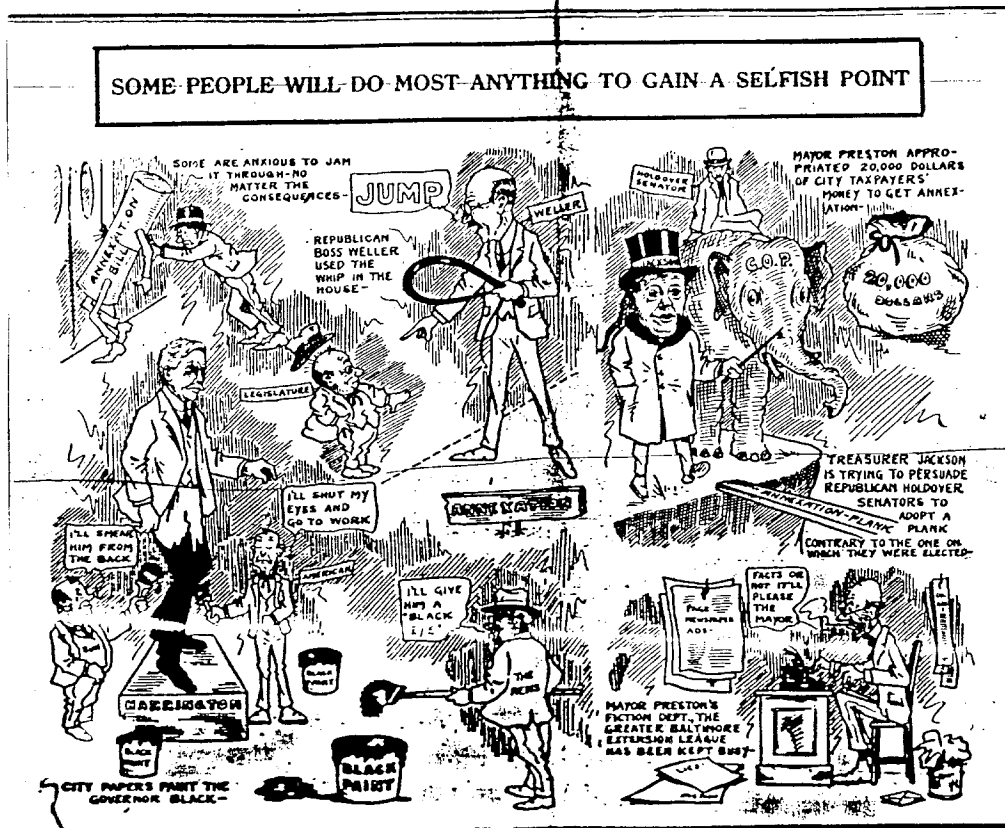


BALTIMORE BOUND:
ARTICLE XIII, SECTION 1, "NEW COUNTIES," OF THE MARYLAND CONSTITUTION
AND THE BALTIMORE CITY ANNEXATION ACTS OF 1888 AND 1918

TOWSON, MARYLAND, SATURDAY, FEBRUARY 23, 1918.



Michele LeFaivre

Submitted as an Independent Writing, Summer 1996
Revision, Spring 1997

I. Introduction

In this paper I examine the extension of Baltimore City's municipal boundaries in the late nineteenth and early twentieth centuries within the context of the legal process which authorized it. The period covered begins in 1864, when a constitutional convention was convened to accommodate, *inter alia*, the formation and growth of counties, and ends in 1948, when the section on counties was revised to effectively preclude Baltimore City from further expansion. The paper's structure parallels the legal process in Maryland, and so it begins with the state constitutional law on annexation procedures, then takes up the drafting and passage of enabling legislation, and judicial review were necessary. The writer chose this approach because popular perception and legal scholarship hold that Maryland Courts erred, as a matter of law, in upholding the State Legislature's two bills which authorized Baltimore City's 1888 and 1918 annexations.

The paper also has a second, unanticipated purpose, which is to convey to readers something of several potential great moments in local urban history. I am speaking of the effort at various times to transform the structure of local governance in Baltimore and the region. Constitutional support for the formation of New England townships in county subdivisions borough government based on the New York model and regional metropolitan government and planning, the influence of England's Town Panning Act: both offered for a brief time the opportunity to rewrite the relationship between urban geography and government structure. The writer confesses a second unanticipated revelation in the historical record, an analysis of which is beyond the scope of the paper. Even more controlling than the political environment which

quashed these proposals is a recognition that racial discrimination in the regional housing market was a primary reason for the failure of several annexation proposals.¹

Following Section I, this Introduction, Sections II and III reviews the history of the two Maryland Constitutional Conventions which drafted articles on the formation of new counties and changing county lines. My claim here is twofold: first, that the broader political context of the two conventions--the Civil War-- resulted in a legislative environment where political ideological struggles impeded thorough lawmaking, and second, that the historical offers no clear exposition of the pertinent language of the Maryland State Constitution. Sections IV and V takes up the legislative process behind the City's 1874 and 1888 annexation bills. Section VI reviews the Court of Appeals' first judicial review of Article XIII, *Daly v. Morgan*, in which the Court exempted the city from adherence to its procedural requirements. Sections VII and VIII cover, respectively, the city's last annexation bid in the early 1900s and subsequent court battle. The final section addresses the last revision to Article XIII, a 1947 amendment which prevents further annexations by the city. A brief overview of the state's failed 1967 constitutional revision, which tackled the problems and opportunities of urban growth through regional government, concludes the paper.

II. The Constitution of 1864: Article X, "New Counties and Townships"

The year following President Lincoln's Emancipation Proclamation, the Maryland State General Assembly voted to hold a state constitutional convention. Convention delegates met in

¹ See Joseph 's seminal study for a political history of Baltimore's annexation efforts. *Joseph Arnold, Suburban Growth and Municipal Annexation*, 22 MARYLAND HISTORICAL MAGAZINE 109-128 (1978).

Annapolis during the spring of 1864 to devise amendments which would abolish slavery (the Emancipation Proclamation did not apply to Maryland), require an oath of loyalty by State officials (eliminating southern sympathizers from holding office), reintroduce the office of the Attorney General and create a state system of education. The convention was committee-based and each committee would bring revised articles forward for review and debate by the entire delegation. Late that spring, Allegheny County Delegate Hopewell Hebb submitted the Report of the Committee on the Rights, Duties, Divisions and Sub-Divisions of Counties to the members of the Maryland State Constitutional Convention. As reported out of committee and signed by five of seven members, the article on counties and townships contained two provisions:

Section 1. The general assembly shall provide for organizing new counties, locating and removing county seats, and changing county lines, but no new county shall be organized without the consent of a majority of the legal voters residing within the limits about to form said county, nor shall any new county contain less than four hundred square miles, nor less than ten thousand inhabitants, nor shall any county be reduced below that amount of square miles, nor below that number of white inhabitants.

Section 2. The general assembly may provide by general law for dividing the counties into towns or permanent municipal corporations in place of the existing election districts, prescribing their limits, and confiding to them all powers necessary for the management of their public: local concerns, and whenever the organization of these township corporations shall be perfected all officers provided for in this constitution, but whose official functions shall have been superseded by such organizations, shall be dispensed with, and the affairs of such towns, and of the counties as affected by the action of such town, shall be transacted in such manner as the general assembly shall direct.²

When debate was permitted on second reading, Montgomery County Delegate Edmund Duvall moved to amend Section 1 by inserting after the word "limits," the words "of the

² 1864 Proceedings of the Convention to Frame a New Constitution, 1085- 1086.

counties." In a word, the amendment proposed to wholly transform the committee objective by mandating that *all* legal voters in affected counties be allowed to approve new counties or changes in count lines, not just legal voters residing within the area to be annexed. Howard County Delegate Sands voiced immediate opposition and differentiated the practical effects of the two bills by "exemplifying" a situation in his jurisdiction. The area involved was the Howard/Baltimore County line in Ellicott City. The problem was that Baltimore County residents who lived just across the Patapsco River from the Howard County courthouse had to travel twenty miles to the Towson Courthouse to conduct their legal affairs. Following the committee report, "[i]f the question were taken tomorrow in those districts which lie along the eastern border of the Patapsco," he remarked, "the vote [to be cut off from Baltimore County and be made a part of Howard County] would be almost unanimous." "[The Duvall amendment] takes from the people wholly and solely interested in the change to decide whether it shall be made or not, and leaves it to those who are not interested in the change the right to decide the question."

To Unionists, it meant something else. Without the Duvall amendment, a small but powerful group of individuals could control the voting process and form a new county, thus changing the "political complexion of the county" as Prince Georges County Delegate Daniel Clarke put it. Clarke's "good union argument" called attention to the subtext guiding convention discourse: the ostensible debate on counties and townships was a hard-edged discourse on the legality of secession, the politics of which structured the entire convention. Every article drafted and amended was a political geographic battleground between the State's non-secessionist Unionists and southern-sympathizing Democrats. The principle of self-determination was everywhere at stake.

Clarke's support for the Duvall amendment sprang from his union loyalty that no segment of the population should direct the political future of an entire community. He argued before the convention a unionist's conviction. "Our counties and our State form, in my humble judgement, one political community, the different parts had reciprocal duties, reciprocal obligations to each other, these obligations having been entered into when they were formed; and they must consult, not only the rights of those going away, but also the rights of those who may remain and form the old political association."³ The broader Duvall amendment was defeated 33-20.

The question of who shall control the power to authorize new counties or changes in county lines, however, was not over. The delegates next considered whether the annexation provision in Section 1 was a joint decision-making exercise between state legislators and voters or the sole prerogative of state legislators. Delegate Bonds summed it thus: the question is not whether the people interested in making new county divisions shall do so with or without the votes of the other countians affected. Rather, it is that they "shall come up to the legislature with their petitions . . . and let the State in its aggregate capacity say whether or not these people shall have what they petitioned for." No one had a right to complain, were his words, since the change of county lines is merely a question of legislation, the people of a county having no right to say that they shall have a certain county line.⁴ In other words, the State Legislature could decide the matter through the legislative process without a referendum.

On this point, the debates reveal a lot of posturing and much misunderstanding and clarification. One exchange goes so: ". . . [T]he legislature has nothing to do with it. The vote is

³ *Id.* at 1180-1187.

⁴ *Id.* at 1187-93.

taken, and if those desiring to separate have the majority, the legislature is bound to pass it." To which another delegate replies, "it does not say so." And so on. Delegate Hebb submitted an amendment which proffered that as a matter of policy the legislature did not have to submit everything to the consent of the people. The amendment failed on vote, 27-26. One amendment which did pass modified the word "shall" in the first sentence to read the Legislature "may." Commenting on the appropriateness of this amendment, Delegate Stirling observed that the change imposed upon the legislature "the duty of making changes;" it "confer[s] the power" were his observation. ⁵

Later in the debate, a delegate queried the meaning of the phrase "the limits about to form said county." Delegate Sands replied by example that it meant that if "five districts of Howard County and three districts of Baltimore County should be formed into a new county then these areas would be the limits which would decide the question. During the vote, several delegates comments indicate that even the basic meaning of the term "county" was ambiguous. Did it refer only to new counties or to the changing of county lines? In this regard, the historical record finds no accord; the delegates proceeded to reject a series of amendments which, while meant to clarify the issue, only made the word's meaning more obscure.

Other amendments proffered language which again required the consent of the people affected. Floor debate then turned to the annexation issue and the question of annexation by Baltimore City surfaced. Delegate Stirling offered a dispirited comment on how easily the principle of "self-determination" could be corrupted by self-interested objectives. All that was needed were a few speculators who lived in the rural parts of Baltimore County and owned land

⁵ *Id.* at 1190.

in an area to be annexed: these gentlemen could obtain all the benefits of government while escaping the taxes of the city. "I am opposed to people [running businesses in the city yet living on streets that run continuously from our city to the county] to escape their share of its burdens." In short, the committee report could backfire. Stirling also queried why such decisions were left to the people when Baltimore City was likely only to annex a half-mile or so in the coming years. Responded Delegate Ridgely from Baltimore County, who wanted a safeguard for his constituents, "I ask this house to give them protection." To which Hebb replied with the last word before the vote was called: "My first impression was to vote for it [the Ridgely amendment]. But if it is not adopted, the legislature will have the right to alter the limits of Baltimore County and Baltimore City as they deem most expedient, and I think it better to leave it that way." The Ridgely amendment passed 37-33. Section 1 was adopted as follows.

Section 1. The general assembly may provide for organizing new counties, locating and removing county seats, and changing county lines, but no new county shall be organized without the consent of a majority of the legal voters residing within the limits about to form said county, nor shall any new county contain less than four hundred square miles, nor less than ten thousand inhabitants, nor shall any county be reduced below that amount of square miles, nor below that number of white inhabitants.⁶

The language of Section 1 was to become the object of intense political debate and the subject of legal review. While the debate in later years advocated a reading which would require a referendum, the historical record affords no such absurdity of meaning, in fact its counsel against the use of legislative history as an objective measure of a coherent voice. Baltimore City's annexation interests are on record, in Hebb's commentary, as the record pertains in general

⁶ *Id.* at 1191-1196.

to Baltimore City but certainly the delegates' attention was not directed to its peculiar circumstances in the county-dominated system of government.⁷ Nor does legislative history confirm an objective meaning for the word referendum clause, the word "county" and phrase "all the legal voters."

III. The 1867 Constitutional Convention: Article XIII, "New Counties"

In 1867, the Civil War's close brought Marylanders together for a second time in the same decade for a constitutional convention. The more "self-determinationist" Conservative Democratic Party now dominated state politics and it was anxious to revise the Unionist aspects of the state constitution. The party's primary goals were to revise the state's loyalty oath and the Declaration of Rights, which gave the black population the right to vote, but Article X was also the subject of legislative interest because of lobbying efforts to create Wicomico County out of Worcester and Somerset Counties.

The possibility of a new county on the eastern shore was an immediate divide. Conservatives feared that the new voting rights of the state's black population would effect a coalition between the abolitionist Unionists in the Baltimore region and the northern portions of the state and the black population in the counties affected by the split. If this happened, the Republicans might regain control of state politics and the governorship, since the abolitionists would once again control a large portion of the state. Worse yet, some feared that a totally black

⁷ The Constitution of Maryland confers specific powers upon Baltimore City. A municipal government with its own charter dating back to 1797, Baltimore City is a unique jurisdiction, the only local government in Maryland which, perforce of the Separation Act of 1851, does not lie within a county. Drafted as part of the constitutional convention of that year, the act made the City and County two separate jurisdictions.

county might be formed when it was proposed to that word "white" be stricken wherever it appeared in Article XIII. Broad political interests once again influenced the language of the law.

On July 23, the committee report on the revision of Article X received its first reading out of committee. Six sections in length, the report collapsed Article X into one section to be revised as Article XIII. The referendum language was massaged and now read that "the lines of a county [shall not be] changed without the consent of a majority of the legal voters residing within the district, which, under said proposed change, would form a part of a county different from that to which it belonged prior to said change . . ." ⁸ Section 2 on the formation of townships was eliminated, erasing all possibility of a New England experiment in government south of the Mason-Dixon line. The remaining sections addressed the formation of Wicomico County, which absorbs most of the reported debate on Article XIII. ⁹ Article XIII, "New Counties," was adopted on August 8 and Wicomico became a new county when the constitutional amendments were ratified.

The central issue informing a revised Section 1 was black suffrage and its effect on the formation of new counties. No discussion of the Baltimore's special circumstances as a "city" county surfaced during the convention; its "place" in Article XIII was only obliquely referenced when Delegate Alvey called Section 1 a great injustice the City of Baltimore and larger counties. History repeating itself, the legislative record fails us if we look to it for objective intent. In summary, then, this first two sections on the legislative history of Article XIII (which superseded Article X) are noteworthy solely for their absence of worthiness as extrinsic evidence. While

⁸ Debates of the Maryland Constitutional Convention, 337 (1867).

⁹ *Id.* at 392.

subjective meaning abounds, we would be hard pressed to arrive at a common core of meaning about several critical phrases and individual words.

IV. The Annexation Acts of 1874

Seven years after the constitutional convention, the City of Baltimore sent an annexation bill sent down to Annapolis for the 1874 General Assembly session. During the first reading of the bill, Baltimore City Delegate Turner explained city's need to extended boundaries. The city had been "circumscribed too long and was now striving to take in the population which belongs to her," he informed his colleagues, and it was about time that 'those who derive benefits from Baltimore City should share in its expenses."

While this rhetoric is grounded in truth, there is a more basic explanation as to why the city wanted to extend its limits in 1874. Post-Civil War economic conditions had stymied urban growth for several years. But with the war over for almost a decade, the city was strategically poised to reap the economic advantage of being the South's northernmost city and the North's southernmost city. In 1874, the city in which first shot of the Civil War was fired between northern and souther troops was witnessing a period of rapid economic growth. During testimony before the House of Delegates, a City Council committee distributed "plats, circulars, and statistics," which showed that for the last five years over 14,000 new houses had been built in the city and that 18,141 housing permits had been issued." New construction in the city added \$40,000,00 to the basis of State and local taxes.¹⁰ Land had become expensive and building activity was rapidly shifting to the suburbs. Absent a growing tax base, the city saw the proposed

¹⁰ *Id.*, February 27, 1874.

annex area as the means to fund the infrastructure necessary to support economic and physical growth.

Popular and political interest in the proposed legislation resulted in its publication in full in *The Sun*, the newspaper most closely aligned with city interests.¹¹ As proposed, the city's 14½ square miles would be increased by an area which would extend three miles north of what is Mt. Royal Avenue, two miles east of East Avenue and west of Payton Street meeting a line running through the center of the Patapsco River. Section 6 fixed the rate of taxation in the "Annex Area" at one-half the amount of its cash value for ten years. Improved property would be taxed at city rate. The bill passed on third reading on February 27 after an amendment to submit the question of extension to the voters in the territory to be annexed was approved. The Senate took up the House bill on April 2 and a final version passed the next day with only minor amendments.

The approved version reduced the city extension to an area one mile east and west and two miles north. If voters approved the extension, the city would become 35 square miles in size. Voter approval would also sustain Baltimore County's stature as the state's largest subdivision. The reduced area also meant, at least until the 1880 census, that the county would retain its six members of the House of Delegates, one more than Frederick County. Furthermore, despite the approximate 20,000 people who would become city residents, the county would remain as populous as Frederick, the county's rival to the west.

¹¹ *The Sun*, February 20, 1874. The publication institutionalized an unwavering pro-annexation stance. *The Sun*, published in Baltimore City, was closely aligned with city political and civic interests. *The Jeffersonian*, published in Baltimore County was closely tied to county interests.

This matter of "status" is essential to an appreciation of the city's annexation gestures. Until recent decades, the size-distribution of cities (a term developed by urban geographers) was closely associated with town growth through the localization of particular resources. Throughout the late nineteenth and mid-twentieth centuries, a city's prosperity was related to the processing of raw materials. Competition between cities to attract industry was fierce and it fueled the city's extension movements. In 1874, the harbor gave the city a competitive trade advantage with England and South and Central America and Baltimore was host to such major industries as oil and sugar refineries and guano/fertilizer factories.

The national railroad system was changing all this. Baltimore could reach into the hinterlands to attract industry, but it would have now to compete with inland cities such as Pittsburgh and Detroit. A city's competitive advantage in the emergent urban system was therefore a crucial factor in its growth. Status mattered. A highly ranked city was the best economic development tool then available to cities. And the most telling measure of urban status was the population and manufacturing census. City policies, including annexation, were directed improving it's rank in the national urban system.

Riding in tandem with the reworking of the referendum language was a maneuver to move up the vote to sometime before the fall congressional election, when a large voter turnout was a surety. Although more expensive to the county, which would oversee the election through specially appointed judges, the date shift would shorten registration time--and thereby the number of eligible voters.¹² One amendment on the subject gave judges the discretion to reject anyone who presented themselves as a voter. Another moved the election to July 7, prompting

¹² *The Sun*, February 28, 1874.

one city delegate to comment that this would unfairly give Baltimore County the time to "colonize" the affected area.¹³

May 5 became the compromise date with votes casted only by those whose "names were on the registration books" and who had resided in the area to be annexed for the last six months. A further qualifier was added via amendments to the voter registration law. The revised law mandated that "immediately after the ordering of any *new or special election*, except for Senators or Delegates the clerk of the court of the county or the Superior Court of Baltimore City in whichever the election is to be held, shall deliver to the registers the books and lists, whereupon they shall for the three days in Baltimore City, or for two days in a county, commencing not more than ten days after the ordering of the election, sit for the purpose of registering new voters and correcting the lists."¹⁴ According to *The Sun*, the bill gave citizens who were otherwise indifferent to general elections the chance to vote on the annexation question.

Letters to *The Sun* showed confusion over the law's meaning and pertinent provisions were reprinted verbatim in *The Sun* in a effort to clarify the law and perhaps forestall an alternative legal interpretation. The paper's editors, no doubt coached by the city solicitor's office, explained the law in terms that opened the books for registration.¹⁵ Baltimore County's registers submitted the law to two judges in the Circuit Court on the question of whether the "open registration" section of the bill applied to the upcoming special election. Yet the legality of judge's opinion was even in question. While the twentieth section of the bill provided for a legal

¹³ *Id.*, February 27, 1874.

¹⁴ *Id.*, April 3, 1874.

¹⁵ *Id.*, April 17, 1874.

advisor, there was an uncertainty about whether this was the county attorney or circuit judges. This "extra-judicial" assumption of responsibility, a defacto advisory opinion, was in fact rejected by the judges, there being no case before them.

While an argument about legislative intent ran on, two special elections were held in Baltimore involving the Jones Falls and funding ordinances, neither of which involved a time frame for registering new voters. The city's explanation--countering their championing of an open registration process--was that the time frame required by law could not be met.¹⁶ The merits of this legal argument and of the legality of the elections went unanswered. County officials made their own determination that the provisions in question did not apply to the May 5 election. The registration books would not be open, which a *Sun* editorial described as nothing less than "disenfranchisement."

When the annexation was put to popular vote on May 5, the measure was defeated almost two to one. Of the 1,705 votes registered, out of a total of about 1,800, 575 were for annexation and 1,130 were against it. Only one precinct, near Carrollton, went in favor of annexation. A *Sun* editorial, reflecting upon the failed election of the previous day, placed the voting provisions and the violations thereof in broad perspective.

To discuss the causes which have contributed to the present defeat of the annexation project might seem rather superfluous but for the light which is thrown on some of the weak places of our political system. Although the election in theory was confined to voters of the particular district proposed to be annexed the contest in reality extended far beyond those limits. The very interest which, theoretically, were supposed to be excluded from any voice or participation in the matter were practically the most active in influencing the result.¹⁷

¹⁶ *Id.*, April 23, 1874.

¹⁷ *Id.*, April 29, 1874. This was not a legal interpretation but an evasion of it.

The editorial also posed the legal question which would eventually be put to judicial review--can the Legislature, per Section 13, New Counties, enlarge the corporate limits of Baltimore City without a popular vote? The election was held "under the color" of the "county" clause, the editorial writer suggests, but the Legislature retained its power to define the territorial limits of municipal charts and "at pleasure to enlarge them." Next, the writer bids our attention to the ambiguity of the language in Section 13 with respect to its application to Baltimore City. The writer posits the two possible legal interpretations: either the constitution does not contemplate annexation to the city or submission to the popular vote is not constitutionally required. Deferring to a fundamental principle of judicial restraint, the conclusion is that "the matter is and more properly one for legislative determination than for a popular vote." The same conclusion would be reached when the law was eventually challenged, and popular opinion would "respectfully" dissent.

V. The Annexation Act of 1888

This chapter on annexation begins with the observation that in the late nineteenth Baltimore annexed territory before it had even been surveyed. Each of the annexation acts contained sections providing for a survey of the area annexed by the Topographical Survey Commission of Baltimore City in conjunction with the Surveyors of affected counties, after passage of the bill. Copies of which were to be placed in county courthouses for admittance as evidence in all courts (See Map I for the 1888 survey. This and the 1918 survey are on file in the Baltimore City Land Records Office).

The absence of a pre-annexation survey suggests that the city had no objective criteria for the scope of the annexation and proceeded to seek legislative authority absent a strategic plan. But the city had no other recourse. Throughout the late nineteenth century and into the twentieth, American cities expanded their boundaries to take in newer sections. Philadelphia expanded its area from two to 130 square miles in 1854. Chicago added 133 square miles to its municipal boundaries in 1889. New York City increased its size from about 44 to almost 300 square miles in 1898.¹⁸ Baltimore had to expand.

Fourteen years after its last failed effort, City Solicitor Carter drafted the annexation bill, which had to be first approved as a municipal ordinance by City Council before traveling to Annapolis. The "Carter" proposal divided an urbanized, contiguous area around the city known as the "Belt" into three sections. The northern section would extend two miles north of the 1818 boundary line, from Mt. Royal Avenues to about where 40th Street today (See Map II for boundary lines). The western section beginning at Parson Street would extend two miles westward to Reisterstown Road. A third eastern section would extend the city one mile east to Belair Road. Independently, an organization called The Belt Citizen's Association submitted a second annexation proposal which restricted the annexation area and vote on annexation to the northern district area to Cold Spring Lane.

The council-approved Carter version was sent down to Annapolis for introduction during the January 1888 session. The sixteen page bill provided that a voting majority in any of the three territories would result in annexation. All city laws except public nuisances would prevail in the

¹⁸ Kenneth T. Jackson, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 138-156 (1985). Jackson's study of urban and suburban growth is an essential history of urban development.

annexed sections, except that local temperance laws would remain in force where existing. All streets now in the extension which were legally condemned were to become the property of Baltimore City and all streets in procession of openings, grading, etc., would proceed under county laws.

Section 19 of the proposed tax rate in the annexed area kept the tax rate in the territory to be annexed at the then present county rate until the year 1900, with a prohibition against any increase assessments in that time period. Property purchased after the annexation would be assessed at three fourths the city rate.¹⁹ The tax rate in the annexed area would remain at 60 cents per \$100, with the city rate standing at \$1.20 per one hundred dollars, an increase of ten cents over the 1885 rate.²⁰ The bill also took measures to extend police and fire protection and increased city council representation. Sidestepping state political opposition to the city bill, the proposal self-limited the number of city delegates and senators, which under current Maryland law would have made the city the major voice in state politics.²¹ To appease the manufacturing sector, the dominant political voice in the eastern section of Baltimore County,²² businesses

¹⁹ *The Sun*, December 1, 1888.

²⁰ *Message of the Mayor of Baltimore and Reports of City Officers for the Year 1888*, 21 (1888).

²¹ Maryland constitutional law entitled counties with population of 55,000 inhabitants to six representatives in the House of Delegates. Baltimore City would thus become a major voice in the House, while Baltimore County's would be diminished, as it stood to lose one vote. See also *The Sun*, December 2, 1887.

²² Located there were brick manufactories, slaughter houses and oil refineries. While many such industries lay in eastern Baltimore County for geographic reasons, the area was an escape from the city's nuisance laws, which had no effect beyond its eastern boundary.

were exempted from compliance with local nuisance ordinances.²³

James W. Denny, representing the 2nd Legislative District, introduced the bill, entitled an "Act to Extend the limits of Baltimore City, by including therein parts of Baltimore county," on January 19. Denny proposed that the bill be referred to a special nine-member committee to be appointed by the Speaker as follows: three from Baltimore City, three from Baltimore county, and three from other sections of the State. Delegate George R. Gott, of Baltimore County, immediately proposed a counter-amendment to the committee structure, which would have dissolved it and replaced it with three representatives each from the city and county as well as one member from each county. The purpose was to diffuse the city's political clout in the state legislature. The amendment was rejected 53-26.²⁴ The House passed the bill on Feb. 21, 1888, 67-7. Five of the seven county delegates voted against it.²⁵

The Senate version's first reading was March 7. On second reading, Delegate Lindsay introduced several bills reported by the *Sun* newspaper as friendly to the anti-annexation forces in

²³ Like State statutes, the Baltimore City Code is organized by chapters. In the late 1900s, the general nuisance laws were part of Chapter 205. The multi-section chapter prescribed criminal proceedings for public health nuisances which required public paving to remove "any such nuisance dangerous to the health of the City." The Mayor and City Council could also enact specific ordinances for the construction of specific types of manufacturing. All such buildings and improvements were subject to building laws and regulations, which were lax in the county. Annexation bills were a serious financial concern to manufacturers, who did not always pave the alleys, streets or install sidewalks abutting their property.

²⁴ Journal of the Proceedings of the House of Delegates of Maryland, 90-91 (Jan. Sess.) 1888.

²⁵ *Id.* at 453-454.

the Senate. Of the two material amendments passed, one gave the Governor the right to appoint a board of supervisors to oversee the special election. These supervisors would later oversee the election of judges, clerks and deputies who serve in each election precinct. The amendment assured that significant patronage jobs could still be controlled by the county.²⁶

The second material amendment submitted the question of annexation to the Belt as a whole instead of the three sections as provided in the House bill.²⁷ If passed, the second amendment could kill the Senate committee bill; despite the exemption from nuisance laws, it was uncertain whether the Eastern Section would give up what Wentz termed a "very amiable relation" with the county commissioners, especially with respect to the sale of Sunday beer. Still, Wentz hoped, the "city had not abandoned the hope of getting the eastern section . . ." the people [might be] willing to give up their beer for the city's schools and other advantages. After further exchange between Lindsay and Wentz on the laxness of county law, the amendment was rejected. The Carter bill was adopted on third reading, 15-2.²⁸

The special election held on May 14 showed just how contentious the expansion of Baltimore City's limits was. Legal voters passed the referendum by only a 6% margin. In the northern section, where the city delegation thought passage was inevitable, the vote in favor won by only a 10% margin. The western section lent the strongest support to the bill, with almost 60% of voters favoring annexation. These two sections added some seven and one-half square miles to the city. In the eastern section, 60% of the votes were anti-annexation. As a

²⁶ *The Sun*, January 6, 1888.

²⁷ Journal of the Proceedings of the Senate of Maryland 539-42 (Jan. Sess.) 1888.

²⁸ *Id.* at 580.

consequence, the eastern boundary of the city would remain the same for almost 100 years.²⁹ Codified as Chapter 98, Sec. 5, Laws of Maryland, the Annexation Act of 1888 made June 1, 1888 the effective date that those parts of the Belt voting for annexation were to become part of Baltimore City.³⁰

Sec. 23 charged the treasurer of Baltimore County to collect one-half of the 1888 taxes paid in the annexed areas and to pay them to the mayor and city council of Baltimore. Just days after the referendum a Baltimore County taxpayer living in the Belt sought an injunction in the Baltimore County Circuit to preclude the county treasurer from complying with Sec. 23 on the ground that Section 19, by creating differential tax rates was void for being unconstitutional.

VI. *Daly v. Morgan*

In *Daly v. Morgan*, George Daly sought to enjoin Baltimore County Treasurer George W. Morgan from paying certain taxes to the Mayor and City Council as mandated by the Annexation Act. (Daly's opposition to annexation was voiced as letters to the editor of *The Sun* during the 1888 legislative session.) The county resident contended that the act was voidable as unconstitutional at the state level because it created separate taxing districts in the annex area in violation of Article 15 of the Declaration of Rights, which provided that "every person in the State or person holding property therein, ought to contribute his proportion of public taxes for the

²⁹ *Id.*, May 16, 1888.

³⁰ 1888 Md. Laws 98. Maryland is a "code" state; statutes are organized as codes in chapter format. New chapters amend existing versions.

support of the government according to his actual worth in real or personal property." ³¹ On June 6, 1888, the Circuit Court passed a pro forma order refusing the injunction asked for and the complainant appealed. ³²

Popular attention to legal issues, especially the details of the act prescribing the terms of annexation, prompted *The Sun* to publish a number of legal opinions on its front page. City Solicitor Carter's opinion, published first, focused largely on the constitutionality of Section 19 of the annexation act, which addressed differential tax rates in the Annex area. The same issue dominated the legal opinions published the week after Carter's. ³³ But to the seven Court of Appeals judges sitting in review, the tax issue was a secondary legal issue and not the grounds upon which the Court decided the case. The Court in brief order affirmed the validity of the Act of 1888, Ch. 98, and dismissed Daly's bill of complaint by holding that the same power which authorized the Legislature to establish different taxing districts in local jurisdictions also permitted it to create multiple taxing districts within a jurisdiction, as long as the tax rates within each district are equal.

The Court then addressed the key legal question, "the constitutional power of the legislature, to extend the limits of Baltimore City, by including therein parts of Baltimore County." ³⁴ In answer, the Court maintained that Article XIII of the Maryland Constitution did not expressly authorize city annexations, it only established rules for shifting county lines and

³¹ *Daly v. Morgan* 69 Md. 460, 460 (1888).

³² *Id.* at 462.

³³ *The Sun*, May 5 and 12, 1888.

³⁴ *Daly*, 463.

making new counties. "The object, and sole object of this provision of section I, was to provide for the annexation of parts of one county to another." The Court reasoned that had the framers intended otherwise, they would have said so "in plain and explicit terms."

No one knew better than the framers of the Constitution of 1867, that the time must come, and that not far distant, when the limits of a great city like Baltimore City would be absolutely necessary to its proper growth and development. And if they meant to deny this exercise of this power by the Legislature, and to say that its limits as then defined by its charter, should for all time remain the same, it is but reasonable to presume that this intention would have been declared in plain and explicit terms. So far from being expressly declared, there is nothing either in the language or terms of this section from which an intention can be inferred.³⁵

First principles of judicial doctrine grounded the Court in its decision.³⁶ Looking to the plain meaning of the term "county," the Court comported with one such principle. Construing an act of the General Assembly in light of the constitution, the Court, guided by a second such principle, made every reasonable effort to enable both the act and the state constitution to stand. The third such principle was an unstated middle term in the Court's argument: the powers of the Maryland legislature are plenary except as restrained by the Federal or State constitutions. Guided by these principles, the Court logically reached the conclusion that the 1867 constitution does not prohibit "legislatively" forced annexations to Baltimore City. "The Legislature has, therefore in our opinion, the same power now which it has always exercised, to extend the limits of Baltimore City by including therein parts of Baltimore County . . ." ³⁷

³⁵ *Id.* at 464-466.

³⁶ City Solicitor Carter was the lone enunciator of these principles, which were a major element of the opinion published in *The Sun*. It is worth noting that subsequent popular and legal dissension with the Court's opinion took no consideration of these fundamental elements of judicial doctrine.

³⁷ *Id.* at 466.

Because the Court found that the Legislature continues to have the constitutional power to extend the city limits, it did not have to rely on Article XIII, Section 1, as the source of legislative power. The question of whether the referendum had been held under the color of Section 1 therefore did not arise. The legal issue of whether the Legislature may act in the future without a popular vote would be left to the Court of Appeals which reviewed the 1918 annexation legislation. The points upon which the 1888 Court decided--that there was no provision on the subject of extending the city limits, that nothing in the Constitution limited the power of the Legislature to extend the city limits, and that in the absence of some limitation, the Legislature has plenary power on the subject--followed established principles of constitutional and statutory interpretation, which in their inherent conservativeness forestalled the substitution of the Court's judgement for the Legislature's--it chose rightly not to assume the Legislature's mantle. In the future, then, the State Legislature had the same power as it had over bills; it could refer them to the voters or enact them without referendum.

VII. The Annexation Act of 1918

Aided by the advent of the electric trolley, development in the "Annex" outran growth in the older parts of the city. Communities such as Peabody Heights (Charles Village), what is now called Reservoir Hill, Homestead and Loudon Park emerged from farm fields and country estates. But the bulk of suburban development lay beyond these row house neighborhoods in such large lot, single family home communities as Arlington, Howard Park, Park Heights and Mount Washington to the west and northwest of the city and Govans and Roland Park to the north. In 1913, almost three-quarters of Baltimore County's real estate taxes came from these suburban

districts.³⁸

One reason these districts experienced such growth area residents were fleeing the most congested city in the United States. The city was built out--so much so that it had to obtain congressional approval to develop a portion of Fort McHenry for an U.S. immigration detention hospital.³⁹ But surely another reason was the city's constrained geography, as is evidenced in correspondence between the City Librarian and the Mayor. Preparing research to support the introduction of another annexation bill in the General Assembly, the librarian despaired to Mayor Preston that Baltimore averaged 18.529 residents per square mile, far more than Cleveland's 12.278 average or Pittsburgh's 12.645.

City leaders viewed the exodus to the suburbs--and the city's incapacity to gain from outward migration--as the dominant cause for Baltimore's drop in the 1910 census, wherein the city's rank in both population and manufacturing capacity fell. The real threat of job losses to other cities as the national urban system transformed itself once again sent the city went down to Annapolis in 1912 with another annexation bill. Like the 1864 state constitutional article on the formation of new counties, which provided for a township form of government, the city proposed a new experiment in governance. The model was New York City's Borough system, which voters had approved in 1898, thereby creating certain central forms of government while granting

³⁸ Thomas Bond, "Suburban Real Estate and the Need for More Improvement," *The Jeffersonian*, January 12, 1914.

³⁹ R. Keene To Mayor Preston (no date). The Mayor repeated these facts in several speeches in which stressed that the present city was almost entirely occupied and that the suburban population was an important business portion of the city. Typewritten speech delivered by Mayor Preston in Montgomery County (1913). The Preston Correspondence, Container 9, File 53-A 3, Baltimore City Archives.

each borough a level of home rule in local matters.⁴⁰

The Baltimore version was a modified form consisting of a commission government and four quasi-independent boroughs. Three borough commissioners would be elected by borough voters and each borough would fix its own tax rate. No borough would be created without submission to the affected voters in each sub-government unit and a majority vote in any borough would bring it into the city's boundaries. Map II (Limits of Borough System proposed, 1912) delineates the proposed 171 acre proposed annexation area. The 30.14 acre northern Ridgely Borough would extend to just beyond Lake Roland; the 50.71 acre western Calvert Borough extended west to Ellicott City; the 28.03 acre southern Calvert Borough extended south to Stony Point, beyond Curtis Bay, and the 30.14 acre eastern Pinkney Borough, extended east to Sollers Point. If the General Assembly approved the bill, Baltimore would become one of the largest cities in the United States with a population of over 800,000 residents.⁴¹

Local urban reformers lent their support to the plan, while organizing themselves as The City Wide Congress on the Relation of City and Suburbs. Its Committee on the Relation of City and Suburbs prepared a series of reports between 1912 and 1915 which advocated home rule for Baltimore City, an extension of city limits, a "progressive charter for greater Baltimore, embodying the Borough system of Government" and the "establishment of a Metropolitan Town Planning Commission." Their model was a Philadelphia plan which had been recently introduced in Harrisburg. The "Heavenly City" plan provided for a commission to conduct

⁴⁰ Mel Scott, *AMERICAN CITY PLANNING SINCE 1890* 27 (1971).

⁴¹ *The American News*, September 24, 1913. The Preston Correspondence, Container 6, File 53-B, Baltimore City Archives.

physical planning within twenty-five miles of the city and to employ experts on street planning, sanitation, parks, housing, etc. The committee's final report on the city bill was highly critical, as it had no "provision for or control over future development in the annexed territory except insofar as it simply provided that the laws and ordinances and government of the city should be extended over the annexed districts." ⁴²

The 1912 city annexation bill failed to move beyond committee. The accepted reason given for its failure was city opposition to the tax rate in annex area assured its failure in Annapolis. ⁴³ A bill passed the year before suggests another. Thirteen years after the Supreme Court's *Plessy v. Ferguson* decision, the State Legislature approved the nation's first "Jim Crow" residential segregation bill. The bill mandated that blocks with greater than fifty percent black or white residents could not be let or sold to members of the opposite race. Full support for this restriction on where Negroes might live tightly constricted the residential decision being made by black southerners daily arriving in the city as part of the mass migration movement north. To the city's black middle class, constrained to reside with a very few areas, the suburbs were a possible escape from limited and often substandard housing. ⁴⁴

The 1915 city bill dropped the borough government proposal. The City now advanced an unimaginative annexation plan which provided for a city referendum, but no voting by those in

⁴² City Wide Congress, *Report of the Committee on Relation of City and Suburbs*, May 20, 1915.

⁴³ S. Field to Mayor Preston, January 17, 1914. The Preston Correspondence, Container 6, File 53-A, Baltimore City Archives.

⁴⁴ For an extended discussion of racial segregation ordinances in Baltimore, see Garrett Power, *Apartheid Baltimore Style: The Residential Segregation Ordinances of 1910-1913*, 42 MARYLAND LAW REVIEW (1982).

the area to be annexed. The geography was also much diminished, only thirty-five square miles, and included significant portions of the harbor. This bill also failed. In 1916, three annexation bills were introduced in the General Assembly. The City-Wide Congress introduced its bill and the Mayor and Governor Harrington introduced one in a political compromise to put a bill forward. Map II shows the geography of these first two bills. (the Campbell plan is the City-Wide Congress'; The "Ogden" proposal is the City's). A third substitution bill introduced late in the session gave the city a piece of the harbor but none of the middle-class suburban area.

The substantive difference among the three bills is symptomatic of the early-twentieth century national urban debate on the legal reach of urban government into surrounding growth areas. Three regimes can be identified. The first is the "industrial" solution, the predecessor to today's economic development approach to urban problems. This approach structured the city's 1912 plan, and the manufacturing sector promoted it speaking through the Baltimore Merchants and Manufacturers Association. Correspondence between local businessmen and Mayor Preston on the city's manufacturing plight is common in this period. One letter calls the Mayor's attention the fact that "nine-tenths of the manufacturing proposing to settle in Baltimore is driven elsewhere" because of the City's tax burden.⁴⁵

Indeed, most new major industries lay just outside Baltimore City, along the harbor, the most prominent being the 200+ acre Bethlehem Steel Company in southeastern Baltimore County. On the Arundel County south shore of the Patapsco River, new "carbon" industries began a growth sector stretching from Brooklyn Park to Wagner's Point. Industrialists saw this

⁴⁵) DeCoursey W. Thom to Mayor Preston, December 20, 1911, The Preston Correspondence, Container 9, File 53-A, Baltimore City Archives.

modern geography reflected in the 1910 manufacturing census: between 1909 and 1914, the city fell behind Detroit, which ranked first and Cleveland, which ranked second (due to the "automobile" business). There is considerable commentary bemoaning the fact that had the metropolitan nature of Baltimore's industrial base been examined, the city would have ranked second, perhaps, and surely third.

Once again the city's precipitous decline in rank put its national prestige at stake. "What an asset it would have been for Maryland in general and Baltimore in particular to have proclaimed to the business world that this city, according to Uncle Sam, had won third place in the measure of increasing manufacturing development!" To shore up support during the city's campaign in Annapolis, *The Sun* published a series of articles extolling Baltimore's industrial advantage, along with a trade map produced by the Municipal Factory Site Commission which illustrated the city's locational advantages in relation to Central and South American.

The second regime reflected the institutional interests of municipal government.⁴⁶ It was not so much that growth was occurring beyond city limits but that the city's bond rating and by way of that, its corporate stability, was almost in crisis. (Given the rise of new forms of municipal government in this period, this fear was more than perception.) The fiscal benefits of annexation to the city were not lost on the Mayor, who wrote to a constituent concerned about the city's bond rating that in 1915 the annex area showed an increase in State taxes of \$229, 661.64 and \$1,037,589.22 in City taxes, on an increased taxable basis of \$60,815,175 (calculated in the basis of the four tax districts in the Annex Area). And he surmises that these tax flows,

⁴⁶ *The Baltimore News*, December 29, 1917. The Preston Correspondence Container 9, File 68-E, Baltimore City Archives.

benefitting both the state and the city, guaranteed passage of the 1916 annexation plan.⁴⁷

The city's expansionary posture at this time is in fact a confluence of interests: spatial, economic, pride and financial health vis-a-vis its borrowing power. The latter became a campaign issue because the city had reached its borrowing power; absorbing parts of Anne Arundel and Baltimore County would add a minimum of \$100,000,000 to city tax coffers, which in turn offered security to the bond market.⁴⁸

The third regime was the metropolitan government movement, surely a cause of concern to party politics. The impetus for metropolitan government was England's Town Planning Act of 1909, which established due processes for city expansion. Regional planning and metropolitan government movements in Boston, Chicago, St. Paul-Minneapolis, and Detroit soon followed. New York's regional planning commission came out of this tradition, as did the Maryland-National Capital Park and Planning Commission and its plan, *On Wedges and Corridors*, (Riverdale, Maryland 1964), one of the most successful legacies of this movement.⁴⁹ While it is possible here to speculate about what might kind of plan might have ensued had the 1920 census not loomed in the near horizon, there was, at least in the abstract, a moment supporting monumental change.

The State Legislature passed none of the three bills.⁵⁰ Only two years now remained

⁴⁷ Mayor Preston to E. L. Stinchcomb, August 4, 1915. .The Preston Correspondence, Container 6, File 68 B-10, Baltimore City Archives.

⁴⁸ *The Jeffersonian*, January 1, 1918.

⁴⁹ See Joseph Arnold's political history of Baltimore's annexation movement, *supra*, fn.1, for an insightful study of why reformism never locally took root.

before the 1920 Census. To safeguard a "good place" for Baltimore in the census, and perhaps a new congressman, Baltimore City began a final annexation campaign to put a "winnable" bill before the 1918 General Assembly. But by now, the United States had entered World War I. Not only was political rhetoric once again heightened to the same degree as during the 1864 and 1867 constitutional debates, but the Assembly had to address federal constitutional efforts to enact prohibition and women's suffrage. To minimize the level of political trading on the two constitutional proposals to get the annexation bill passed, the Republican-dominated House of Delegates introduced House Bill No.1 entitled "An Act to extend the limits of Baltimore City by including therein parts of Baltimore County and Anne Arundel County" as the first bill of the January session.

Prepared by the Non-Partisan Greater Baltimore Extension League, a consortium of manufacturers, landowners and businessmen, with the support of the City and the Republican Party the bill added significantly to the city's square mileage.⁵¹ Legislative approval would grant the city 46.5 square miles from Baltimore County and 5.4 square miles from Anne Arundel County--an area one and one-half times the then-existing area of the city (Map III). The tax rate in the annexed area would begin at 60% of the city rate and increase 3% each additional year for twenty years, when it would be taxed at the city rate

The annexation geography was a clear compromise between city and business annexation regimes, but there was no borough government element. Some newer tax-producing suburbs were included, the city's population would increase and the harbor would fall under the city's

⁵¹ S.S. Field, *For a Greater Baltimore*. 24-25 (1916). The Preston Correspondence Container 6, File 68-A, Baltimore City Archives.

control. On the matter of whom should vote on the annexation question, there was a complete turnaround. The sponsoring committee argued the following.

There was no reason to give to the people in the territory immediately surrounding the City a veto power, upon the progress and development of the City, and when, after the passage of the Act of 1888, the Court of Appeals decided that the Constitution did not so require, the way was cleared for proceeding upon logical principles. These "principles" demand that a matter that so vitally involves the welfare of the entire State as the growth and development of its chief city and harbor should be finally decided by the representatives of the people of the entire State viz. the Legislature, and that the will of the people of the State so expressed should not be vetoed or thwarted by a bare majority of the comparatively few people of the State living in the territory proposed to be added to the City.⁵²

The second, borough plan was not completely off the table. On the first reading of Bill No. 1, Baltimore County Delegate Howard Bryant introduced a substitute Minority Report. The "Bryant" bill borrowed on the borough plan proposed by Mayor Preston in 1912 and 1914. Consisting of the same territory as the City bill, the Bryant Bill created two boroughs, one to be known as the Canton Borough, the other as the Guilford Borough. Hillen Road would mark the dividing lines between the two. Each would be self-governed by a three-member commission, two of whom would be elected. The commissioners could levy taxes, propose bond issues, lay out streets, construct public buildings, locate parks and provided sewerage as approved by the City Topographic Commission.⁵³

Politically, the territory would remain a part of Baltimore County in voting affairs, but it would be a self-governing unit with powers of local taxation for distinctly local purposes. The

⁵² *The Sun*, January 29, 1918.

⁵³ *Id.*, January 7, 1918.

city would be renamed Metropolitan Baltimore.⁵⁴ The minority report also modified sections 19, 20 and 21. Section 19 concerned certain voting procedures in Anne Arundel County. Section 20 addressed particulars of the special election on the annexation of the Anne Arundel portion of the proposed annexation territory. Section 21 devised provisions for the supervisors of election to insure the integrity of the election.

The Judiciary Committee held several hearings on the two bills, some at night so that the Assembly could get on with other work. When this happened, crowds were already lined up by late afternoon and by early evening spectators lined the walls. Supporters of the "Bryant" Bill minority report touted the proposal as a piece of legislation subject to "the will of the people" forthrightly questioned the constitutionality of the other bill, which had no provision for a referendum.⁵⁵ The opposing Baltimore County Non-Partisan Citizen's Protective Committee maintained that House Bill No. 1 had less to do with the extension of city services than with the city's need to increase its assessable tax base and borrowing power--and the jurisdiction's interest in bettering Baltimore's position in the 1920 census. Republicans accused the city of bossing the state. Democrats argued that landowners in the county "had put money into the county delegation's hands." A city delegate argued during one session that residents in the areas proposed for annexation should not be allowed to vote because so many had moved there from the city that they would like to stop the city's growth for their own "selfish interests."⁵⁶

The minority report coalition--now known as the anti-annexationists--contented that the

⁵⁴ *Id.*, December 29, 1917.

⁵⁵ *The Jeffersonian*, January 31, 1918.

⁵⁶ *The Sun*, February 1, 1918.

city had never been able to develop and occupy all its present territory and called for a map which directed attention to the undeveloped territory within the territory to be shown in red. (One wonders from these comments if the borough plan was merely a measure to divert interest away from the city bill.) William Offutt, Baltimore County Commissioners's counsel, suggested that another tax rate would hopelessly confuse the tax assessors, who had already to deal with four tax divisions in Baltimore, a legacy of the 1888 annexation taxing district system.⁵⁷ Offutt also underscored the fact that the city bill would put a special tax of fifteen cents per front foot upon property lying next to streets within the territory to be annexed.

City Solicitor Field took on the Democrats' idea that annexation legislation was subject to the "will of the people" and made political capital of the fact that the borough plan called for the creation of a borough manager, who would be elected by a committee, none of whom resided in the proposed borough. The city's final tack piggybacked the area's support of the local war effort, which was bringing hundreds of new jobs to the area. Speaking before the Judiciary Committee and through front page endorsements in *The Sun*, plan endorsers argued the need for a good supply of vacant land to meet the city's development needs. Exploiting the local war effort, the bill's boosters used the thriving local war industry to foretell Baltimore's future. The Protective Committee stressed that while the city was once larger than its neighboring rival Philadelphia, the former was now three times as large (in part due to "forced" annexation). The latter they attributed to the city's declining role in manufacturing, which suffered because the manufacturing center, including Curtis Bay and Sparrow's Point Bethlehem Steel, still lay beyond city

⁵⁷ A legislative act instigated by residents in the 1888 annexed area reclassified the area at the old sixty cents per one hundred dollar rate.

boundaries unsupported by county government.⁵⁸

The second reading of the two bills took up most of January 31 and February 1. Anti-annexationist rhetoric controlled floor discussion, preventing the city bill from being sent unamended to third reading. Delegate McIntosh introduced an amendment which fixed the rate of taxation in the annexed area such that no portion could be allocated to pay off the principal or interest on the public debt of Baltimore City.⁵⁹ Nine other amendments were proposed and rejected. On a call for votes, the minority bill was defeated, 62-36. On February 5, an effort to postpone the effective date of annexation until one year after termination of the present was defeated 59-38. The City's bill was then affirmed 62-36. On third reading in late March, the House bill passed, 59-38.⁶⁰

Before the Senate bill had even received its first reading on March 7, anti-annexationists convinced Harford County Senator Stifler to draft a resolution calling for a joint committee to draft a new bill. Though ruled out of order, the motion evidenced the same absence of total support for the bill on the floor as the House version.⁶¹ During a March hearing, the sole survivor of the Convention of 1867 argued that Article XIII mandated approval by voters in the affected area.⁶² In a repeat of the bill's progress in the House, anti-annexationist Senators Allen

⁵⁸ *The Sun*, January 29, 1918.

⁵⁹ *The Sun*, February 3, 1918.

⁶⁰ Journal of the Proceedings of the House of Delegates of Maryland, 158-180, 200-202 (Jan. Sess.) 1918; *The Sun*, January 17, 24, 1918 and February 2, 1918.

⁶¹ *The Sun*, February 7, 1918.

⁶² *The Sun*, March 2, 1918.

and Duvall, representing Baltimore County and Anne Arundel County, respectively, proposed a substitute amendment which gave Baltimore and Anne Arundel County voters the right to approve annexation and limited the annexation area to 17 square miles along the industrial harbor. ⁶³ The substitute bill was defeated on March 12. The Senate bill was then submitted to a vote and passed 18-9. ⁶⁴

Prior to 1918, Baltimore City comprised 32.10 square miles. The 1918 annexation act created a city one and one-half times as large by adding another 51.83 square miles of land and 11.3 square miles of water to its boundaries. ⁶⁵ Baltimore County lost \$50,000,000 of its taxable basis. ⁶⁶ Baltimore City now ran from just south of Hawkins Point to a direct line north to Overlea, then west on a direct line to Slade and Park Heights Avenue, then a direct line south to Fredrick Road, then southeast to Annapolis Road and from there to a line curving around the south back to Hawkins Point. Within this area lay dozens of new war industries, and all the attendant worker population.

VIII. *McGraw v. Merryman*

In May, the County Commissioners of Baltimore and Anne Arundel Counties filed bills of complaint against the Mayor and City Council of Baltimore City in their respective Circuit

⁶³ Journal of the Proceedings of the Senate of Maryland, 483-488 (Jan. Sess.) 1918. *The Sun*, February 8, 1918.

⁶⁴ Journal of the Proceedings of the Senate of Maryland, 750-752.

⁶⁵ Mayor's Message to the City Council of Baltimore, 9 (October 1918).

⁶⁶ *The Jeffersonian*, March 30, 1918.

Courts to have the recent annexation act declared unconstitutional. Five bills of complaint were brought before the Baltimore County Circuit Court and one before the Anne Arundel Circuit Court. The Circuits Courts in each county held as unconstitutional the annexation law as passed by the Legislature. In July, the Court of Appeals held a special sitting in which the constitutional question was argued by Baltimore City Solicitor Field and eight "anti-annexationist" attorneys, one of whom was the son of a judge sitting on the case. The cases were consolidated as *McGraw v. Merryman* (McGraw resided in Baltimore County and N. Bosley Merryman was the Treasurer of Baltimore County). City Solicitor Field's two-hour closing remarks accentuated the city's investment in harbor development. Baltimore City, he informed the Court, had become very active in industrial development around the harbor after the 1904 fire, which gave the city the opportunity to purchase waterfront land and begin several port development projects. The plaintiffs' closing arguments argued the illegality of an annexation without a referendum .

Two legal questions were presented to the Court. First, what is the controlling power of the State Legislature to extend or limit the boundaries of Baltimore City, a municipal corporation? Second, did Article 13 of the Constitution of 1867 place constraints on the legislative power to redraw the boundaries of Baltimore City? The Court delivered its opinion on July 30.

Relying on the doctrine of stare decisis rather than considering the case on its merits, the court affirmed the *Daly* decision. The decision is a window on one of the most fundamental convention of judicial reviews, stare decisis. "If this Court should reverse one of its prior decisions which was so deliberately rendered, on a question of such vast importance as to demand of every Judge his fullest consideration and best judgement as we have endeavored to

show was done in *Daly v. Morgan* because we felt that it worked a great hardship and possible injustice, not only would the principle of *stare decisis* have to be ignored, but it would have a tendency to cause decisions of Courts to be regarded as unstable and vacillating . . ." ⁶⁷

The court's reliance on precedent structured its response to the questions presented and so the opinion closely follows the reasoning in *Daly*. Thus in response to the first question the Court reviewed "just what the Court [in *Daly*] did decide, and what the judges thought they were called upon to decide." ⁶⁸ The McGraw Court found that the *Daly* opinion determined that there was nothing in the State constitution limiting the power of the General Assembly to extend the city limits. Quoting a leading treatise on municipal governance, the Court expounds a basic canon of statutory construction. "[I]n the absence of a constitutional prohibition, there can be no doubt under the authorities that it is for the Legislature to say whether or not there shall be a referendum . . . it may, *unless specially restrained in the constitution*, subsequently annex, or authorize the annexation of contiguous or other territory without the consent of, and even against the remonstrance of the majority of the persons residing in the corporation or in the annexed territory." ⁶⁹ Speaking through Judge Robinson's *Daly* opinion, the McGraw court reaffirmed that Article 13 applies only when one county is being annexed to another. "The object and sole object, of this provision of section 1 was to provide for the annexation of parts of one county to another . . ." ⁷⁰

⁶⁷ *McGraw*, at 260-261.

⁶⁸ *McGraw*, at 253.

⁶⁹ *Id.* at 255; 1 DILLON ON MUNICIPAL CORPORATIONS, (5th Ed., 1880), sec. 555.

⁷⁰ *McGraw*, at 254.

The doctrine of stare decisis is jurisprudential expression of the Court's reluctance to take up the state legislature's role. Judicial reasoning properly conserved a third question inherent in Section 1 for the political arena: did the referendum language requiring "a majority of all legal voters residing within the limits" mean a referendum based on all legal voters voting or a majority vote of all legal voters? Since the case was not heard on the merits, the court's abstention from evaluating this language, seen in the best light, is a restraint from responding to the political question impressed upon them from the public--a gap in legal explanation and understanding which confirms the great divide between public notions of justice and the judicial system's deferral of political questions to an accountable legislature.

This public notion of justice bears some scrutiny, however, because there is also substantial extrinsic evidence for the court's decision. Historical support for the Court's rationale can be found beyond the pages of legislative history and judicial decisions. "Forced" annexations were the legislative practice of the day. Some annexation efforts were popularly supported, but most were accomplished "within legislative halls," as the urban development historian Kenneth T. Jackson puts it. Such annexations spurred the growth of Philadelphia (1854), San Francisco (1856) and Baltimore's own annexations prior to 1888.⁷¹ They were known to Marylanders through economic competition; the "status" between manufacturing centers kept them always alert to city extensions elsewhere in the nation.

Immediately after the Court's decision, the City brought a professional town planning firm to Baltimore to confer with them on a comprehensive plan for the city and the outlying

⁷¹ Jackson, CRABGRASS FRONTIER, 148. A legal analysis of contemporary forced annexation procedures appears in Laurie Reynolds, *Rethinking Municipal Annexation Powers*, 24 URBAN LAWYER, 268-269 (1992).

districts recently added. The New York firm of Carrere and Hastings, who had redesigned Mt. Vernon and St. Paul Place in 1911, proposed to prepare a general plan based on several elements: streets, zoning, the harbor, railways, and sanitary conditions for a fee of seven hundred dollars. The firm also recommended that the City adopt a City Planning Commission to work with the consultant. Both the plan and the commission become a reality.

IX. A Final Amendment

In 1947, the General Assembly enacted Bill No. 210, incorporating language specific to Baltimore City, 89 years after the ratification of the first article on new counties, Article XIII today reads as follows (capitalized words indicate language added to the 1867 version).

Section 1. The General Assembly may provide, by Law, for organizing new Counties, locating and removing county seats, and changing county lines; but no new county shall be organized without the consent of the majority of the legal voters residing within the limits proposed to be formed into said new county; and whenever a new county shall be proposed to be formed out of portions of two or more counties, RESPECTIVELY, the consent of a majority of the legal voters of such part of each of said counties, respectively, shall be required; nor shall the lines of any county NOR OF BALTIMORE CITY be changed without the consent of a majority of the legal voters residing within the district, which under said proposed change, would form a part of a county OR OF BALTIMORE CITY different from that to which it belonged prior to said change; [or a part of a municipality not wholly within the boundaries of said county] and no new county shall contain less than four hundred square miles, nor less than ten thousand white inhabitants; nor shall any change be made in the limits of any county, whereby the population of said county would be reduced to less than ten thousand white inhabitants, or its territory reduced to less than four hundred square miles.

Article XIII was amended by Chapter 618, Laws of Maryland, upon ratification by Maryland voters on November 2, 1948. The bill effectively ended Baltimore City's era of forcible annexation. The legislative and historical record is distinguished for its silence on this last

revision; what we can speculate about it must be based on a general assessment of the social and political climate of the period.⁷²

Baltimore County included the bill in its "housekeeping" measures put before the General to remove ambiguities in laws which might otherwise generate future litigation. The county's proposal would render it impossible for a municipality to take over part of any county unless the voters of both the city and the county agreed to do so. But to describe the bill as a housekeeping measure begs the question of timing. Why 1948? Another bill sandwiched between legislation to construct the Bay Bridge and the Baltimore-Washington Beltway offers a clue.

On February 6, 42 spokespersons for civic, labor, political and veterans groups appeared before a Senate Judiciary Committee hearing on a bill to repeal a "Jim Crow" law in the Annotated Code of Maryland, Article 27, entitled "Crimes and Punishments." The particular "Jim Crow" law at issue segregated Negro passengers on railroads and steamboats--already illegal in Interstate Transport. Though generally not enforced except on the Chesapeake Bay Ferry, the law symbolized a broader social concern: housing segregation, the same issue that contributed to the failure of the city's 1912 borough plan. Baltimore in 1948 was home to thousands of Afro-Americans who were unable to purchase homes in the city because several areas had been redlined by private mortgage lenders and federal lending policies. The measure effectively barred them from purchasing homes in the state's suburban landscape. Afro-Americans comprised 20% of the city's population, but they lived on 2% of the land mass.⁷³

⁷² The author reviewed *The Sun* and *The Jeffersonian* newspapers of 1947 and 1948 for this segment of the paper. Given the attention to previous legislative changes to Article XIII, the absence of any reporting on the 1948 revision is striking.

⁷³ *Id.*, January 16 and 18, 1947.

The previous month, the question of fair housing had brought housing advocates together for a panel discussion sponsored by the Institute on Race Relations at the Homewood Friends House. The subject of the three-day long panel was the unavailability of homes for Baltimore Afro-American war veterans. Unable to purchase homes, the veterans were directed to the city's public housing program--of the 4,665 pending applications before the Baltimore Housing Authority, 3,233 were from Afro-Americans. One of the key speakers at the conference, James Rouse, a vice-president for the Mortgage Banks of America, urged builders to provide alternatives to public housing.⁷⁴ Yet even as he was speaking, city public housing officials were making plans to take over war emergency housing in Fairfield, Brooklyn and Westport and three city councilmen were beginning an investigation of the city housing authority for overcharging for repairs and inadequate housing and slum conditions.⁷⁵ And that same week, newly-ensconced President Truman spoke at the first meeting of the President's Committee on Civil Rights to direct its membership, with the assistance of the Attorney General, to secure civil rights and make recommendations for any new legislation that was advisable.

But undoubtedly, the legal specter silently counseling the county's Annapolis legislative agenda was the Supreme Court decision in *Shelley v. Kraemer*, 34 U.S. 1 (1948). The Supreme Court had agreed to hear *Shelley*, a collection of restrictive-covenant cases, several months before and the opinion was handed down at the beginning of May 1948, so it was inescapably in the minds of the General Assembly, many of whom were attorneys. Though the Jim Crow law remained intact, never getting out of committee--the Speaker of the House refused to recognize

⁷⁴ *The Sun*, January 16, 1947.

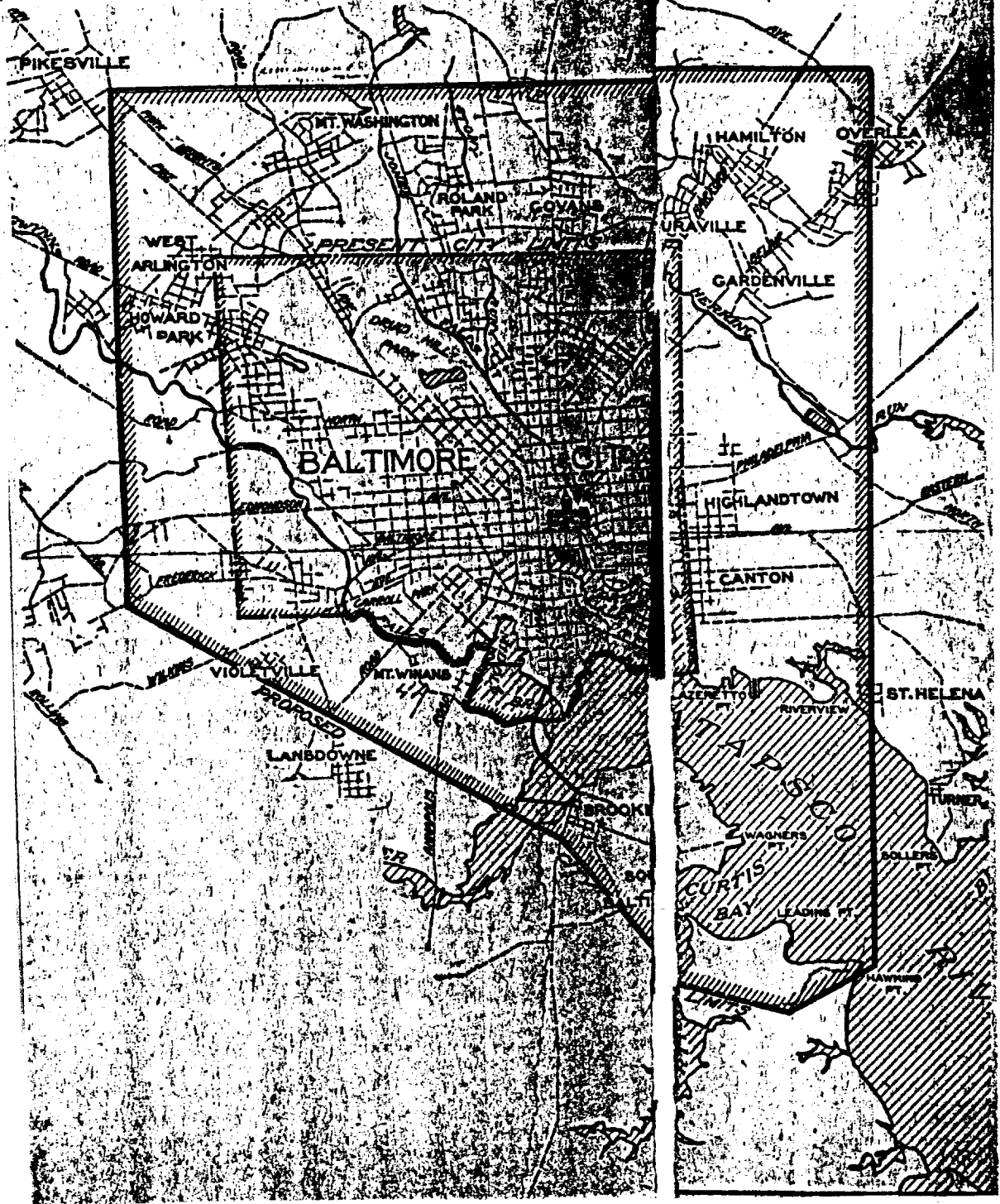
⁷⁵ *Id.*, January 17, 1947.

supporters, and several Democratic delegates voted with the Republican Party in committee-- the housing disability which kept veterans and non-veterans in substandard housing conditions unleashed a wave of black-middle class home ownership way beyond the confines of the city ghettos. Baltimore's 1918 annex communities, many of whom were built with restrictive covenants, no longer had public policy supporting their racial homogeneity.

In 1968, the state's last constitutional convention met with a reform agenda that offered hope to the City for its problems with urban growth. Regional governments were proposed throughout the state, as were regional master plans. But farce now controlled. Many delegates and much of the voting public understood Section 7 of the proposed revised constitution to mean that the Legislature could establish regional government without approval from the people affected. A referendum in May of that year, coming up against a summer of urban riots spurred by the assassination of Martin Luther King, failed by almost 54% of the vote.⁷⁶

⁷⁶ Interim Report of the Constitutional Convention Commission, 169-187 (1967).

INCREASE IN THE CITY'S SIZE BY THE ANNEXATION ACT



MAP III
1888 City Boundaries
1912 Borough Plan
1918 City Boundaries