and advocated the abolition of slavery. It was published in 1857 and by 1860 had become a campaign document of the Republican party. It was symptomatic of the times that this amendment succeeded in breaking the legislative alignment, passing the Senate by 15 to 6. Its design, of course, was to invalidate or ridicule the proposed law.

20. Erasmus Levy's tavern, on Holliday Street, to which reference is also made in Mr. Wallis' testimony, was a notorious gang headquarters. Levy's and similar dens here and elsewhere brought the term "tavern" into such disrepute that dispensers of spirits sought to refurbish their public image by calling their establishments "saloons," a term which a century ago carried an air of gentility and elegance.

21. See WINGATE, *THE MARYLAND REGISTER FOR 1860-1861*, at 6, 8-9 (1860), for the composition of the 1860 General Assembly.

22. *JOURNAL OF THE PROCEEDINGS OF THE STATE OF MARYLAND* 113 (Jan. Sess. 1860).

On February 2, 1860, the police bill received its final vote of approval,²³ and the companion bills followed in its wake. The Governor at that time was a Know Nothing, but the 1851 Constitution gave him no veto power and the bill became law.

THE BATTLE IN COURT

Both sides now girded for the inevitable court fight, and both took the offensive. The four Police Commissioners named in the Act brought a mandamus action to obtain possession of the station houses and police equipment owned by the City. The City countered with a suit to have the Act declared void and to restrain the Commissioners. The two actions were argued together before Judge Robert N. Martin in the Superior Court of Baltimore City.²⁴ He was an able judge and had been on the Court of Appeals from 1845 to 1851. The new Constitution of that year had required that judges be elected. This was so offensive to the members of the Court of Appeals that they refused to run, and a wholly new court was elected. Later, Judge Martin became judge of the Superior Court in Baltimore.

His opinion was crisp and to the point and knocked down, one by one, every substantial argument advanced by the fertile imaginations of the City lawyers. In this he had the support of some of the best legal brains of the day, the new Police Commissioners being represented by Reverdy Johnson, William H. Norris, James Mason Campbell, and Severn Teackle Wallis. The City was represented by Jonathan Meredith, William Price, William Schley, and Thomas S. Alexander.

The issue was solely one of power, said Judge Martin, the question of expediency being exclusively within the province of the legislature. The City was a creature of the State, and the State legislature had the power to rearrange its functions as it saw fit, including the power to transfer municipally owned station houses and police equipment to State Commissioners. It was a public trust, and if the legislature saw fit to change the trustees, it had the right to do so.

Within a month the Court of Appeals affirmed, opinions being written by Judge William Hallam Tuck and Chief Judge John Carroll LeGrand, of Baltimore City. Although much longer than Judge Martin's opinion, the Court of Appeals opinions did not add greatly to it. Indeed, their greater elaboration had the effect of creating doubts on some points that the lower court had merely brushed aside.²⁵

23. The 1860 census figures for the political subdivisions from which members of the legislature were elected make it clear that the Know Nothings represented a larger proportion of the voters than did the Democrats, as shown below:

	<i>Population Represented by Senators</i>	<i>Population Represented by Delegates</i>
Know Nothings	338,704	304,566
Democrats	117,204	211,342

24. *Baltimore v. State*, 15 Md. 376, 382-401 (1860).

25. 15 Md. 376. The most questionable part of the decision was that sustaining the legislative authority of the Police Commissioners to fix their own expenses and to require the City to pay them. The Court of Appeals regarded this as a delegation of taxing power, but sought to justify it on the basis of cases permitting the delegation of

The case was not as easy as the judges made it sound. No one could question that the City was legally a creature of the State, but the concept that the legislature could transfer the City's police to commissioners named in the Act was nevertheless revolutionary. By the same logic the legislature might have named a new mayor and a new city council.

The Court of Appeals was humorous rather than serious in its treatment of the legislative anathema against Black Republicans and endorsers of the Helper Book. They had no way of determining, they said, what the words meant. Therefore they held them meaningless.²⁶

THE SWEETS OF VICTORY

Whatever the legal quirks in the police bill, the proof of the pudding was in the voting. At the next election, held six months after the court decision, the new laws and the new police force performed so well that for the first time in a decade Baltimoreans were free to vote as they chose, free of violence, fraud or intimidation. Know Nothingism was smashed. And, to cap the climax, the voters swept into office as mayor the lawyer who had so fearlessly led the battle, George William Brown.

Nor was this the only occasion on which the transfer of the police to State control was to have a dramatically beneficial effect.

During the Civil War, Baltimore was subjected to force and intimidation of a different sort, purportedly in the interest of the war effort. Mayor Brown, the four Police Commissioners, Judge Bartol of the Court of Appeals, thirty-one legislators, and hundreds of other citizens were arrested without legal process. Many of them were imprisoned at Fort Warren, in Boston harbor, for more than a year, without the placing of any charges against them, merely because military officers hoped that their incarceration might render the City less contentious.²⁷

While the war was raging there was some color of justification for administering the City under what amounted to martial law. But the Radical Republicans who held political control at the war's end had no notion of surrendering their authority. Through the cooperation of the Police Commissioners they controlled the election machinery just as ruthlessly as the Know Nothings had before them. Many of the Radical Republican leaders had in fact been Know Nothings. By

such power to municipal corporations, citing *Burgess v. Pue*, 2 Gill 11 (1844) and *State v. Maryland*, 2 Gill 487 (1845). This seems contrary to the spirit and purpose of the MARYLAND DECLARATION OF RIGHTS art. XII (now art. 14), which was designed to vest the taxing power in the elected representatives of the people, in accordance with the principle of "no taxation without representation." A delegation to an administrative body, not directly responsible to the vote of the people, is very different from a delegation to a municipal corporation, and seems to violate this principle.

26. *Id.* at 484-85.

27. See C. B. Clark, *Suppression and Control of Maryland, 1861-1865*, 54 MARYLAND HISTORICAL MAGAZINE 241 (1959). No charges were ever placed against Mayor (later Judge) Brown, who attributed his arrest and fourteen month incarceration to his refusal to use City funds to pay police officers who were appointed and controlled by the Federal military command.

an overbearing application of what was known as the "Ironclad Oath," they exercised a form of thought control, barring from voting anyone who could not satisfy the Republican election judges that he had never sympathized with or extended aid or comfort to anyone connected with the Confederacy. The overzealous enforcement of restrictive rules is said to have disfranchised more than half the voting public.²⁸

Again the key to the situation was the police, who had a large measure of responsibility for elections. The governor at the time was Thomas Swann. He had been mayor of Baltimore during the earlier crisis and had condoned the intimidation of voters by his supporters. Fate now gave him the opportunity to redeem himself.

Like most of the Know Nothing leaders, Swann had become a Republican, and he had been a strong unionist throughout the Civil War. But with the war over he could no longer stomach the vengeful spirit and excesses of the party leaders then in command. Upon a petition from citizens of Baltimore, he removed the Police Commissioners and replaced them with appointees of greater tolerance.²⁹ The effect was to break the hold of the Radical Republicans upon Baltimore, and once more, through State control, to make elections free.³⁰

28. KENT, *THE STORY OF MARYLAND POLITICS* 5 (1911), places the proportion of those disfranchised at three-fourths.

29. See Andrews, *History of Baltimore, from 1850 to the Close of the Civil War*, in I *BALTIMORE, ITS HISTORY AND ITS PEOPLE* 208-09 (1912).

30. By the LAWS OF MD. ch. 15 (1900), the Police Commissioners were made subject to appointment and removal by the Governor, rather than by the General Assembly, as theretofore; and by the LAWS OF MD. ch. 559 (1920), provision was made for a single Commissioner instead of a board.

In 1920 and again in 1947 the General Assembly called for a vote in Baltimore City as to whether the Police Commissioner should be appointed by the Mayor or by the Governor. The Department of Legislative Reference shows the results as follows:

	1920	1947
For appointment by Governor.....	87,474	56,457
For appointment by Mayor.....	72,779	24,809