

Governor John Seymour
and the
Charters of Annapolis

by

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For

Harry
(21 June 1924 - 5 March 2008)
and
Marian Dahlheimer

Friends

“. . . nobody is so free in mind as the man who knows nothing of what he is talking about: for to such a man it does not matter whether he says one thing more than another.”

Romain Rolland, *Jean Christophe* (Modern Library edition), II, 38.

“A certain oscillation shook the whole horizon of his brain.”

Victor Hugo, *Les Miserables* (New York: Arcadia House, 1950), p. 629.

“Something should be risked or there will be nothing to contradict.”

F. W. Maitland, *Township and Borough: The Ford Lectures, 1897* (Cambridge: Cambridge University Press, 1898), p. 51.

Table of Contents

Title Page	i
Copyright Page	ii
Dedication	iii
Quotations	iv
Table of Contents	v
Acknowledgments	vi
Foreword: The Perplexities of Trying to Understand the Charters of Annapolis of 22 November 1708	viii
Foreword: Notes	xi
Text	
Part 1. Preliminary Observations	1
2. The Act of 1696	5
3. The Charters	9
4. Reflections	29
Notes	
Part 1. Preliminary Observations	31
2. The Act of 1696	34
3. The Charters	37
4. Reflections	57
Images and Transcripts of Charters and Petition	
Charter of 16 August 1708 (Chancery Record 2, pp. 590-594, Maryland State Archives) Transcript	
Petition to Governor John Seymour (Chancery Record 2, pp. 595-596, Maryland State Archives) Transcript	
Existing Manuscript Copies of the Charter of 22 November 1708	
Copy from The National Archives of England (The National Archives (PRO), Colonial Office 5, Volume 716, Item No. 69.i) Transcript	
Historic Annapolis/Maryland State Archives Copy (Maryland State Archives Special Collections MSA SC 5793) Transcript	
Copy from Chancery Record 2, pp. 596-602 (Maryland State Archives) Transcript	
Vellum/Parchment Copy (Maryland State Archives, MSA SC 5339- 187-1.) Transcript	

Acknowledgments

For encouragement and assistance during the many months I have been writing this essay I owe thanks to several people. Dr. Edward C. Papenfuse, State Archivist and Commissioner of Land Patents of Maryland first suggested that we put the article on the State Archives' website and has provided me with information when I needed it. I thank him also for his generosity in the matter of citations. I thank Dr. Jean Russo, Research Archivist and Associate General Editor of the *Archives of Maryland Online*, for her careful reading of the manuscript and for catching some errors and making suggestions, for responding to my questions, for her patience in our discussions through e-mail of my citations, and for her work in matching some of my citations with the entries on the new shelf lists at the State Archives. We are also using Dr. Russo's transcriptions of the Historic Annapolis/Maryland State Archives copy of the second charter, of the copy of the second charter in Chancery Record 2, and of the vellum/parchment copy, also at the State Archives.

Unless otherwise noted, all original records are at the State Archives in Annapolis.

Dr. Gregory Stiverson, President of the EnVISIONing ANNAPOLIS Foundation, read an early draft of the article and had some useful comments. Ms. Jane McWilliams of Annapolis saved me from an inexcusable blunder by suggesting that early in the article I should discuss the "Act for keeping good Rules and Orders in the Port of Annapolis" of 1696 rather than jump straight into the charters of Annapolis themselves. I also thank her for her patient discussions through e-mail of various ambiguities in the difficult documents we have been trying to understand — on some of which ambiguities we have agreed respectfully to disagree — and for her careful reading of the manuscript, her suggestions, and her corrections.

In Washington, we thank Jeffrey M. Flannery, Head of the Reference & Reader Services Section in the Manuscript Division of the Library of Congress, for sending us information from the Colonial Office Papers.

In England, we thank Tim Padfield, Information Policy Consultant of the Information Policy and Services Directorate at The National Archives, Kew, Richmond, Surrey, for responding quickly to our question about copyright, and Paul Johnson, The National Archives Image Library Manager, Kew, Surrey, for sending us images of the copy of the second charter in The National Archives of England and for his help regarding permission to reproduce the second charter on the web.

Finally, once again I thank Beverly Ann for her support and for her patience in listening to my long and enthusiastic explanations of conclusions that turned out to be wrong and of an occasional conclusion that turned out to be right. As we already knew but learned again, in writing something such as this there are a lot of dead ends, but we believe that the remaining conclusions and explanations will withstand scrutiny. Beverly has also transcribed the first charter of Annapolis, the petition to Governor John Seymour, and the copy of the second charter from The National Archives of England. She has also often been the only thing that has stood between me and madness when I am working on my computer.

Foreword

The Perplexities of Trying to Understand the Charter of Annapolis of 22 November 1708

We know of four separate existing manuscript copies of the charter of Annapolis of 22 November 1708. These are, first, the copy that Governor John Seymour sent to England with his letter of 10 March 1708/9¹ and that is in The National Archives of England.² A photocopy of this copy is available in the Manuscripts Division of the Library of Congress in Washington.³ The second copy, which is called the Historic Annapolis/Maryland State Archives copy, is at the State Archives in Annapolis.⁴ The third copy is included in the Chancery Record 2 at the Maryland State Archives,⁵ and a fourth copy, which is referred to as the vellum/parchment copy, is also at the Maryland State Archives⁶ but is a copy from a much later date than the others.⁷ Elihu S. Riley's copy in *The Ancient City*⁸ need not be considered here.

None of these copies appears to be the original copy of the second charter, and where that original copy is, if it still exists, nobody appears to know.

No two of the manuscript copies of the second charter are exactly the same but have literally dozens of variations. Anyone who has tried to transcribe a hand-written document will know how difficult it is to make the copy exactly as the original.

Most of the variations in the copies of the second charter are either differences in spelling or the leaving out of words that are obvious. Neither of these types of differences changes the meanings the passages in which they occur and therefore should create no problem for anybody. They appear to be the result of the distractions of the clerks in the tedious and boring job of copying the documents or of their own preferences in spellings and abbreviations. In other instances, however, impor-

tant words are left out and, in the vellum/parchment copy, an entire important passage is missing.

Aside from the variations in the copies, there are two other problems in trying to understand the second charter. The first is that it is very boring, and it requires considerable effort to concentrate on it. Second, sometimes the wording is very obtuse, and therefore nobody can be sure exactly what these passages mean. We should be suspicious of anyone who claims that he knows their exact meanings. On the meaning of these passages serious people might sometimes have to agree respectfully to disagree.

One disagreement, for example, might arise over whether under the second charter women and free blacks could vote. Because by using the word “persons” the second charter does not explicitly exclude women and free blacks from voting,⁹ one person might argue that women and free blacks with sufficient property could vote, while another might argue that, even though the second charter does not exclude these persons from voting, until we have some specific evidence that women and free blacks did vote we must assume that the economic, social, and political ethic of the period made it unnecessary for white men even to *think* of having specifically to exclude them from the franchise.

Another disagreement might be over just when the freed apprentice could start voting. One person might hold that he could vote three months after being freed, while another might argue that he not only had to have been free for at least three months but also had to have become a freeholder or to have acquired an estate of at least twenty pounds sterling.¹⁰

And, of course, there might be other disagreements.

Probably a person who is only beginning his research on the charters would be well advised to use the copy from the National Archives in England together with the copy in Chancery Record 2¹¹ at the Maryland State Archives. It turns out, however, that in writing this article we did not follow what is now our own advice. Since the copy in Chancery Record 2 is the first copy to which we had access, this is the one we used. When later we got copies first from the Library of Congress and then from The National Archives of England we found that we had not included any information from the passages that have what appear to be significant variations, and therefore we have not had to change anything in our text or in our notes from the copy in

Chancery Record 2.

Since as appendices to this article we are including all four of the manuscript copies of the second charter, with transcriptions, readers can compare them and judge our work for themselves.

Foreword

The Perplexities of Trying to Understand the Charter of Annapolis of 22 November 1708

¹ The National Archives (PRO), *Calendar of State Papers: Colonial Series* (40 vols.; Vaduz: Kraus Reprint Ltd., 1964), XXIV, Nos 410,. 410.i.

² The National Archives (PRO), Colonial Office 5, Vol. 716, No. 69.i.

³ Library of Congress, Manuscript Division, Colonial Office 5, Vol. 716, No. 69.i.

⁴ Maryland State Archives Special Collections MSA SC 5793.

⁵ Chancery Record 2, pp. 596-602.

⁶ Maryland State Archives, 1708 Charter of Annapolis, MSA SC 5339-187-1.

⁷ Dr. Edward C. Papenfuse, Maryland State Archivist and Commissioner of Land Patents, e-mail message of 20 March 2008.

⁸ Elihu S. Riley, "*The Ancient City.*" *A History of Annapolis, in Maryland, 1649-1887* (Annapolis: Record Printing Office, 1887), pp. 87-91.

⁹ Second charter of Annapolis, in Chancery Record 2, p. 600; Riley, *The Ancient City*, p. 89.

¹⁰ Second charter of Annapolis, in Chancery Record 2, p. 600; Riley, *The Ancient City*, p. 89.

¹¹ The Historic Annapolis/Maryland State Archives copy of the second charter was discovered too late for us to consider it in this article. We know about the variations from Dr. Edward C. Papenfuse's analysis of the charters.

Cortland, NY 13045

27 March 2008

1. Preliminary Observations

In 1708 Governor John Seymour issued two charters for the “Porte and Town of Annapolis,”¹ the second of which has become quite notorious as the document that established Annapolis as a city. The first thing we should note about that second charter, however, is that it did not establish Annapolis as a city by itself but rather only in conjunction with the “Act Confirming and Explaining the Charter to the City of Annapolis,” which the assembly passed and Seymour signed during the legislative session that opened late in November of 1708.² In establishing the city the act of the assembly is as important as the charter is: with no act there would have been no charter at this time.

The second thing to note about the charters is that neither charter provided Annapolis with its first local government. Governor Francis Nicholson and the assembly had already established Annapolis as a “Body Corporate in Deed” in 1696 with the “Act for keeping good Rules and Orders in the Port of Annapolis.”³ With that act they gave the settlement the basis for a functioning government. The two charters therefore only changed the structure of this government — the first for a very short time, the second for a longer period.

The primary significance of the charters that Seymour issued in 1708, therefore, is neither that they established Annapolis as a city and thus might have provided it with greater dignity⁴ than it had enjoyed as a mere “Body Corporate,” nor that they changed the structure of its government. The chief significance of the charters, rather, is that they provided the occasion for the creation of two separate but closely related early precedents for the limitation of the power of the executive.

The occasion arose because with the first charter, which Seymour issued on 16 August 1708,⁵ he tried to appropriate all political power in the city for himself and

a small clique of his favorites. He did this by revoking the right to vote not only of most of the people who under the act of 1696 had been able to vote for commissioners of Annapolis but also of most of those who had been able to vote for delegates from Anne Arundel County to the lower house of the assembly. Annapolis would have two delegates, but only thirteen of the governor's small group of eighteen courtiers would be able to vote for them.

This assault on their rights was unacceptable to at least some of the people in Annapolis who had been able to vote earlier, and in a petition to the lower house an unknown number of them protested.⁶ After considering the petition the delegates unanimously resolved that Seymour had no right to grant the charter in the manner and form in which he had granted it.⁷ Under this pressure, on 22 November Seymour issued the second charter, by which he restored the right to participate in the political system of the city and the province to some, if not all,⁸ of the people whom he had disenfranchised when he issued his first charter.

Thus the first precedent. Both the petitioners against the charter and the delegates in the lower house claimed the right to judge an action of the governor, and together they forced him, through the second charter, to broaden political participation in the city and thus to accept a limit on his executive authority.

The delegates, however, were not satisfied with Seymour's issuing that second charter on his own but rather believed that they should have the right to participate in determining the government of the city. Under further pressure,⁹ therefore, Seymour agreed that the assembly should pass and he would sign what became "An Act Confirming and Explaining the Charter to the City of Annapolis." In this act the delegates added some ideas of their own on the government of the city. On 17 December 1708 Seymour signed the act,¹⁰ and thus it was not the second charter alone but rather the second charter *together with* the act confirming and explaining it that provided the new basis of the government of the city.

So here is the second early precedent in Maryland for the limitation of the power of the executive. Not only could the petitioners from Annapolis and the delegates force the governor to broaden political participation, as he had done with the second charter, but now the delegates, as the lower house of the assembly, could themselves participate in establishing policies that the governor would have preferred to establish with the advice only of his favorites. Members of the upper house, who

also made up the governor's council, would have participated in these decisions in any case.

Ironically, probably the person to whom we owe more than to anyone else for these early precedents for the limitation of executive power is the most vilified man in early eighteenth-century Maryland — vilified not only by the political powers of his time¹¹ but also by historians who have accepted their slanders of him with little or no further research.¹² This is Thomas Macnemara,¹³ an Irishman who came to Maryland in 1703 and who was quite possibly the best lawyer of his time in the province. He quickly became very unpopular with the ruling elite, however, allegedly because of his alleged multiple misbehaviors¹⁴ but more likely because of his courage in challenging the powerful. He was the spokesman before the lower house for the petitioners against the first charter,¹⁵ and, though we have no specific evidence of this, he might have been the leader, or one of the leaders, in drawing up the petition in the first place. He and Thomas Docwra were the only two petitioners the delegates mentioned by name when they summoned the petitioners to appear to defend their petition,¹⁶ and he had plenty of good reasons for wanting to embarrass John Seymour.¹⁷ While the delegates' already being upset at Seymour¹⁸ might have made Macnemara's job easier, still he was willing to put himself at the front of the battle, and as spokesman for the petitioners he convinced the delegates unanimously that Seymour had no right to issue that first charter as he had.¹⁹

Exactly how important Macnemara, whose tempestuous career in Maryland was defined by his willingness to challenge authority, was in the dispute over the charters is uncertain, but the petitioners' making him their spokesman before the lower house must mean that they accepted him as their leader. If he did not incite them he obviously encouraged them, and their making him their spokesman must be evidence of the respect that they had for him.

Although Seymour issued both charters of Annapolis in the name of Queen Anne, the queen herself probably had little or nothing directly to do with them. While apparently she did participate quite actively in the government of England,²⁰ it is all but impossible that she ever saw the first charter at all, and she could not have seen the second charter, if she ever saw it, until several months after Seymour had issued it. Probably she knew only vaguely, if at all, what was in them.

Both charters were written in Maryland. If the first charter had been written in

England Seymour or one of his council would not have had to propose, on 16 August 1708, that Annapolis be erected into a city, that it send two delegates to the lower house, and that it should have “some other small priviledges” that Seymour and his council would agree on.²¹ If the charter had come from England all of that would already have been settled. Further evidence is Seymour’s making it quite clear that he was responsible for the first charter when in his letter of 10 January 1708/9, referring to the session of the assembly of 27 September to 5 October 1708, he told the Commissioners of Trade and Plantations that the delegates “disputed . . . the legality of a *charter I granted* to the City of Annapolis” The Commissioners received the letter on 11 May 1709 but did not read it until 6 December,²² and so they might not have got their first inkling that there was a first charter until almost seventeen months after Seymour issued it. Long before that, on 3 June 1709, they had received a copy of the second charter.²³

And certainly there was no time for either the Commissioners or the queen to have seen the second charter before Seymour issued it, since he issued it only four days after he ordered “the Corporacon,” which must mean the mayor, recorder, aldermen, and common-councilmen whom Seymour had established by his first charter, to draw it up.²⁴ Seymour sent a copy of the second charter to the Commissioners of Trade and Plantations with his letter of 10 March 1709/10, which the Commissioners received on 3 June 1709.²⁵

Aside from the charters’ being issued in her name, therefore, apparently the closest the queen got to having anything to do with them is that by not disallowing the act confirming and explaining the second charter she allowed the second charter to stand.²⁶

2. The Act of 1696

The charters of 1708 did not establish the first formal government of Annapolis. Rather Governor Francis Nicholson and the assembly established that twelve years earlier with the “An Act for keeping good Rules and Orders in the Port of Annapolis” of 1696.

After Governor Charles Calvert tried unsuccessfully to establish ports in Maryland with his “Ordinance Edict and Declaracon” of 5 June 1668, his “Ordinance” of 20 April 1669, and his “Ordinance edict and declaration” of 30 June 1671,¹ the assembly in 1683 finally passed “An Act for Advancement of Trade” to establish ports and towns.² The area that ultimately became Annapolis, a settlement on the Severn River in Anne Arundel County, soon came to be called Anne Arundel Town.³

In October of 1694 Nicholson and the assembly confirmed the status of Anne Arundel Town as a “port and town” and a “place of trade” where ships could enter and clear and where the naval officer and collector of the district, or their deputies, would have to live.⁴ During that same session the assembly decided that Anne Arundel Town would replace St. Mary’s City as the capital of the province,⁵ and on 28 February 1694/5 the assembly met there for the first time.⁶ Two days earlier the provincial court had held its first session there.⁷ When the assembly met on 8 May 1695 the settlement was still known as Anne Arundel Town,⁸ but during that session the assembly changed its name to Annapolis and ruled that all sessions of the Anne Arundel County court would be held there.⁹

For more than a year-and-a-half after Annapolis became the capital of the province it remained an unincorporated settlement.¹⁰ On 1 May 1696, after Nicholson proposed that the inhabitants¹¹ of Annapolis be allowed “some Privileges,”¹² the delegates suggested that if he issued a charter for the port he could grant the inhabit-

ants “all reasonable Privileges and imunityes” that he considered appropriate.¹³ Nicholson did nothing further, however, and finally during the next session of the assembly the delegates on 8 July 1696 ordered that Nicholson’s proposal be drawn up into an ordinance and that a bill be drawn up during the following session.¹⁴ During that next session the assembly passed “An Act for keeping good Rules and Orders in the Port of Annapolis,” and on 2 October 1696 Nicholson signed it.¹⁵

By this act the assembly established Annapolis as “a Body Corporate in Deed” with eight “Comissioners [*sic*] and Trustees,” any five of whom could act for the town.¹⁶ If one of them died, left the province, or became incapacitated the “ffreemen and inhabitants” of the town would elect another freeman who was a resident of the town and who was qualified to serve as a delegate to the lower house to replace him.¹⁷ That meant that the prospective commissioner had to have a freehold of at least fifty acres or a visible personal estate of at least forty pounds sterling.¹⁸ Freemen, as specified in the act, included Governor Nicholson, the members of the governor’s council, all of the present delegates to the lower house, and every other person who had a lot in the town and resided there or had “a Trade in the Town Pasture,” and therefore more people were eligible to vote than were eligible to be elected commissioners. All “Merchants, Masters, Mates Guñers [gunners]¹⁹ Carpenters and Boatswains” who made Annapolis “their Constant Porte of Trade by Two Voyages” or more would enjoy the full privileges of freemen during their residence in the town.²⁰

Thus under this act not all free adults, nor even all free adult white males, were freemen. Though the use of the word “person” here might make it appear that a woman or a non-white who had a lot in the town and lived there or had “a Trade in the Town Common” could be a freeman and therefore had the right to vote, the economic, social, and political culture of the period would make this appear unlikely. Until we find specific evidence that women and non-whites could vote we have to assume that they could not.

While for purposes of voting the assembly carefully defined the word “free-men,” it did not define “inhabitant.” The definition of “freemen” in the act of 1696 makes it appear that the term “inhabitant” was limited to people who owned a lot in town and resided there and craftsmen who pursued their trades in the town pasture. And the act does make it clear that for political purposes under that act not every

adult male “resident,” in the common use of that term, could vote and therefore that not every “resident” was considered an “inhabitant” of the city.²¹

The commissioners and trustees could make laws, rules, and orders “for the good Government and regulateing of [the] Inhabitants” of the town as long as those laws did not contradict the laws of England.²² Here, then, the word “inhabitants” is used in a broader sense, to include all of the residents in the city. The commissioners could purchase land “adjacent to the Town and for Town Common,” by eminent domain if necessary, and pay for it with money raised for that purpose. In order to have the right to use the town common people who owned land in town would have to contribute to the cost of the common in proportion to the amount of land they owned in town.²³ If the owners of the land adjacent to the land that was set aside for “Wharfage and building of Keys [quays] and Wharfs and Warehouses” did not build “such necessary Wharfs or Keys or Warehouses” within eighteen months of the publication of this act any other person could take up the land that was designated for the wharfs, keys, and warehouses and, on building a substantial brick warehouse twenty feet square on every forty-foot square of such land, he would receive title in fee simple to every forty-foot square piece of land on which he built such a warehouse.²⁴

By this act the assembly also provided for four “rolling Roads,” with their routes specified, for rolling hogsheads of tobacco and for carrying other trade. The commissioners could purchase one acre of land at each end of each road, again by eminent domain if necessary, for building warehouses for common use and for the profit of the town. If the commissioners did not build the warehouses within eighteen months after the laying out of the one-acre lots any person could take up a lot and, by building “a good Substantiall” warehouse on it twenty feet square within eighteen months could, by paying the town the value of the lot, gain ownership of it. He could not live on this land, however, and the wording of this provision makes it appear that he would have to build the warehouse before he paid for the plot and gained possession of it.²⁵

The commissioners also had judicial powers within the city. Any three or more of them could create officers of the court, such as “Clerk Cryer Attorneys or Sollicitors,” and the sheriff of Anne Arundel County would have to attend their sessions. They could hear and determine any dispute between “the Townsmen or freemen” of

the town involving no more than five pounds sterling or one thousand pounds of tobacco, and for any misdemeanors or breaches of the peace committed within the town they could impose punishments not extending to life or member. For contempt of court, whether it was committed by officers of or suitors to the court, they could impose fines not exceeding twenty shillings sterling or two hundred pounds of tobacco.²⁶

A market could be held in Annapolis every week and a fair every year, at times that the commissioners considered appropriate. The commissioners could establish rules and orders for the markets and fairs, and people who came to them would not be subject to arrest for anything less serious than treason, murder, or felony.²⁷

Thus by the act of 1696 Francis Nicholson and the assembly provided Annapolis, now a “a Body Corporate in Deed,” with the structure for a fully functioning government. The city still did not, however, have its own separate representation in the lower house of the assembly. This absence of representation provided John Seymour an opportunity to issue a charter for the city in which he drastically reduced the participation of Annapolitans in their government while pretending to do them a favor.

3. The Charters

The act of 1696 remained the basis of the government of Annapolis for not quite twelve years, and the city remained without representation in the lower house except as a part of Anne Arundel County. On 8 September 1704, however, during his second meeting with the assembly after he assumed the governorship on 12 April 1704,¹ John Seymour suggested that the delegates seriously consider the instruction of the Commissioners of Trade and Plantations that he enquire into why St. Mary's City should have two representatives in the lower house and whether, since Annapolis was the seat of government, it might be proper to "encourage" it by giving it two representatives.²

The delegates ordered that the charter of St. Mary's City "be laid before" the House during the next session, when they would consider it further,³ but in the short session in December,⁴ on the "Article relating to the Members of the City of Saint Mary's referred to this Session & producing the Charter" they resolved that "it . . . [did] not properly lie before them."⁵ This wording might mean either that the delegates believed that they had no business considering the issue⁶ or that Seymour had failed to deliver the article from his instructions and the charter of St. Mary's City to the lower house.

Seymour might not have been anxious to have the delegates discuss representation to begin with. During the next three sessions of the assembly neither he nor the delegates mentioned withdrawing representation from St. Mary's City and awarding it to Annapolis.⁷

However that may be, finally in 1708 Seymour decided to act on his own. Whether this is what he had in mind all along there is no way to know. On 16 August 1708 he and his council, after considering whether it was proper that St. Mary's City

send two delegates to the lower house, since it did not have “a Mayor Recorder & [alder?]men”⁸ to choose them, decided that because of the absence of such people no citizens of St. Mary’s City could be legally returned to serve in the lower house but nevertheless decided to direct a writ of election “to such persons.”⁹

Seymour and his council were right about the scarcity of population in St. Mary’s City. At the beginning of the next session of the assembly the sheriff of St. Mary’s County returned the writ of election for the city with the endorsement that he could find nobody there who could elect any delegates for it.¹⁰ The lower house filed the writ of election with its endorsement “with the rest of the Papers and Writs of Election until some Persons” moved there,¹¹ and apparently nothing more was done. Apparently St. Mary’s City was all but deserted, and apparently also the council had ordered the writ of election to be sent there only to fulfil the legal requirement of its charter¹² but possibly also to provide legal evidence that there were no voters there.

After the council ordered the writ of election for St. Mary’s City Seymour or one of the members of his council proposed that Annapolis be erected into a city with two delegates to the lower house and with “some other small priviledges” that Seymour and his council would agree on. The council decided that that would be very proper, since Annapolis was the seat of government, was “a growing place,” and had “the most Buildings & People Inhabiting therein”¹³ — meaning, apparently, the most buildings and people of any settlement in the province.

Determined that he would change the government of Annapolis, Seymour must already have had the first charter written up, since he issued it that very day.¹⁴ William Bladen and Wornell Hunt, two of Seymour’s favorites, were elected as delegates to the lower house of the assembly.¹⁵ The assembly met on 27 September 1708;¹⁶ Bladen and Hunt were sworn the next day;¹⁷ and during the early part of the session both men actively participated in the business of the lower house.¹⁸

In issuing that first charter Seymour appears to have had at least three less-than-generous motives. First, by issuing it without consulting the delegates he pre-empted the lower house of the assembly and thus, if he had succeeded in his attempt, would have provided a precedent for the governor’s acting on his own, with the advice of his council but without the participation of the delegates. The members of the upper house would still have participated with the governor because they were also members of his council. Seymour therefore appears to have been using the issuing of the

charter as an opportunity to consolidate the political power of the governor and his council, which really means the governor,¹⁹ at the expense of the lower house and therefore of the voters of the province.²⁰

Second, Seymour reduced participation in government simply by reducing the number of voters in Annapolis. Men who lived in the city and who had formerly been able to vote in elections for delegates from Anne Arundel County would lose the right to vote in those elections because Annapolis would have two delegates of its own, and these men would no longer be able to vote in elections for those delegates. Only the mayor, the recorder, the six aldermen, and the five senior of the ten members of the common council would have the right to participate in the election of delegates from the city.²¹

Nor would most of the “ffreemen and inhabitants” of Annapolis who had been able to vote in elections for commissioners of the city under the act of 1696 be allowed any longer to vote for local officials. Only the mayor, recorder, aldermen, and common council would participate in the annual choice of the mayor, who had to come from among the aldermen;²² on the death or “removall” of the mayor the aldermen would choose a replacement from among themselves;²³ the mayor and the aldermen would chose future recorders and from the members of the common council would fill vacancies among the aldermen;²⁴ and the mayor, the recorder, and the six aldermen would choose the original ten common councillors from among the “inhabitants and freeholders” of the city and then would fill vacancies on the common council as they occurred.²⁵ Thus even the members of the common council would have no voice in choosing the recorder or filling vacancies among the aldermen or on the common council itself, and only the five senior members of the common council would have a voice in choosing delegates. All special elections would be held within a month of the death or the “removal” of the official.²⁶

This arrangement would restrict participation in government in Annapolis to sometimes six — or even fewer if two or more of the eight leading officials died within a month of each other²⁷ — sometimes seven, sometimes eight, sometimes thirteen, and sometimes up to eighteen men, depending on what was being done, and therefore would solidify the power of a very narrow elite in the city, would keep “undesirables” out of government, and might even serve as a precedent for reducing participation in government throughout the province.

Third, by providing representation for Annapolis in the lower house Seymour might increase his influence there by getting two of his favorites elected as delegates from the city.²⁸ William Bladen, an alderman, and Wornell Hunt, the recorder — both of whom Seymour had appointed to their positions²⁹ —, were in fact chosen as delegates.

Not everyone was happy with Seymour's new arrangement. Some of the residents of Annapolis objected to his charter, and in a petition to the lower house an unknown number challenged it.³⁰ On the afternoon of Thursday, 30 September 1708, the Committee of Election and Privileges referred the petition “against the electing of Delegates to serve the said City” to the consideration of the whole House, where the petitioners had asked to be heard. The delegates decided to consider the petition the next morning and ordered the mayor, the recorder, and the aldermen of Annapolis to attend the House, “with the Record of their Charter by which they claim[ed] to send Delegates to the Assembly,” to respond to the petition. They also ordered the petitioners to attend the House to explain and defend their petition.³¹

That wording in the record — “their Charter by which they *claim[ed]* to send Delegates to the Assembly”³² —, might make it appear that the delegates were already upset at Seymour's issuing the charter on his own.

On Friday the delegates did not get to the charter until late in the day. Apparently as their last piece of business that day they read the charter, the petition, and the writ of election by which Hunt and Bladen had been elected; called into the House the mayor, the aldermen, and the members of the common council of Annapolis along with Thomas Macnemara, Thomas Docwra, and other, unidentified, petitioners against the charter; and heard the complaints of the petitioners.³³ Since Macnemara would be their spokesman the next day,³⁴ it appears likely that he presented their complaints on this day also.

The delegates' singling out Thomas Macnemara and Thomas Docwra when they mentioned the petitioners appears to mean that those two were the leaders in the campaign against the charter. At about this same time Docwra had the courage to challenge authority by objecting to the tax to support the Anglican church,³⁵ and Macnemara not only had great courage but also had at least three good reasons to try to embarrass John Seymour.

Exactly one year earlier, on 30 September 1707, Seymour disbarred Macnemara

at the same time that he hijacked the right to admit and suspend attorneys when he ruled that, in order to prevent their misbehavior and to guarantee that only those men who had “a Competent share of Learning honesty and Experience” would be admitted as attorneys, nobody would be admitted to practice in the province unless he had been “for some time” a member of one of the “Inns of Courts or Chancery in England” or had submitted to an examination of his ability, honesty, and good behavior before the governor and his council and had received “a Certificate of such Examination.”³⁶ Seymour’s proclamation effectively disbarred every attorney in the province,³⁷ but he immediately restored to practice every attorney who applied except Macnemara,³⁸ who was still disbarred when Seymour issued his charter.

Four-and-a-half months later Seymour gave Macnemara a second cause for grievance. On 17 February 1707/8 the pauper Peter Perry complained to the governor and his council that Macnemara had demanded a fee from him as his attorney and refused to return it even though as a pauper he was not supposed to have to pay anything for legal counsel. After Macnemara responded with an impertinence when Josiah Wilson, the sheriff of Anne Arundel County,³⁹ asked him whether this was true, Seymour ordered that for that “Sawcy Answer and other Audacious behaviour” he sit in the stocks for “one full hour bare Breeched.” Later, however, Seymour did remit half an hour of the punishment when “a great Gust” arose.⁴⁰ No other instance of this imaginative punishment has appeared so far in the records of colonial Maryland.

Third, in Macnemara’s nasty dispute with his wife Margaret, which went on from August of 1707 or earlier until 19 February 1708/9, Seymour three times had ordered him jailed. Even before Seymour issued the first of these orders Macnemara might have spent some time in jail when he could not provide the bond of eight hundred pounds sterling to guarantee his good behavior toward his wife for one year from the date of the bond that Samuel Young, one of the justices of the provincial court, required of him after her complaint against him on 19 August 1707 or possibly earlier. On that date — 19 August 1707 — he again appeared before Young, and when he requested to be bailed Young cut his bond in half. This time he was able to find four sureties.⁴¹ At the provincial court for September of 1707, which opened on the day on which Seymour disbarred Macnemara, the justices discharged that recognizance because they still considered it excessive and required him to enter a

new one of only one hundred pounds sterling.⁴²

On 13 October Margaret Macnemara petitioned the chancery court, with Seymour and John Hammond sitting as justices, for separate maintenance because of what she alleged were Macnemara's "Continued Intollerable Rigours, severitys and Unchristian Dealings," including scurrilous language, beatings, and even threats to her life, but Macnemara refused to respond to the petition. Seymour three times ordered his arrest, but twice Thomas Smithson, the chief justice of the provincial court, released him on writs of *habeas corpus*. Finally, on 19 February 1707/8 — two days after sitting in the stocks bare-breeched — Macnemara agreed to provide separate maintenance for his wife,⁴³ and five weeks later, on 24 March 1707/8, Seymour and his council decided to remove Smithson from the provincial court for bailing Macnemara.⁴⁴

So when Seymour issued his charter only six months after Macnemara spent half an hour sitting bare-breeched in the stocks in the middle of February, the feisty lawyer might have welcomed the opportunity to add a little stress to the governor's life. A desire for revenge might have magnified his concern for the rights of the petitioners, and a chance to take advantage of the delegates' already frosty relationship with Seymour might have been too enticing to pass up. In any case his unique punishment did not intimidate him. On Saturday — 2 October 1708 — the lower house allowed Hunt and Bladen to respond to the objections of the petitioners,⁴⁵ and Macnemara then responded to Hunt and Bladen. The delegates next ordered the petitioners, Hunt and Bladen, the other aldermen, and the members of the common council of Annapolis to withdraw while they debated the issue.⁴⁶ When "the Question was put whether or no the Governor had Power to grant the Charter in Manner and fform as it . . . [was] granted," the delegates unanimously voted that he did not.⁴⁷ That vote unseated Bladen and Hunt.⁴⁸

Since this petition has not survived, it is impossible to know exactly what the petitioners had demanded. One wording in the record — "against the electing of Delegates to serve for the said City"⁴⁹ — might make it appear that they were upset only because they would have no part in electing the delegates from Annapolis. Other wording, however — the "Petitioners against it [the charter] and the Election thereupon"⁵⁰ and "the Objections against the Charter"⁵¹ —, makes it appear that they might have been concerned about more than that. However that may be, it is clear

that by challenging both the “Manner and fform” in which Seymour issued the charter⁵² the delegates challenged both the contents of the charter itself and Seymour’s right to issue it. Whether the concerns of the petitioners were similar to those that the delegates would express in their response to Seymour on the following Monday⁵³ there is no way to know.

The delegates, who already had at least two serious grievances against Seymour, were primed for a fight. In the first place, they were still upset about Seymour’s claiming the right to admit and suspend attorneys.⁵⁴ Previously the county justices themselves had performed those functions,⁵⁵ and of the forty delegates who were sitting in the lower house at the time of the vote on 2 October⁵⁶ at least twenty — and possibly as many as twenty-two — were county justices,⁵⁷ whose own power would be reduced if Seymour had his way.

If that was not enough, the delegates were also still smarting at Seymour’s establishing the assizes, the circuit courts that he and his council created in February of 1707/8 without the participation of the lower house after the delegates rejected them.⁵⁸ Seymour established two circuits, one for the counties on the Western Shore and one for those on the Eastern Shore, and two provincial justices would hold sessions in the counties of each of the two circuits twice a year. The delegates were suspicious:⁵⁹ the provincial justices’ holding court in the counties might reduce the power of the county justices, and therefore their prestige and influence in their counties, and during their two sessions in 1708 the delegates continued to refuse to support these courts.⁶⁰

The delegates were right to be suspicious. Later, in a letter to the Board of Trade, Seymour made it clear that one of the functions of the justices of assize would be to impress the population at the expense of what he called the raw, ignorant, proud, and obstinate “natives” who he claimed monopolized the county courts as well as the lower house of the assembly.⁶¹

Having usurped the power to admit and suspend attorneys, and having imposed on the delegates courts that they did not want, Seymour now was challenging the delegates’ participation in controlling elections and the membership of the lower house. This participation the delegates had acquired only recently and thus was still fragile. In 1692, at the beginning of the royal period, the assembly gained control of elections when Governor Lionel Copley signed “An Act directing the Manner of

Electing and Summoning Delegates and Representatives to serve in succeeding Assemblies,”⁶² and in 1704 Seymour himself signed a new act with the same title.⁶³ In 1695 the assembly for the first time since it established Anne Arundel County way back in 1650⁶⁴ established a new county, Prince George’s, and thereby added delegates to the lower house,⁶⁵ and in 1706 it established Queen Anne’s County and added more delegates.⁶⁶ Except for Anne Arundel County, the earlier counties, when their origins are known, were established by the executive.⁶⁷

For Annapolis, Seymour did have the proprietary precedent of Charles Calvert’s granting a charter to St. Mary’s City on 11 September 1671 and allowing the city to send two delegates to the lower house,⁶⁸ but that came under the proprietor and long before the assembly passed the acts of 1692 and 1704.

The participation in establishing representation in the lower house was worth fighting for, and the delegates were none-too tactful in the way they went about the fight. After they unanimously decided on 2 October 1708 that Seymour did not have the power to issue the charter in the “Manner and fform” in which he had issued it⁶⁹ and unseated Bladen and Hunt, they did not even honor him and the upper house with an official report of what they had done. When on Monday morning a delegate asked whether it was necessary to send Seymour and his council a message relating to the charter, the delegates decided that it was not.⁷⁰

Seymour did not need a formal message from the lower house to know what was going on. As the last piece of business on Saturday afternoon he asked the members of the upper house whether, “considering how dilatory and irregular” the delegates had been, it would be convenient to prorogue the assembly to a later date. The upper house unanimously agreed that it would be convenient to prorogue the assembly to 29 November if Seymour thought that that would be a good idea.⁷¹

On Monday afternoon — 4 October 1708 — Seymour summoned the delegates to the council chamber and in his usual condescending fashion made his contempt for them clear. He was aware, he told them, that “in an Extrajudicial Way” they had taken it upon themselves to interpret his commission from the queen in a way contrary to its clear meaning. Exhibiting the arrogant paternalism that was characteristic of him and that must have been maddening to the delegates, who yielded to nobody in arrogance, Seymour told them that in good manners they might have allowed him to be a competent judge of that commission, since he had “worn it so

many years.”⁷² He could not avoid the conclusion, he continued illogically, that the delegates’ action had resulted “from an ill grounded heat and Rashness not at all becoming the Station” they filled, since nobody pretended to control their “debates and Resolves concerning the Election of . . . [their] Members.”

Apparently it did not occur to Seymour that if he conceded the right of the lower house to control their debates and resolutions on the election of delegates he must have been conceding their right to determine how the delegates from Annapolis would be elected and to expel Bladen and Hunt.

The delegates would have shown much more discretion, Seymour continued, if they had proceeded to the business of the House rather than in an unwarrantable manner to have expelled the delegates whose commission for sitting in the lower house was “derived from the same fountain of Authority” as their own.⁷³ Since that awkward step of the lower house was derogatory to the queen’s prerogative, the delegates could not blame him for the cost to the poor country for this unprofitable session.

All generosity, however, Seymour would give the delegates another chance. To “the many favourable concessions” that he had already made to them he would add one more: he would have them return to the lower house and seriously reflect on what they had done.⁷⁴

The delegates obviously reflected on what they had done, but they did not back down, and in their response to Seymour that same afternoon they expressed their concerns. First, some of the “Freeholders and Inhabitants” of Annapolis believed that the charter deprived them of some of their rights and privileges as Englishmen, particularly of the right to vote for delegates to the lower house.⁷⁵ Seymour had provided that the mayor, the recorder, and the aldermen together with the five senior members of the common council would elect the two delegates to the lower house,⁷⁶ and therefore men who lived in Annapolis and who had been able to vote for delegates from Anne Arundel County would not be able to vote for delegates from either Anne Arundel County *or* Annapolis. Seymour was revoking a right that qualified Englishmen had had since 1430.⁷⁷

Seymour’s denial of the right to vote for delegates to men who had been able to vote for them earlier makes his first charter of Annapolis a reactionary document. In the provision on the election of delegates it was reactionary in a second way. Not

only would men who had been allowed to vote for delegates from Anne Arundel County be unable to vote for delegates from Annapolis, but some, many, most, or all of those same men *would* have been allowed to vote for delegates from St. Mary's City under the second charter of that city thirty-seven years earlier. By that charter, dated 11 September 1671, Charles Calvert, the future third Lord Baltimore,⁷⁸ allowed "free citizens" the right to vote for delegates when he provided that the mayor, recorder, aldermen, common council, "and ffree citizens" of St. Mary's City could elect two delegates to the lower house.⁷⁹

Seymour's first charter was reactionary in the third place because men who had been able to vote for the commissioners of Annapolis under the act of 1696 would not be able to vote for local officials under the charter. In provisions similar to those in the second charter of St. Mary's City,⁸⁰ Seymour had not only named the mayor, the recorder, and the six original aldermen of Annapolis and had provided that those officials would choose ten other "of the most sufficient of the Inhabitants and freeholders" of the city as the first common council,⁸¹ but he had also provided that in the future the mayor, the recorder, and the aldermen would fill vacancies on that body.⁸² The mayor, recorder, aldermen, and common council would choose future mayors, but only the mayor and aldermen would choose future recorders and fill vacancies among the aldermen.⁸³ Aldermen would have to come from the common council, and the mayor would have to come from among the aldermen.⁸⁴ Thus initially the government of Annapolis would be in the hands of eight of Seymour's favorites and ten other men who were acceptable to them and therefore to him, and the eight — or even a portion of them in the case of multiple deaths among them — could perpetuate the oligarchy⁸⁵ by choosing only their fellow-travelers to fill vacancies on the common council.⁸⁶

A second problem with the charter, the delegates claimed, was that it made the residents of Annapolis "liable to be sued for small debts" that the laws of the province empowered "any Single Justice to hear and determine." This complaint resulted from Seymour's provision that the mayor, recorder, and aldermen or any three or more of them could hold a court of hustings in which they could try all civil cases in which the demand did not exceed £6.10.0 sterling or seventeen hundred pounds of tobacco, with no provision that any one of them alone could hear cases of small debts,⁸⁷ as the county justices could.⁸⁸ The absence of jurisdiction of the single

justices would increase the costs of suits for small amounts. What proportion of legal actions this change would affect is impossible to know.

Third, the delegates argued, the charter took “from the publick those Lands and Buildings they . . . [had] purchased and erected.”⁸⁹ Here apparently the delegates were concerned about Seymour’s giving the corporation control over the land that had already been laid out under the act of 1696. This included the town common and public pasture, which the people of the town had had to help pay for if they wanted to use it⁹⁰ and the use of which they might now be denied unless they paid again. Another concern might have been that people who had built warehouses at the ends of the “rolling roads”⁹¹ or had constructed keys, wharfs, and warehouses at docks⁹² would lose their investments. The corporation itself, using public money, might also have built some warehouses at the ends of the rolling roads.⁹³ The delegates might also have been expressing their fear that if Annapolis had a court of its own the Anne Arundel County court, as well possibly as the provincial court and the chancery court, would be moved out of the city⁹⁴ and that therefore the people who depended on the business that those courts brought to town would lose money.⁹⁵

Fourth, according to the delegates, the charter deprived the people of Annapolis of unspecified “other Priviledges.” One of the things the delegates might have been concerned about here is that Seymour had made Wornell Hunt the recorder of Annapolis even though he had not resided in the province for three years, as the “Act for the Advancement of the Natives and Residents of . . . [the] Province” required,⁹⁶ and so had deprived some other citizen of Annapolis, who had been in the province for three years, of that employment.⁹⁷

The delegates insisted on their participation in the granting of charters.⁹⁸ It was not out of any disrespect for him or any desire to reduce the prerogative of the crown or the power that the queen had invested him with, they assured Seymour, but they observed that his power to grant charters was not “plainly exprest” in his commission. When his power to grant charters was more plainly expressed, they promised, they would readily concur in the granting of a charter for Annapolis, but they included so many provisos that they actually were promising nothing. They would concur in the granting of the charter provided that “all the Inhabitants and Freeholders of Annapolis” requested it, that those inhabitants and freeholders retain “their equal priviledges in choosing their representatives” and all other privileges to

which the laws of England and the province entitled them, and that “the publick Lands and Buildings” in Annapolis would be “Secured to the uses for which they were purchased and Erected.”⁹⁹

Surely when the delegates demanded that “*all* the Inhabitants and Freeholders of Annapolis” request a charter¹⁰⁰ they were not demanding that every resident — every man, woman, and child — join in the request. Rather the term “inhabitant” carried a very narrow definition.

Apparently the term “inhabitant” applied only to the free white adult male who had established a household in the city and who had a visible estate of at least twenty pounds sterling. In a petition to Seymour later the petitioners refer to “persons” who after the expiration “of their Time be Actually housekeepers and Inhabittants [*sic*]”¹⁰¹ of the city, and in the second charter Seymour uses exactly the same wording.¹⁰² That wording makes it appear that to become an “inhabitant” a man first had to become a housekeeper or householder. The petitioners also include the requirement that the “inhabitant” had to have a visible estate of at least twenty pounds sterling,¹⁰³ and in his second charter Seymour establishes that requirement.¹⁰⁴ Clearly, therefore, not every resident was an “inhabitant.”¹⁰⁵ Often used together, apparently the terms “inhabitant” and “freeholder” refer simply to two separate categories of voters, or, in the case of Annapolis after the first but before the second charter was issued, former voters.

The Commissioners of Trade and Plantations had instructed Seymour only to enquire into whether since Annapolis was the seat of the government it should have two delegates to the lower house and had said nothing about issuing it a charter,¹⁰⁶ but if his instructions said nothing about his issuing a charter for Annapolis his commission, like those of the other royal governors of the province, gave him the power “to Erect raise and build . . . Cities Burroughs [and] Towns.” Thus it is unclear why the delegates could say that in his commission his power to charter Annapolis was not “plainly exprest.” The most likely possibility appears to be that they were distinguishing chartering, on the one hand, from erecting, raising, and building, on the other. In none of the commissions of the royal governors of Maryland is there a specific mention of *chartering* cities,¹⁰⁷ and, when in their commissions to the governors the Commissioners of Trade and Plantations mention the erecting of cities, boroughs, and towns, they mention those powers in the context

of defense rather than in the context of government. They gave each governor “full power and authority . . . to Erect raise and build” as many “Forts Platteforms¹⁰⁸ Castles Cities Burroughs Towns and fortifications” as with the advice of his council he considered necessary and “to fortify and furnish [them] with Ordnance and Amunition [*sic*] and all sorts of Arms fitt and necessary for the security and Defence of” the province. Finally, he and his council could “demolish or dismantle” those “Forts Platteforms Castles Cities Burroughs Towns and fortifications” “as . . . [might] be most Convenient.”¹⁰⁹

When the Commissioners of Trade and Plantations refer to establishing courts and appointing justices, on the other hand, they gave the governors the power to “Erect Constitute and Establish” courts and “to Constitute and appoint” judges, justices of the peace, and other necessary officers for administering justice.¹¹⁰ Thus while the word “erect” could be used to mean “to constitute or form into,”¹¹¹ the delegates might have been arguing that the words “Erect raise and build” refer to the building of structures rather than to the creation or the reorganization of a political entity. If they were looking for a justification for challenging Seymour, they had to find it where they could. If they were challenging the wording of Seymour’s commission, though, they were challenging the wording of those of the other royal governors as well.

Disgusted with the delegates over their challenge to his issuing the charter as well as over their other offensive proceedings, Seymour had had enough. On Tuesday morning he called them into the council chamber again and dissolved the assembly after a session of only nine days. There were several pieces of business to be done, he told them, but to his great sorrow they had refused to consider that business but had acted in such an unwarrantable and unparliamentary way that he knew not how to retrieve them. If he accepted their position he would leave to posterity precedents that not only would be prejudicial to the queen’s prerogative and the privileges of her subjects but also would be a bad example to future assemblies.

Seymour listed the sins of the delegates. Before they had qualified themselves by taking the appropriate oaths they had chosen a Speaker, debated privileges, voted, rejected the clerk whom Seymour had appointed and who had been legally commissioned and had chosen a clerk themselves, and had adjourned “without any” — without, apparently that is, a clerk whom Seymour had legally commissioned.¹¹²

Since there was “no Retrieving this Misfortune,” which the “heats” of the delegates had led them into, Seymour dissolved the assembly and would order new elections.¹¹³

Before the assembly met again two months later Seymour, apparently realizing that the elections had added nothing to his influence in the lower house,¹¹⁴ decided that he would have to compromise. But he would concede as little as possible, and he would still act without the participation of the delegates. To accomplish this he would use the support of his dependents and other “acceptable” men of Annapolis.

If the delegates wanted “all the Inhabitants and Freeholders of Annapolis” to request a charter for the city, Seymour would pretend to accommodate them. In what appears clearly to have been a political contrivance inspired by Seymour himself, on 18 November 1708 or sometime earlier the mayor, the recorder, the six aldermen, the ten common-councilmen, and seventeen other “inhabitants” of the city¹¹⁵ petitioned him “to Enlarge the Charter.”¹¹⁶

Since the wording in the record is insufficient to reveal exactly what the petitioners to the lower house had petitioned for,¹¹⁷ we have no way of knowing whether Thomas Macnemara when he represented them before the delegates was asking only for a broader franchise in the city or also was asking them for other changes. We do know, however, that while the delegates had voted unanimously that Seymour had no right to grant the charter in the “*Manner* and form” in which he had granted it¹¹⁸ and thus denied his right to issue it at all, the petitioners to Seymour directly endorsed his claim to the right to issue the charter and asked for only one concession: an expanded franchise in Annapolis. A request for only that one change in the charter, in a document that included an explicit acceptance of the authority he claimed, Seymour could accept.

Probably Seymour could accept the request for a broader franchise in Annapolis all the more quickly because he must have known that when in his first charter he had revoked a right that qualified men in England had had since 1430¹¹⁹ he was on very shaky ground. The Commissioners of Trade and Plantations might have had something to say to him about that.

On behalf of the gracious Queen Anne, the petitioners began in a document that the governor himself could have written, Seymour for the benefit of her dutiful subjects in Annapolis had been pleased to grant them a charter. Then, after pirating

the arguments of the council from 16 August¹²⁰ by pointing out that Annapolis was the seat of the government, was “the best scituated [*sic*] and most Convenient place for Trade,” and had more “inhabitants” than any other “place” in the province, they asked Seymour “to Enlarge the Charter” to increase the number of men in the city who could vote. Specifically they asked that any freeholder — meaning, as the petitioners themselves defined the term, any person who owned a whole lot with a house built on it “according to Law”¹²¹ —; any person¹²² “residing and Inhabitting” in the city and having a visible estate of twenty pounds sterling; and any person who after serving five years in any trade in the city had been free for three months, had become a “housekeeper and inhabitant,”¹²³ and took the oath of “free Citizens” be allowed to vote for delegates to the lower house. Finally, they asked that all “freemen Inhabittants as aforesaid” be allowed to vote to fill vacancies on the common council.¹²⁴

What proportion of the free white adult male population of Annapolis the thirty-five petitioners constituted there is no way to know. According to the heading of the petition, it came from “the Corporacon of the City of Annapolis and the greater parte of the Inhabittants of the same,”¹²⁵ but, again, not every resident of the city, nor even every white adult or every white adult male, was an “inhabitant.”

Thus the seventeen men whom the petitioners refer to as “the greater parte of the Inhabittants” of the city¹²⁶ must have been the majority of the free white adult males who had established households in the city and had visible estates of at least twenty pounds sterling but who were not officials of the corporation — since in the heading of the petition the “Inhabittants” are distinguished from “the Corporacon” — rather than a majority of all of the free white adult male *residents* who were not officials of the corporation. Of course the officials of the corporation would have had to be “inhabitants” or freeholders to begin with.

Even under this limited definition of “inhabitant” Seymour did not meet the delegates’ demand that “all the Inhabitants and Freeholders of Annapolis” request a charter. He got only “the greater parte” of them.

On 18 November Seymour granted the petition and ordered that “the Corporacon,” which, again, must mean the mayor, recorder, aldermen, and common-councilmen whom Seymour had established by his first charter, prepare a charter accordingly.¹²⁷

Since the differences between Seymour and the delegates could have been settled through discussions between the two houses, this petition appears quite clearly to have been a device to allow Seymour to save face, to concede as little as possible, and to ratify the isolation of the lower house. The petitioners would petition Seymour rather than the lower house and thus would endorse the governor's exiling of the delegates from participation in important political decisions; all of the principal officials of the city, whom Seymour himself had appointed, would join in the petition along with the members of the common council, who had been chosen by the officials whom Seymour had appointed; seventeen "inhabitants" of Annapolis who were acceptable to Seymour but who under his first charter were denied the franchise would also join in the petition; Seymour would grant the one concession that the petitioners requested; the officials themselves could write the charter of the city, no doubt with sufficient consultation with Seymour or his agent;¹²⁸ and again the delegates would have no part in the process.

On 22 November, four days after he granted the petition, Seymour issued a new charter¹²⁹ that is almost identical to the first one. The only differences are first, that as the petitioners requested he granted all freeholders and all "inhabitants" of Annapolis, including all former apprentices who had been free for at least three months and had acquired the visible estates of at least twenty pounds sterling required to become "inhabitants," the right to vote in elections for delegates and for members of the common council.¹³⁰ A freeholder was any person¹³¹ who owned "a whole Lott of land" in the city with a house built on it "according to Law,"¹³² and therefore all freeholders in Annapolis, as Seymour defines them in the charter, had the right to vote.¹³³

Second, even though the petitioners did not ask for it Seymour cut in half the property qualification for the freeman or the "inhabitant" who wanted to become a delegate from Annapolis. Under the first charter the prospective delegate had to have a freehold or a visible estate of forty pounds sterling, while under the second he had to have a freehold or a visible estate of only twenty pounds sterling. Under both charters the delegates had to live in the city.¹³⁴

On 29 November the new assembly met,¹³⁵ and trouble soon appeared. If Seymour's concessions satisfied the more privileged residents of Annapolis, the delegates were more difficult to please. In the new charter Seymour had confronted

only their complaint about the franchise; he had left them out of the process; and he had done nothing to re-assure them about his authority to issue the charter.

Two days after the assembly met — on 1 December — the delegates took up the challenge. They informed Seymour that if he had any further instructions from the queen about granting charters and erecting cities they would like to see them.¹³⁶

Seymour had no further instructions, but he and the members of the upper house tried to bluster through. Seymour was well satisfied, they told the delegates that same day, that he had ample authority from the queen to establish cities, boroughs, castles, and forts. Cities and boroughs were “to be Erected by Privileges & Grants from the Crown.” What Seymour had done as a favor to Annapolis, the seat of government, he had done “with a true regard to the Interest & honour” of the province, and since he had acted on her Majesty’s prerogative it was not for the delegates to question it. If he had made any irregular step he was answerable only to the queen.

Seymour and the members of the upper house hoped that the delegates would not delay other business of greater importance by continuing to question the governor’s right to issue the charter. It was no dishonor, they lectured the delegates as though they were school-children, “for men of Reason to give up a groundless opinion on better Satisfaction.” Seymour and the upper house did not provide any “better Satisfaction,” however, but rather only reasserted their claim. It was plain that her Majesty had empowered Seymour to erect cities and boroughs, they told the delegates, but, apparently uncomfortable with the military context of this provision of Seymour’s commission, they concluded that it was “not Walls but incorporating [that] makes them so.”¹³⁷

Tough as this language was, Seymour and the upper house were ready for a compromise, possibly because Seymour was too sick to keep fighting. During the entire session of 29 November to 17 December, he told the Commissioners of Trade and Plantations in his letter of 10 March 1708/9, he had been able to sit with the upper house for no more than three or four days, and since the end of the session he had been unable to leave his house.¹³⁸

For whatever reason, when the delegates asked for a conference to discuss that last message Seymour and the upper house agreed.¹³⁹ Thus presumably the issue before the conference committee would be whether Seymour had the right to issue the charter, but the delegates would not be content with that. According to an entry

in the record of the lower house for later that same day the committee would consider “the Privileges granted by Charter to the City of Annapolis.”¹⁴⁰ The entire charter was on the delegates’ agenda.

There is a hint in the record that reaching agreement might not have been easy. Early the next day, 2 December 1708, the conferees from the lower house reported “how far they had proceeded in the Business” and asked the House for permission to continue the conference. The House gave them the permission,¹⁴¹ and later that day the committee had its report ready.

By the compromise that came out of the committee the delegates got the right to participate in granting the charter and saw their concerns about it satisfied. While in the report there was no explicit challenge to Seymour’s claim to the right to *issue* the charter, the committee did recommend that the assembly confirm it with an act by which it would guarantee the citizens of Annapolis the liberty and privileges mentioned in the new charter as long as they did not in any way “infringe the Liberty & Privilege of the public . . . in regard to public Land or Buildings” that the public had purchased “and to which they . . . [were] lawfully and rightfully entitled.” The public lands and buildings in Annapolis should continue to be used for the purposes for which they were purchased and designed, and the justices of Anne Arundel County should continue to hold their court in the statehouse and should continue to have jurisdiction in Annapolis. The laws made by the corporation should be binding only on the residents of Annapolis and non-residents who had dealings with the “citizens” of the city,¹⁴² and the delegates to the lower house from Annapolis should have only half the allowance of the delegates from the counties.

The conferees also suggested that the maximum tolls that the corporation could levy on goods sold at the fairs in Annapolis were excessive. Under Seymour’s charter, they pointed out, if goods sold at fairs were worth two thousand pounds the toll could amount to one hundred pounds. They believed that it would be more beneficial to the city if no tolls were mentioned. Finally, the conferees pointed out that the person Seymour had appointed recorder of Annapolis — Wornell Hunt — was not qualified to hold that office, since he had not lived in the province for three years.¹⁴³

The delegates accepted the report, suggested that “the Petitioners for the Charter” write up a bill to implement the suggestions of the committee, and requested

the concurrence of the upper house.¹⁴⁴ The upper house did agree and suggested only that the bill to confirm the charter include a clause to allow Wornell Hunt to be the recorder of Annapolis, since he was “very fit” for that job. The delegates agreed.¹⁴⁵

The assembly therefore passed “An Act Confirming and Explaining the Charter to the City of Annapolis.” Together the new charter and the confirming act satisfied the delegates, who got almost everything they wanted. By the charter Seymour gave the “inhabitants” of Annapolis the franchise that the petitioners had asked for,¹⁴⁶ and by the act confirming the charter the assembly provided that public lands and buildings would continue to be used as they had been used in the past and that the courts that had been held in Annapolis would continue to be held there. The justices and the sheriff of Anne Arundel County would continue to have jurisdiction in the city, thus guaranteeing that the individual county justices would continue to have jurisdiction in cases of small debts. The laws of the corporation would not be binding on anyone outside the city; the delegates from Annapolis would receive only one-half of the “wages” of other delegates;¹⁴⁷ and the town common would “be reserved & remaine to the Use of the proper owner or owners” unless they received proper satisfaction.

The assembly also changed Seymour’s provision on the tolls the corporation could charge on goods sold at fairs. While by the second charter Seymour provided that the mayor and alderman could establish a toll of not more than six pence on every beast sold at a fair and one-twentieth of the value of any commodity sold¹⁴⁸ — the same provision as in Seymour’s earlier charter¹⁴⁹ —, the assembly provided that there would be no toll on animals or goods worth less than twenty shillings current money and limited to six pence the toll on animals or goods sold for five pounds or less and to twelve pence the toll on animals or goods sold for more than that amount.

Finally, the assembly specifically exempted Wornell Hunt from the provisions of the act for the advancement of natives and did allow him to remain recorder of Annapolis even though he had not lived in the province for three years.¹⁵⁰

Thus both sides gave, and both sides got. The delegates conceded Seymour’s right to issue the charter, and Seymour conceded the delegates’ right to amend and confirm it. The delegates got a charter that with the amendments provided in the law satisfied them, and Seymour got Wornell Hunt as recorder of Annapolis. The freeholders and the other “inhabitants” of Annapolis, rather than only some of the

officials of the corporation, got the right to vote to fill vacancies on the common council and for delegates to the lower house. But the delegates were the real winners: they had forced Seymour to allow them to participate in the chartering of Annapolis and in determining the structure of its government and the regulations by which it would be governed. When on 17 December 1708 Seymour signed the bill “Confirming and Explaining the Charter to the City of Annapolis” he consented to a precedent exactly the opposite of what he appears to have been aiming for when he issued the first charter.¹⁵¹

If Seymour ended up with less than he had hoped for, so also, according to the governor, did the mayor, recorder, and aldermen of Annapolis. In both charters he had given these officials the power “to rule, Order and govern” in the city just as justices of the peace were authorized to do in the counties and had provided that no other justices of the peace would have any jurisdiction in the city.¹⁵² In the law confirming and explaining the charter, however, the assembly provided that the justices and the sheriff of Anne Arundel County would continue also to have jurisdiction there.

In his notes on the laws that the assembly passed during the session that ended on 17 December 1708, which he included along with the second charter in his letter of 10 March 1708/9 to the Council of Trade and Plantations,¹⁵³ Seymour claimed that the officials of Annapolis were so upset at having to share power with the sheriff and the justices of Anne Arundel County that the entire “Corporation” hoped that the queen would disallow the law confirming and explaining the charter. Seymour’s wording here makes it appear that he himself was all but inviting the queen to do just that.¹⁵⁴ A disallowance would have supported his claim that he had the power to issue the charter on his own, would have left power in Annapolis in the hands of a few of his favorites, and would have been a good lesson for the delegates. The queen, however, did not disallow the act, and the law and the charter survived.¹⁵⁵

Wornell Hunt and Thomas Bordley had been elected delegates from Annapolis under the second charter,¹⁵⁶ but the lower house, determined to perfect its precedent, would not admit them until after the bill confirming the charter was passed.¹⁵⁷ Since Seymour did not sign the bill until the last day of the session,¹⁵⁸ Annapolis was not represented again in the lower house until the next session, which met on 25 October 1709.¹⁵⁹

4. Reflections

In spite of the changes that Governor John Seymour made in the first charter of Annapolis and the assembly's "explanation" of the second one, and in spite of the passionate claims of some modern Annapolitans, the government of Annapolis under the second charter was far from democratic.¹ While under the second charter the freeholders and the "inhabitants" of Annapolis could vote for members of the common council and for delegates,² the mayor, recorder, aldermen and members of the common council would still choose the mayor each year; the mayor and the aldermen would still choose future recorders and fill vacancies among the aldermen; only men who had already been elected to the common council would be eligible to rise further in the hierarchy;³ and voting for members of the common council and for delegates would be limited to freeholders who owned a whole lot of land with a house built on it and to "inhabitants" — people who had visible estates of at least twenty pounds sterling.⁴ Thus the more privileged white adult male residents of the city could sort people out, and the mayor, recorder, and aldermen could sort them further.

While it would be a great mistake, therefore, to call the second charter of Annapolis democratic, its adoption still has an important political significance. The exercise over the charters was one of the early episodes in the long battle to limit the power of the executive in what became the United States. The men who insisted that they had a right to participate in such political decisions, and won that right, provided a real service for future generations not only of Marylanders but also of all Americans.

While there is no way to know how many, if any, of the delegates' arguments against the second charter came from Thomas Macnemara's presentation to them

against the first one, as the spokesman for and quite possibly the leader of the petitioners to the lower house he might deserve more credit for this early contribution to the legacy of a limited executive than anyone else. His job was to persuade the delegates, and he succeeded unanimously.

The struggle over the charters, however, did not occur in a political vacuum but rather came in the context of other political issues as well as of the participants' political and personal ambitions and disappointments. By 1708 John Seymour had been for some time trying to consolidate his power at the expense of the delegates and the justices of the courts. The delegates and the justices objected. When the issue of the charters came up the delegates were already disgusted with Seymour because of his establishing the assizes over their objections and his claiming the right to admit and suspend attorneys, and Seymour's consistent arrogance toward the delegates probably did not help him any. Under the first charter many of the petitioners to the lower house, as well as many of the petitioners to Seymour himself, had lost the franchise that they had enjoyed under the act of 1696 and wanted to regain the franchise for themselves and other men as economically well off as they were. Thomas Macnemara might have been happy to get a little revenge against Seymour for the governor's disbarring him from the practice of law, for ordering him to sit in the stocks bare-breached for his impertinence, and for ordering him arrested three times during his troubles with his wife. Public policy became entangled with the personalities, the personal issues, and the personal ambitions of the participants.

That often the men who in Maryland in 1708 were insisting on greater participation in government might not have had the purest of motives does not diminish the importance of their contribution to the legacy of a limited executive. Nor does the swaggering contempt that many of the most prominent American politicians — as well as many other Americans — have exhibited toward that legacy at the beginning of the twenty-first century diminish its importance. They might destroy it, but they cannot diminish its importance.

The struggle continues.

1. Preliminary Observations

¹ For “Porte and Town of Annapolis,” see “An Act for keeping good Rules and Orders in the Port of Annapolis,” 1696, c. 24, *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XIX, 498.

² *Md. Arch.*, XXVII, 261, 262, 334; 1708, c. 7, *Md. Arch.*, XXVII, 358-360.

³ 1696, c. 24, *Md. Arch.*, XIX, 498-504.

⁴ For the increase in dignity on being raised to a city, see Edward A. Freeman, “City and Borough,” *Macmillan's Magazine* (May 1889), p. 29.

⁵ First charter of Annapolis, in Chancery Record 2, pp. 590-594.

⁶ *Md. Arch.*, XXVI, 213.

⁷ *Ibid.*, p. 216.

⁸ The problem of the definition of “inhabitant” makes it unclear just who could vote in Annapolis under either the act of 1696 or the second charter of the city. 1696, c. 24, *Md. Arch.*, XIX, 498-504; second charter of Annapolis, in Chancery Record 2, pp. 596-602; Elihu S. Riley, “*The Ancient City.*” *A History of Annapolis, in Maryland, 1649-1887* (Annapolis: Record Printing Office, 1887), pp. 87-91.

⁹ *Md. Arch.*, XXVII, 229, 229-230, 230, 232-234, 234, 271, 272, 273, 274-276, 276.

¹⁰ *Ibid.*, pp. 261, 262, 334; 1708, c. 7, *Md. Arch.*, XXVII, 358-360.

¹¹ Council of Maryland to Board of Trade, 18 July 1712, The National Archives (PRO), Colonial Office 5, Vol. 720, pp. 123-127 (photocopy in Library of Congress), and The National Archives (PRO), *Calendar of State Papers: Colonial Series* (40 vols.; Vaduz: Kraus Reprint Ltd., 1964), XXVII, No. 16; Provincial Justices to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 127-128, and TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.i.

¹² Aubrey C. Land, *The Dulanys of Maryland: A Biographical Study of Daniel Dulany, the Elder (1685-1753) and Daniel Dulany, the Younger (1722-1797)* (Baltimore: Maryland Historical Society, 1955; reprinted Baltimore: The Johns Hopkins Press, 1968), pp 7-8, 8-10, 14-16, 16-17, 28, 30, 30-31, 33, 34-35, 41, 46, 54, 210; Aubrey C. Land, *Colonial Maryland: A History* (Millwood, N. Y.: KTO Press, 1981), pp. 108, 125-127 (page 126 is a portrait of Daniel Dulany the Elder); Beatriz Betancourt Hardy, “‘A most Turbulent and Seditious person’: Thomas Macnemara of Maryland,” *Maryland Humanities* (Baltimore: Maryland Committee for the Humanities), Issue Number 72 (January 1999), pp. 8-11; Carl Bode, *Maryland: A Bicentennial History* (New York: W. W. Norton & Company, Inc., 1978), pp. 17-18; Alan F. Day, *A Social Study of Lawyers in Maryland, 1660-1775* (New York: Garland Publishing, Inc., 1989), pp. 50, 106, 130, 132; John E. Douglass, “Between Pettifoggers and Professionals: Pleaders and Practitioners and the Beginnings of the Legal Profession in Colonial Maryland, 1634-1731,” *The American Journal of Legal History*, XXXIX, No. 3 (July 1995), pp. 376-377, 378-379; Herbert L. Osgood, *The American Colonies in the Eighteenth Century* (4 vols.; New York: Columbia University Press, 1924; reprinted Gloucester, Mass.: Peter Smith, 1958), III, 6, 10.

¹³ An argument might be made that Richard Clarke, whom John Seymour, his council, and the assembly managed to get hanged on 9 April 1708 on a bill of attainder for high treason, was more vilified than Macnemara was. See *Md. Arch.*, XXV, 240, and indexes to *Md. Arch.*, XXV, XXVI, and XXVII; 1705, c. 5, *Md. Arch.*, XXVI, 513-514; 1707, c. 1, *Md. Arch.*, XXVII, 139-140; John Seymour to Council of Trade and Plantations, 23 June 1708, TNA (PRO), *Calendar of State Papers: Colonial Series*, XXIII, No. 1570; TNA (PRO), Colonial Office 5, Vol. 727, p. 89; John Seymour to Principal Secretary of State, 23 June 1708, in “Unpublished Provincial Records,” *Maryland Historical Magazine*, XVI, No. 4 (December 1921), pp. 357-358; Provincial Court Judgment Record, Liber T. L., No. 1, pp. 576-577; Liber T. L., No. 3, pp. 266, 268, 274-275, 429; Anne Arundel County Court Judgment Record, Liber G, pp. 252, 284-285.

¹⁴ See Note 11 above.

¹⁵ *Md. Arch.*, XXVII, 213, 216.

¹⁶ *Ibid.*, 213.

¹⁷ See Part 3, “The Charters,” at Notes 36-44.

¹⁸ See *ibid.*, at Notes 54-61.

¹⁹ *Md. Arch.*, XXVII, 216.

²⁰ Edward Gregg, *Queen Anne* (new edition; New Haven: Yale University Press, 2001; originally published London: Routledge & Kegan Paul Ltd., 1980).

²¹ *Md. Arch.*, XXV, 249. See also Part 3, “The Charters,” at Note 14.

²² TNA (PRO), *Calendar of State Papers: Colonial Series*, XXIV, No. 290 (pp. 195, 197). Emphasis added.

²³ *Ibid.*, No. 410.i.

²⁴ Seymour ordered “the Corporacon,” to draw up the second charter on 18 November 1708, and he issued it on the twenty-second. Chancery Record 2, pp. 596, 602; Riley, *The Ancient City*, pp. 87, 91.

²⁵ TNA (PRO), *Calendar of State Papers: Colonial Series*, XXIV, No. 410.i. With his letter of 10 March 1709/10 Seymour also included his comments on the acts that the assembly had passed during its previous session. *Ibid.*, No. 410.ii; “The Titles of the Severall Laws made the Last Session of Assembly in December 1708 with Remarques thereon,” in “Unpublished Provincial Records,” *Maryland Historical Magazine*, XVII (June 1922), pp. 215-223; “Some Remarques on Several Acts of Assembly made the Last Session,” in “Unpublished Provincial Records,” *ibid.*, XVII, No. 3 (September 1922), pp. 284-291.

²⁶ Thus the entry “1708 — Royal Governor John Seymour proclaims City Charter from Queen Anne” in “Three Amazing Centuries” on the website of “Annapolis Alive!” (<http://www.annapolisalive.org/centuries.html> [visited 9 August 2007]) is quite misleading by implying not only that Seymour had actually received the charter from England but also that it went into effect with no further action by the assembly. And, further, I have found no evidence that the charter was ever proclaimed in public.

The charters of Annapolis probably required even less effort on the part of the queen than Eric Smith suggests when he says that “Giving the ragged little village of Annapolis the right to govern itself was probably just a bit of political paperwork for a busy monarch.” Eric Smith, “*Cityscape*: Charter was crucial in city’s history,” *Annapolis Evening Capital Online*, 17 May 2007. <http://www.hometownannapolis.com/cgi-bin/read/2007/05_07-31/OPN>. [visited 18 May 2007]

2. The Act of 1696

¹ *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), V, 31-32, 47-48, 92-94. John W. Reps, in *Tidewater Towns: City Planning in Colonial Virginia and Maryland* (Williamsburg: The Colonial Williamsburg Foundation, 1972), p. 117, mentions the first of these three items. I thank Jane McWilliams of Annapolis for suggesting them to me.

² 1683, c. 5, *Md. Arch.*, VII, 609-619. John W. Reps mentions this act. Reps, *Tidewater Towns*, p. 117. I thank Jane McWilliams for reminding me of it.

For the delegates' resistance to the establishing of towns, and therefore to this act, see C. Ashley Ellefson, *William Bladen of Annapolis, 1673?-1718: "the most capable in all Respects" or "Blockhead Booby"?*, in *Archives of Maryland Online*, Volume 747 (2007), pp. 12-13, and Notes 145-146. <http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000747/html/index.html>.

³ Reps, *Tidewater Towns*, p. 117.

⁴ 1694, c. 8, *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XIX, 110-113.

⁵ 1694, c. 29, *Md. Arch.*, XXXVIII, 23-25. A new act is 1699, c. 19, *Md. Arch.*, XXII, 494.

⁶ *Md. Arch.*, XIX, 119, 127; Edward C. Papenfuse, "*Doing Good to Posterity*": *The Move of the Capital of Maryland from St. Mary's City to Ann Arundell Towne, now called Annapolis* (Annapolis: Maryland State Archives, 1995), especially pp. 11-13.

⁷ Provincial Court Judgment Record, Liber T. L., No. 1, p. 209.

⁸ *Md. Arch.*, XIX, 141, 171.

⁹ 1695, c. 2, *Md. Arch.*, XIX, 208-209.

¹⁰ St. Mary's City had remained an unincorporated capital from the time the assembly first met there in February of 1634/5 (Edward C. Papenfuse, Alan F. Day, David W. Jordan, and Gregory A. Stiverson, *A Biographical Dictionary of the Maryland Legislature, 1635-1789*, hereafter *Biographical Dictionary* (2 vols.: Baltimore: The Johns Hopkins University Press, 1979, 1985), I, 15) until Charles Calvert, the future third Baron Baltimore, issued a charter for it on 3 November 1668. *Md. Arch.*, LI, 567-570; Donnell M. Owings, *His Lordship's Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), p. 117.

¹¹ As will become clear later, for political purposes not every "resident" of the settlement was an "inhabitant." Definitions will be a continuing problem in this paper.

¹² *Md. Arch.*, XIX, 291-292, 341.

¹³ *Ibid.*, pp. 303, 341-342.

¹⁴ *Ibid.*, p. 391. This order does not appear in the records of the lower house. *Ibid.*, pp. 412-414.

¹⁵ *Ibid.*, pp. 452, 470, 484, 489, 490, 492, 497; 1696, c. 24, *Md. Arch.*, XIX, 498-504.

¹⁶ The "commissioners and trustees were Governor Francis Nicholson, Sir Thomas Lawrence, Nicholas Greenberry, Thomas Tench, John Hamond, Edward Dorsey, James Sanders, and Richard Hill. *Md. Arch.*, XIX, 498.

¹⁷ *Ibid.*, pp. 498-499.

¹⁸ 1692, c. 76, *Md. Arch.*, XIII, 542.

¹⁹ The published Archives has "Guñers," while the *Archives of Maryland Online* has "Gufiers." on html but "Guñers" on the pdf version. 1696, c. 24, *Md. Arch.*, XIX, 503. For "Gunnars," see the act in Thomas Bacon, *Laws of Maryland at Large* (Annapolis: Jonas Green, 1765), p. 112.

²⁰ *Md. Arch.*, XIX, 502-503.

²¹ At the same time the word "inhabitants" might refer to all residents of the city. See the wording of the act of 1696 in *Md. Arch.*, XIX, 502.

The same political distinction between "resident" and "inhabitant" occurred under the second charter of the city. See Part 3, "The Charters," at Notes 100-105. For the legal difference between a "resident" and an "inhabitant" see Henry Campbell Black, *Black's Law Dictionary: Definitions of the Terms and Phrases of American*

and English Jurisprudence, Ancient and Modern (6th edition; St. Paul: West Publishing Co., 1990), p. 782, under “Inhabitant.”

We also have the problem of the definition of “townsman.” While “townsman” might refer to any resident, the wording “Townsmen *or* Freemen” (*Md. Arch.*, XIX, 502. Emphasis added.) might make it appear that the townsman was distinguished from a “freeman.”

²² *Md. Arch.*, XIX, 502.

²³ *Ibid.*, pp. 499-500.

²⁴ *Ibid.*, p. 500. The “fee simple” as used here is “conditional fee simple,” since the person got ownership of a piece of property on the condition that he do something. *Black’s Law Dictionary* (6th edition), p. 615. The condition in this case is that he build “a substantial brick warehouse twenty feet square.”

²⁵ *Md. Arch.*, XIX, 500-501.

²⁶ *Ibid.*, p. 502.

²⁷ *Ibid.*, pp. 503-504.

3. The Charters

¹ Donnell M. Owings, *His Lordship's Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), p. 120.

² *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XXVI, 39, 116. This instruction is item twenty-two of the twenty-three that Seymour mentions after telling the delegates that he and his council recommended their "Serious Considerations [of] several of her Majesties royal Instructions laid before . . . [them] the last Assembly." *Ibid.*, pp. 36-39, 113-116.

Some of the instructions that Seymour mentioned in the previous session — 26 April to 3 May 1704 —, however, are quite different from those he mentioned in the later session, and the instruction on St. Mary's City and Annapolis is not included in the earlier list. *Md. Arch.*, XXIV, 332-334, 368-371.

³ *Ibid.*, XXVI, 134.

⁴ This was the first session of the assembly after the statehouse burned on the night of 17-18 October. *Ibid.*, XXV, 179-180.

⁵ *Ibid.*, XXVI, 392.

⁶ Apparently back in 1696, when they suggested to Governor Francis Nicholson that if he issued a charter for Annapolis he could grant the inhabitants "all reasonable priviledges and imunities" that he considered appropriate, the delegates believed that chartering cities was a function of the governor. *Ibid.*, XIX, 291-292, 303, 341, 341-342; Part 2, "The Act of 1696," at Notes 12-13.

⁷ The records of the sessions of May 1705, April 1706, and March and April of 1707 are in *Md. Arch.*, XXVI and XXVII.

⁸ A space in the record in the published *Archives* makes it appear that the

reference here is to aldermen rather than simply to men. *Md. Arch.*, XXV, 249.

⁹ *Ibid.*

¹⁰ *Ibid.*, XXVII, 209.

¹¹ *Ibid.*, p. 210.

¹² Second charter of St. Mary's City, in *Md. Arch.*, LI, 389.

¹³ *Md. Arch.*, XXV, 249.

¹⁴ First charter of Annapolis, in Chancery Record 2, pp. 590-594, especially p. 594. Elihu S. Riley has 10 August 1708 as the date of the first charter (Elihu S. Riley, "*The Ancient City.*" *A History of Annapolis, in Maryland, 1649-1887* (Annapolis: Record Printing Office, 1887), p. 85), but the date in Chancery Record 2, in the charter itself, is 16 August.

David Ridgely has the date of the first charter right, but he does not mention the second charter. David Ridgely, *Annals of Annapolis . . .* (Baltimore: Cushing & Brother, 1841), p. 110.

¹⁵ William Bladen was the attorney general of the province and one of the aldermen of Annapolis under the first charter (Owings, *His Lordship's Patronage*, pp. 133-134; Chancery Record 2, pp. 590-591; Riley, *The Ancient City*, p. 88), and Wornell Hunt was a lawyer and the recorder of Annapolis under the first charter (Chancery Record 2, p. 590; Riley, *The Ancient City*, p. 86), although the record of the lower house makes him one of the aldermen. *Md. Arch.*, XXVII, 216. In the petition of the officials and other inhabitants of Annapolis to Seymour in November of 1708 Wornell Hunt is marked off with the aldermen. Chancery Record 2, p. 596. For this petition, see also Text below at Notes 115-127.

¹⁶ *Md. Arch.*, XXVII, 181, 197.

¹⁷ *Ibid.*, p. 200.

¹⁸ The delegates sent Wornell Hunt with Mathias Vanderheyden to the upper house to inform Seymour and the upper house — the council — that it had chosen Richard Dallam as its clerk (*ibid.*, pp. 185, 200) and appointed William Bladen to the Committee of Election and Privileges. *Ibid.*, p. 203. It sent Bladen with George Gale and Samuel Worthington to request that the upper house send members of the council to the lower house to swear the delegates (*ibid.*, p. 184), and Bladen and Gale went to the upper house to get the writs of election so that the delegates could inspect them. *Ibid.*, pp. 184-185. Hunt and John Hudson went to the upper house with John

Rousby, the naval officer for the District of Patuxent, so that Rousby could prove — swear to — his public accounts. *Ibid.*, pp. 186, 203.

Later the delegates sent Hunt with Walter Smith to the upper house to request a conference on the governor's recommendations "relating to the Dispersers of false news" (*ibid.*, pp. 188, 206, 207) and appointed him to the conference committee that resulted from that request (*ibid.*, p. 207), and Hunt went to the upper house with Robert Bradley to inform the members of the upper house that the members of the conference committee from the lower house were ready to meet. *Ibid.*, p. 188. The conference committee also considered the acts concerning the "Gauge of Tobacco Hogsheads and against Masters of Ships cropping Tobacco Hogsheads." *Ibid.*, p. 211.

¹⁹ The governor could control the members of his council. In a letter of 10 January 1708/9 Seymour told the Commissioners of Trade and Plantations that on the issue of whether Sir Thomas Lawrence should have the fees from licensing ordinaries he had "advised the Council not to agree with" the delegates. The National Archives (PRO), *Calendar of State Papers: Colonial Series* (40 vols.; Vaduz: Kraus Reprint Ltd., 1964), XXIV, No. 290 (p. 195).

²⁰ Here it would be a mistake to use the term "freeman" instead of "voter." While by the eighteenth century the term "freeman" usually applied only to the person who had the right to vote (Henry Campbell Black, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (6th edition; St. Paul: West Publishing Co., 1990), p. 665), even under Governor John Seymour's second charter for Annapolis not all freemen there would have that right. Thus it is very easy to get confused over the term "freeman."

Under Seymour's second charter the apprentice who had completed his service became a freeman but could not vote until he had been free for three months and had become a "housekeeper" and an "inhabitant" of the city. Voters for delegates from the city included the

Mayor Recorder Aldermen and Common Councilmen of the said City for the time being and their successors for ever and alsoe all Freeholders of the said City that is to say all persons owneing a whole Lott of land with a house built thereon according to Law and all persons Actually Resideing and Inhabitting in the said City haveing a visable [*sic*] Estate of

the Vallue of twenty pounds ster att the least and likewise all persons that hereafter shall serve five years to any Trade . . . [within] this Citty and shall after the expiracon of their time be Actually housekeepers and Inhabitants in the same . . . ,

but, later on this same page, “. . . noe Freeman . . . not being a ffreeholder . . . shall have the libertie of such Vote as aforesaid untill free three months after such his freedom obtained” Second charter of Annapolis, in Chancery Record 2, p. 600; Riley, *The Ancient City*, p. 89. That last quote makes it clear that not all freemen could vote.

Apparently Seymour’s saying that “. . . all persons that hereafter shall serve five years to any Trade . . . [within] this Citty and shall after the expiracon of their time be Actually *housekeepers and Inhabitants* in the same” (second charter of Annapolis, in Chancery Record 2, p. 600; Riley, *The Ancient City*, p. 89. Emphasis added.) means that the freeman did not become an “inhabitant” until he became a “housekeeper” with a visible estate of at least twenty pounds sterling. In order to vote the former apprentice had to become an inhabitant (second charter of Annapolis, in Chancery Record 2, p. 600, lines 6-8; Riley, *The Ancient City*, p. 89, lines 10-11 from bottom), and to become an inhabitant had to have a visible estate of twenty pounds sterling. Chancery Record 2, p. 600, lines 3-5; Riley, *The Ancient City*, lines 12-14 from bottom. And see Text below at Notes 100-105, 122.

In the counties voters included “all the ffreemen of . . . [the] County” who had within the county “a ffreehold of fifty acres of Land or a Visible Estate of forty pounds Sterling at the Least.” 1708, c. 5, *Md. Arch.*, XXVII, 353. Thus while in Annapolis all freeholders, by Seymour’s definition, could vote for delegates, in the counties some of the less wealthy freeholders were excluded.

²¹ First charter of Annapolis, in Chancery Record 2, p. 593.

²² *Ibid.*, p. 591.

²³ *Ibid.*

²⁴ *Ibid.*, pp. 591-592. The recorder had to be “learned in the Laws.” He was “a certain magistrate or judge having criminal and civil jurisdiction in a city or borough.” *Oxford English Dictionary Online*, definition 1.a.

²⁵ First charter of Annapolis, in Chancery Record 2, p. 592.

²⁶ *Ibid.*, p. 591. This oligarchic government of boroughs was characteristic in England. F. W. Maitland, *The Constitutional History of England* (Cambridge:

Cambridge University Press, 1908), p. 290.

²⁷ First charter of Annapolis, in Chancery Record 2, p. 591. The eight leading officials were, of course, the mayor, the recorder, and the six aldermen. On the “decease or removall” of the mayor the aldermen would elect a replacement within one month. *Ibid.* On “any decease or deceases removall or removalls of the . . . recorder or Aldermen or any of them” the mayor and the remaining aldermen would choose a replacement or replacements within one month. *Ibid.* Thus if the mayor and an aldermen, or two aldermen, had died within a month of each other five men would choose the replacements.

²⁸ For this last suggestion, see David W. Jordan, *Foundations of Representative Government in Maryland, 1632-1715* (New York: Cambridge University Press, 1987), p. 224.

²⁹ First charter of Annapolis, Chancery Record 2, pp. 590-591.

³⁰ Since this petition to the lower house has not survived, there is no way to know who signed it or exactly what the petitioners said. *Md. Arch.*, XXVII, 210, 213. The entry in the records of the lower house for 1 October 1708 appears to be sufficient evidence that Thomas Docwra and Thomas Macnemara had signed the petition. *Ibid.*, p. 213. Those are the only petitioners whose names we know.

Whether the petitioners challenged only the provisions of the charter or also challenged Seymour’s right to issue it is not noted, but the resolution of the delegates after they discussed the petition might make it appear that they challenged both. For the resolution, see *Md. Arch.*, XXVII, 316, and Text below at Note 52.

³¹ *Md. Arch.*, XXVII, 209-210. The wording in the record is “and make good their Petition.”

³² Emphasis added here.

³³ *Md. Arch.*, XXVII, 213. How many of the petitioners actually appeared there is no way to know. The summons does not mention the recorder, Wornell Hunt, but as a delegate he was already there.

³⁴ *Ibid.*, p. 216.

³⁵ Edward C. Papenfuse, Alan F. Day, David W. Jordan, and Gregory A. Stiverson, *A Biographical Dictionary of the Maryland Legislature, 1635-1789*, hereafter *Biographical Dictionary* (2 vols.: Baltimore: The Johns Hopkins University Press, 1979, 1985), I, 273.

³⁶ *Md. Arch.*, XXV, 223-224.

³⁷ We can say that Seymour's proclamation effectively disbarred every attorney in the province because he was not specific in how much time an attorney had to have spent at one of the Inns of Court in order to be excepted from the general disbarment. He said only that the attorney had to have been a member of one of the "Inns of Courts or Chancery in England" "for some time." *Md. Arch.*, XXV, 224. William Bladen and Wornell Hunt had attended Inns of Court (*Biographical Dictionary*, I, 136, 472), but both still applied for readmission to the practice of law. *Md. Arch.*, XXV, 226.

³⁸ *Ibid.*, pp. 226-227, 236, 237; Provincial Court Judgment Record, Liber P. L., No. 1, pp. 235, 265.

³⁹ Anne Arundel County Court Judgment Record, Liber T. B., No. 1, pp. 672, 686.

⁴⁰ *Md. Arch.*, XXV, 234-235.

⁴¹ Provincial Court Judgment Record, Liber P. L., No. 1, pp. 353-354.

⁴² *Ibid.*

⁴³ Chancery Record 2, pp. 579-585.

⁴⁴ *Md. Arch.*, XXV, 228-233, 236-237, 239-240.

⁴⁵ Wornell Hunt and William Bladen requested that their responses be deposited in writing with the clerk of the lower house. *Ibid.*, XXVII, 216. Apparently, however, the responses have not survived.

⁴⁶ Either the mayor, Amos Garrett, did not appear at this session or the clerk neglected to mention him.

⁴⁷ *Md. Arch.*, XXVII, 216.

⁴⁸ *Ibid.*, pp. 218, 219. Elihu S. Riley says that in September of 1708 the lower house "Denied Admittance" to the delegates from Annapolis (Riley, *The Ancient City*, p. 92, in heading of new section), but later, quoting John V. L. McMahon, *An Historical View of the Government of Maryland, from Its Colonization to the Present Day* (Baltimore: F. Lucas, Jr., Cushing & Sons, and William & Joseph Neal, 1831; reprinted Spartanburg, S. C.: The Reprint Company, 1968), p. 256, he says that they were expelled. Riley, *The Ancient City*, p. 92.

⁴⁹ *Md. Arch.*, XXVII, 209.

⁵⁰ *Ibid.*, p. 213.

⁵¹ *Ibid.*, p. 216.

⁵² *Ibid.*

⁵³ See Text below at Notes 75-99.

⁵⁴ *Md. Arch.*, XXVII, 247, 248, 298, 307-308, 311.

⁵⁵ See for example Anne Arundel County Court Judgment Record, Liber G, p. 320; Prince George's County Court Record, Liber B, p. 289; Provincial Court Judgment Record, Liber T. L., No. 3, pp. 261, 266.

⁵⁶ The four delegates from St. Mary's County were not allowed to sit because of irregularities in their election (*Md. Arch.*, XXVII, 209, 210, 211, 213-214), and William Bladen and Wornell Hunt, the two delegates from Annapolis, were ordered to withdraw from the house before the vote was taken. *Ibid.*, p. 216.

⁵⁷ County justices voting on the charter in the lower house on 2 October 1708:

Anne Arundel County

Richard Jones	Quorum justice
Charles Greenberry	Quorum justice
Daniel Mariarte	Non-quorum justice

Baltimore County

James Maxwell	Chief (?) justice
James Philips	Quorum justice
Richard Colegate	Non-quorum justice

Calvert County

Walter Smith	Chief justice
John Mackall*	Possibly non-quorum justice
Robert Skinner	Non-quorum (?) justice

Cecil County

Matthias Vanderheyden	Quorum justice
Thomas Frisby**	Possibly non-quorum justice

Charles County

James Smallwood	Quorum justice
William Herbert	Quorum justice

Dorchester County

Joseph Ennalls	Non-quorum justice
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Kent County

None

Prince George's County

Robert Bradley	Chief justice
Robert Tyler	Quorum justice

Queen Anne's County

John Salter	Quorum justice
Philemon Hemsley	Non-quorum justice

Somerset County

John West	Chief justice
John Franklin	Quorum justice

St. Mary's County

None

Talbot County

Robert Ungle	Quorum justice
Thomas Robins	Quorum justice

* John Mackall, who might have been a non-quorum justice of Calvert County, is not included as one of the twenty justices mentioned in the text because while he was a justice in Calvert County in 1706 and 1710 the intervening period is uncertain.

** By October of 1708 Thomas Frisby might have been a justice of Cecil County, since he was a justice by 1708/9, but because of the uncertainty he is not included as one of the twenty justices mentioned in the text.

Sources for delegates:

Biographical Dictionary, I, 38;
Md. Arch., XXVII, 213-214, 216.

Sources for justices:

Anne Arundel County Court Judgment Record, Liber T. B., No. 2,
 pp. 1-2;
 Baltimore County Court Proceedings, Liber I. S., No. A, p. 1;
Biographical Dictionary, biographies;
 Charles County Court Records, Liber B, No. 2, pp. 521-523;
 Kent County Court Proceedings, 1707-1709, pp. 115a-116a;
 Prince George's County Land Record, Liber D, pp. 90-91;
 Somerset County Court Judicial Record, Liber G. I., pp. 129-130;
 Talbot County Land Records, Liber R. F., No. 11, pp. 595-596.

Quorum justices were justices without at least one of whom the court could not hold a session. 1704, c. 63, *Md. Arch.*, XXVI, 346; 1708, c. 12, *Md. Arch.*, XXVII, 367-368.

⁵⁸ *Md. Arch.*, XXVII, 51, 88, 114.

⁵⁹ *Ibid.*, XXV, 210, 216-217, 220, 236, 269-270; XXVII, 4-5, 11, 12, 17, 58, 63-64, 68-69, 73-74, 75, 76, 88, 113, 114; The National Archives (PRO), Colonial Office 5, Vol. 720, p. 18 (photocopy in Library of Congress).

⁶⁰ *Md. Arch.*, XXVII, 183, 199, 206, 227, 235, 236, 239, 268-269, 279, 281-282, 285-286. For the quarrel between Seymour and the delegates over the assizes, see also C. Ashley Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763* (New York: Garland Publishing, Inc. 1990), pp. 76-90.

⁶¹ Seymour to the Board of Trade, 10 March 1708/9, *Md. Arch.*, XXV, 269-270.

⁶² 1692, c. 76, *Md. Arch.*, XIII, 541-544; David W. Jordan, "Elections and Voting in Early Colonial Maryland," *Maryland Historical Magazine*, LXXVII, No. 3 (Fall 1982), p. 249.

⁶³ 1704, c. 35, *Md. Arch.*, XXVI, 294-297.

⁶⁴ 1650, c. 8, *Md. Arch.*, I, 283, 292. I thank Jane McWilliams for correcting me here.

⁶⁵ 1695, c. 13, *Md. Arch.*, XIX, 212-215.

⁶⁶ 1706, c. 3, *Md. Arch.*, XXVI, 620-624.

⁶⁷ County Court Judicial Records Project, Archives of Maryland Online, at <http://www.msa.md.gov/msa/stagser/s1259/160/html/countycct.html>. [visited 13 September 2007]

⁶⁸ See Text below at Notes 78-79. This was the second charter of St. Mary's City. The first, dated 2 November 1668, did not provide for delegates to the lower house. *Md. Arch.*, LI, 567-570.

⁶⁹ *Ibid.*, XXVII, 216.

⁷⁰ *Ibid.*, p. 218.

⁷¹ *Ibid.*, p. 190.

⁷² Seymour was commissioned governor on 12 February 1702/3 and assumed office on 12 April 1704. Owings, *His Lordship's Patronage*, p. 120.

⁷³ Seymour's sentence here does not make sense. He says that the delegates

would have shown more discretion if they had “wholly proceeded thereon” rather than expel the two delegates from Annapolis, but he has no clear reference for “thereon.” Presumably he meant that the delegates should have accepted his claim that he had a right to issue the charter and should have proceeded to the business of the lower house, but possibly he meant that if the delegates had proceeded to a discussion of the whole basis of the authority for their elections they would have decided that the delegates from Annapolis had as much right to sit in the lower house as the other delegates did.

But Seymour did not say either of those things. I have used the interpretation that appears to me to make the more sense.

⁷⁴ *Md. Arch.*, XXVII, 191. The clerk of the lower house, Richard Dallam, might have been expressing his opinion of Seymour by only summarizing Seymour’s speech rather than including it in full. *Ibid.*, pp. 219-220. Dallam had not been Seymour’s preference as clerk of the lower house. See Note 112 below.

For an illustration of Seymour’s arrogance toward the delegates in the past, see *Md. Arch.*, XXVI, 89-91, 209-211.

⁷⁵ *Ibid.*, XXVII, 191-192, 220.

⁷⁶ First charter of Annapolis, in Chancery Record 2, p. 593.

⁷⁷ 8 Henry VI, c. 7, in Danby Pickering, *The Statutes at Large* (109 vols.; Cambridge: Joseph Bentham and Others, 1762-1869), III, 119-121; Maitland, *The Constitutional History of England*, pp. 173, 239-240, 290.

⁷⁸ Owings, *His Lordship’s Patronage*, p. 117.

⁷⁹ Second charter of St. Mary’s City, in *Md. Arch.*, LI, 389. How many of the men who were denied the vote for delegates in Annapolis would have been able to vote in St. Mary’s City depends on whether there was a difference between the qualifications for becoming a “free citizen” of St. Mary’s City and those for becoming an “inhabitant” of Annapolis.

⁸⁰ Second charter of St. Mary’s City, in *Md. Arch.*, LI, 387-388.

⁸¹ First charter of Annapolis, in Chancery Record 2, p. 591. Charles Calvert chose the seven members of the first common council of St. Mary’s City. Second charter of St. Mary’s City, in *Md. Arch.*, LI, 387.

⁸² First charter of Annapolis, in Chancery Record 2, p. 592.

⁸³ *Ibid.*, p. 591.

⁸⁴ *Ibid.*, pp. 591-592.

⁸⁵ *Ibid.*, p. 591. See also Text above at Notes 21-27.

⁸⁶ For the fear of a broad electorate in England in the last half of the seventeenth-century, see J. H. Plumb, *The Origins of Political Stability: England, 1675-1725* (Boston: Houghton Mifflin Company, 1967), pp. 40-41.

⁸⁷ First charter of Annapolis, in Chancery Record 2, p. 594.

⁸⁸ By an act of 1704, the single county justice could hear any civil case in which the “reall Debt or Damages” did not exceed two hundred pounds of tobacco or £0.16.8 in money. 1704, c. 31, *Md. Arch.*, XXVI, 284.

⁸⁹ First charter of Annapolis, in Chancery Record 2, p. 590.

⁹⁰ 1696, c. 24, *Md. Arch.*, XIX, 499, 501-502.

⁹¹ *Ibid.*, pp. 500-501.

⁹² *Ibid.*, p. 500.

⁹³ *Ibid.*, p. 501. The delegates might also have been concerned about land that had been distributed under the act of 1683. 1683, c. 5, *Md. Arch.*, VII, 612-615.

⁹⁴ See the act by which the assembly confirmed the second charter of Annapolis (1708, c. 7, *Md. Arch.*, XXVII, 358-359), and Text below at Notes 95 and 142.

⁹⁵ Jane McWilliams suggests that in the delegates’ complaint “public” means “province” and points out that “the legislature had paid for a number of amenities in the city, upkeep of some fences and gates,” as well as for public buildings such as the statehouse and St. Anne’s church. She suggests that the delegates were “objecting to what they . . . [saw] as another entity controlling a city in which the ‘public,’ i. e. [the] province, had made an investment.” Personal communication, 4 December 2006.

⁹⁶ 1704, c. 93, *Md. Arch.*, XXVI, 429-430. An earlier act is 1694, c. 1, *Md. Arch.*, XIX, 100-101.

⁹⁷ Jane McWilliams suggests that “other Priviledges” “sounds like one of those ‘cover anything I haven’t thought of yet’ kinds of phrases.” Personal communication, 4 December 2006.

⁹⁸ By the last half of the seventeenth century in England, according to Frederic William Maitland, the house of commons was claiming the right to decide “whether a borough had the right to send members” to parliament. Maitland, *The Constitutional History of England*, p. 290.

⁹⁹ *Md. Arch.*, XXVII, 191-192, 220-221.

¹⁰⁰ Emphasis added.

¹⁰¹ “Housekeeper” appears to have been used as a synonym of “householder.”

¹⁰² Second charter of Annapolis, in Chancery Record 2, pp. 595, 600; Riley, *The Ancient City*, pp. 86, 89.

¹⁰³ Petition to Seymour, Chancery Record 2, p. 595; Riley, *The Ancient City*, p. 86.

¹⁰⁴ Second charter of Annapolis, in Chancery Record 2, p. 600; Riley, *The Ancient City*, p. 89.

¹⁰⁵ For the difference between a “resident” and an “inhabitant,” see again *Black’s Law Dictionary* (6th edition), p. 782.

¹⁰⁶ *Md. Arch.*, XXVI, 39, 116.

¹⁰⁷ For the commissions of royal governors of Maryland, see *Md. Arch.*, VIII, 263-270 (Lionel Copley); XX, 83-91 (Francis Nicholson); Provincial Court Land Record, Liber W. R. C. (1687-1700), pp. 887-891 (Nehemiah Blakiston); Liber T. L., No. 2 (1699-1707), pp. 740-749 (John Seymour); Liber T. P., No. 4 (1709-1719), pp. 259-269 (John Hart).

¹⁰⁸ The definition of “platform” that fits best here is “a permanent or temporary base for the mounting of guns.” *Webster’s Third New International Dictionary of the English Language Unabridged* (1981).

¹⁰⁹ Seymour’s commission, dated 12 February 1702/03, in Provincial Court Land Records, Liber T. L., No. 2 (1699-1707), p. 746. For this provision in the commissions of the other royal governors of Maryland, see *Md. Arch.*, VIII, 267 (Copley); XX, 87-88 (Nicholson); Provincial Court Land Records, Liber W. R. C. (1687-1700), p. 889 (Blakiston); Liber T. P., No. 4 (1709-1719), p. 266 (Hart).

¹¹⁰ Provincial Court Land Records, Liber T. L., No. 2 (1699-1707), p. 744 (Seymour). For this provision in the commissions of the other royal governors of Maryland, see *Md. Arch.*, VIII, 266 (Copley); XX, 86 (Nicholson); Provincial Court Land Record, Liber W. R. C. (1676-1700), p. 888 (Blakiston); Liber T. P., No. 4 (1709-1719), pp. 263-264 (Hart).

¹¹¹ *Oxford English Dictionary Online*, definition 10: “1718 Col. Rec. Penn. III. 58 The sd. town might be Erected into a Borough by a Charter, etc.” [visited 3 August 2007]

¹¹² Seymour had appointed a clerk for the lower house, but on the twenty-eighth, the second day of the session, the delegates sent Wornell Hunt and Matthias Vanderheyden along with Richard Dallam to the upper house with the request that he and his council approve Dallam as their clerk. Seymour and his council required the delegates to put their request in writing; the delegates did; and Seymour and his council responded that though the delegates had no right to choose their own clerk they would accept him in order to avoid the delay of the business of the country. At the same time they expressed their resentment that the delegates rejected, without giving any reason, the clerk whom Seymour appointed. The delegates thanked Seymour, and Dallam took the appropriate oaths. *Md. Arch.*, XXVII, 185-186, 201.

What Seymour must have meant by saying that the delegates had chosen a clerk themselves and had adjourned “without any,” therefore, is that though Dallam had taken the required oaths as clerk Seymour had issued no commission for him. Whom Seymour had appointed clerk of the lower house does not appear.

¹¹³ *Md. Arch.*, XXVII, 192-193, 221. Seymour’s speech is not included in the record of the lower house. *Ibid.*, p. 221.

In a letter to the Council of Trade and Plantations on 10 January 1708/9, writing about the session of the assembly of 27 September to 5 October 1708, Seymour expressed his view that the delegates “disputed what they had no cognizance of, vizt. the legality of a charter I granted to the City of Annapolis (by the advice of H. M. Council)” TNA (PRO), *Calendar of State Papers: Colonial Series*, XXIV, No. 290 (p. 195).

¹¹⁴ John Seymour to Council of Trade and Plantations, 10 January 1708/9, in TNA (PRO), *Calendar of State Papers: Colonial Series* XXIV, No. 290 (p. 195); David W. Jordan, “Political Stability and the Emergence of a Native Elite in Maryland,” in Thad W. Tate and David L. Ammerman, eds., *The Chesapeake in the Seventeenth Century: Essays on Anglo-American Society* (Chapel Hill: The University of North Carolina Press, 1979), pp. 260-261; Jordan, “Elections and Voting in Early Colonial Maryland,” pp. 250-251; Jordan, *Foundations of Representative Government in Maryland, 1632-1715*, pp. 224-225.

¹¹⁵ Elihu S. Riley misreads the list of petitioners, and in doing so he has twelve common-councilmen rather than ten. If he had not left out John Beale, whose name should appear between those of Matthew Beard and Thomas Jones, he would have

had thirteen common-councilmen.

The lists of the petitioners to Seymour, with letters after the names that Riley has wrong:

Incorrect list		Correct list
From Riley		From Chancery Record 2
Amos Garrett	Mayor	Amos Garrett
Wornell Hunt	Recorder	Wornell Hunt
William Bladen	Aldermen	William Bladen
John Freeman		John Freeman
Benjamin Fordham		Benjamin Fordham
Evan Jones		Evan Jones
Thomas Boardley		Thomas Boardley
Josiah Willson		Josiah Willson
e William Haughton	Common Council	a John Baldwin
f Charles Crowley		b John Brice
g William Elliott		c Thomas Docwra
h Richard Thompson		d Richard Young
i Samuel Newill		Charles Killbourne
j William Gaylard		Matthew Beard
k John Grosham Jr.		John Beale
Charles Killbourne		Thomas Jones
Matthew Beard		Patrick Ogilvie
Thomas Jones		Cadder Edwards
Patrick Ogilvie		
Cadder Edwards		
a John Baldwin	Inhabitants	e William Haughton
b John Brice		f Charles Crowley
c Thomas Donera (Docwra?)		g William Ellett
d Richard Young		h Richard Thompson
James Wotton		i Samuella Newill
Christopher Smithers		j William Taylard
Joseph Humphrey		k John Gresham Jr.
John B.		James Wotten
William Gwyn		Christopher Smithers
Richard Bukardike		Joseph Humphreys
Richard Kolk		John B.
Thomas Holmes		William Gwyn
John Novarre		Richard Bukardike
William Durdan		Richard Kelk
		Thomas Holmes
		John Nevarre
		William Durdan

By the charter of 22 November 1708 the mayor, the recorder, and the aldermen were the same as in the first charter, and again they would elect the ten original members of the common council. Chancery Record 2, pp. 590-591, 597-598; Riley, *The Ancient City*, pp. 87-88.

¹¹⁶ It is impossible to tell for sure when these thirty-five men presented this petition to Seymour. The pages in the Chancery Record immediately before the two charters and the petition are entered are for 10, 17, and 18 February 1707/8. Chancery Record 2, pp. 588-589. Seymour granted the petition on 18 November 1708 (*ibid.*, p. 596), and the next record is for 13 July 1708 (*ibid.*, pp. 603-606), then 26 November 1708. *Ibid.*, pp. 606-612.

¹¹⁷ *Md. Arch.*, XXVII, 210, 213.

¹¹⁸ *Ibid.*, p. 216. Emphasis added.

¹¹⁹ 8 Henry VI, c. 7, in Pickering, *The Statutes at Large*, III, 119-121; Maitland, *The Constitutional History of England*, pp. 173, 239-240, 290.

¹²⁰ *Md. Arch.*, XXV, 249.

¹²¹ According to law the building had to be a dwelling house at least “Twenty foot Square.” 1694, c. 8, *Md. Arch.*, XIX, 112.

¹²² Until we find some positive evidence otherwise, probably it is safe to assume here, as throughout, that “person” meant “white adult male” and that neither women nor free blacks were voting in Maryland during the first two decades of the eighteenth century. When we have no evidence one way or the other it appears safest to judge by the economic, social, and political values of the society.

¹²³ The wording in the petition is plural, and so the words are “housekeepers and Inhabittants.”

¹²⁴ Chancery Record 2, pp. 595-596; Riley, *The Ancient City*, pp. 86-87. The petitioners’ asking that the “freemen Inhabittants as aforesaid” be allowed to vote in elections of the members of the common council must mean that they were asking that for the apprentice who had served his time and had lived in the city for three months the qualifications for voting be the same as for others and that therefore they were *not* asking that the freed apprentice receive the franchise immediately and therefore were not asking for a broader franchise in elections of members of the common council than in elections of delegates.

In discussing the act confirming and explaining the charter in his report to the

Council of Trade and Plantations Seymour does not mention the petition to him but rather mentions only the petition to the delegates: “. . . some troublesome persons not being Satisfied therewith [the first charter of Annapolis] petitioned the late Convention . . .” “The Titles of the Severall Laws made the Last Session of Assembly in December 1708 with Remarques thereon,” in “Unpublished Provincial Records,” *Maryland Historical Magazine*, XVII, No. 2 (June 1922), pp. 221-222; “Some Remarques on Several Acts of Assembly made the Last Session,” in “Unpublished Provincial Records,” *ibid.*, XVII, No. 3 (September 1922), pp. 289-290.

Seymour sent a copy of these notes to the Council of Trade and Plantations with his letter of 10 March 1708/9. TNA (PRO), *Calendar of State Papers: Colonial Series*, XXIV, No. 410.ii (p. 252).

¹²⁵ Chancery Record 2, p. 595; Riley, *The Ancient City*, p. 86.

¹²⁶ Chancery Record 2, p. 595; Riley, *The Ancient City*, p. 86.

¹²⁷ Chancery Record 2, p. 596; Riley, *The Ancient City*, p. 87. Riley creates the wrong implication when he says that the petitioners were asking for a charter for Annapolis. Riley, *The Ancient City*, p. 86. Actually they were asking for a change in the charter that Seymour had already issued.

¹²⁸ The second charter would turn out to be mostly a combination of Seymour’s first charter and the petition to him.

¹²⁹ Second charter of Annapolis, in Chancery Record 2, pp. 596-602; Riley, *The Ancient City*, pp. 87-91.

¹³⁰ First charter of Annapolis, in Chancery Record 2, p. 593; second charter of Annapolis, in *ibid.*, pp. 598-599, 599-600; Riley, *The Ancient City*, 88, 89.

¹³¹ Again until we have some positive evidence to the contrary we must assume that the free person had to be a free white male adult.

In a news story on the Tricentennial Celebration of the charters of Annapolis an unidentified source is quoted as saying “It [the second charter] allowed property owners - even if they were free blacks - to vote . . .” Earl Kelly, “City kicks off its 300th anniversary celebration,” *Annapolis Evening Capital Online*, 23 April 2006. <http://www.hometownannapolis.com/cgi-bin/read/2006/04_23-49/TOP>. [visited 24 April 2006]

As readers here will note, I believe that, as much as we might like to believe that under the second charter free blacks could vote, the economic, social, and

political structure of the time would have prevented it. I have spent a fair amount of time trying to discover who first made this claim that free blacks with sufficient property could vote but have had no success. Like many myths we would like to believe, it probably originated anonymously way back when.

¹³² Second charter of Annapolis, in Chancery Record 2, p. 600; Riley, *The Ancient City*, p. 89. See also Note 121 above.

¹³³ In the counties, on the other hand, not all freeholders could vote. See Note 20 above.

¹³⁴ First charter of Annapolis, in Chancery Record 2, p. 593; second charter of Annapolis, in *ibid.*, pp. 599-600; Riley, *The Ancient City*, p. 89.

¹³⁵ *Md. Arch.*, XXVII, 225, 265. Carl N. Everstine says that “the two houses in conference worked out a suitable compromise” during the session that opened on 29 November 1708 (Carl N. Everstine, *The General Assembly of Maryland, 1634-1776* (Charlottesville, Va.: The Michie Company, 1980), p. 197), but it appears clear that the compromise on the franchise in Annapolis was worked out between Seymour and some of the “inhabitants” of Annapolis before the next session of the assembly ever met. Seymour issued the second charter on 22 November, while the assembly did not meet until the twenty-ninth.

Possibly Everstine was thinking of the compromise of 2 December 1708. *Md. Arch.*, XXVII, 232-233, 274-276, 276. See Text below at Notes 139-145.

¹³⁶ *Md. Arch.*, XXVII, 229, 271.

¹³⁷ *Ibid.*, pp. 229-230, 272.

¹³⁸ TNA (PRO), *Calendar of State Papers: Colonial Series*, XXIV, No. 410 (p. 251). Actually Seymour attended the upper house on the first seven days of the session, missed the next nine days, and attended on the last day only to close the session. *Md. Arch.*, XXVII, 225, 228, 229, 230, 235, 238, 239 (present); 241, 242, 243, 245, 247, 248, 250, 255, 257 (absent); 259-262 (attended only to close session).

After he wrote that letter on 10 March 1708/9 Seymour would have less than five months to live. He would die on 30 July 1709. Owings, *His Lordship's Patronage*, p. 120.

¹³⁹ *Md. Arch.*, XXVII, 230, 272, 273. The four members of the conference committee from the upper house were Edward Lloyd, William Holland, Kenelm Cheseldyne, and William Coursey. *Ibid.*, p. 230.

The eight delegates on the committee were Charles Greenberry and Daniel Mariarte of Anne Arundel County, John Mackall and Robert Skinner of Calvert County, George Gale and Samuel Worthington of Somerset County, and Nicholas Lowe and Robert Ungle of Talbot County. *Ibid.*, pp. 267, 273.

For the counties of these delegates, see *Biographical Dictionary*, I, 39.

¹⁴⁰ *Md. Arch.*, XXVII, 273.

¹⁴¹ *Ibid.*

¹⁴² The ordinances of Annapolis would “be not otherwise binding to Any other the Inhabitants of the Province Save only in relation to the Citizens of Annapolis.” *Ibid.*, pp. 233, 275. So here apparently the committee is using both “inhabitants” and “citizens” as synonymous with “residents.”

¹⁴³ *Ibid.*, pp. 232-233, 274-275. The complaint about the toll is not understandable from the statement of the conferees alone but requires a reference to the second charter, by which Seymour provided that the corporation could levy a tax not exceeding six pence on every beast and five percent of the value of any commodity sold at a fair. Second charter of Annapolis, in Chancery Record 2, p. 601; Riley, *The Ancient City* p. 90. That tax was the same as in the first charter. First charter of Annapolis, in Chancery Record 2, p. 594. See Text below at Notes 148 and 149.

¹⁴⁴ *Md. Arch.*, XXVII, 233-234, 275-276.

¹⁴⁵ *Ibid.*, pp. 232, 234, 276.

¹⁴⁶ Second charter of Annapolis, in Chancery Record 2, pp. 598-599, 599-600; Riley, *The Ancient City*, pp. 88, 89-90. Thus while Seymour had tried to restrict the voting for delegates from Annapolis to the mayor, recorder, aldermen, and the five senior members of the common council, in the end the franchise for the election of delegates from Annapolis appears to have been quite similar to what it had been in St. Mary’s City. The second charter of St. Mary’s City refers to “free citizens,” while in the second charter of Annapolis Seymour defines the voters. Second charter of St. Mary’s City, in *Md. Arch.*, LI, 389; second charter of Annapolis, in Chancery Record 2, pp. 599-600; Riley, *The Ancient City*, p. 89.

¹⁴⁷ By an act of 1704 the delegates would receive 140 pounds of tobacco for every day they attended the assembly. They also would be reimbursed for their itinerant charges, the costs of getting to and from Annapolis. 1704, c. 70, *Md. Arch.*, XXVI, 352-353.

¹⁴⁸ Second charter of Annapolis, in Chancery Record 2, p. 601; Riley, *The Ancient City*, p. 90.

¹⁴⁹ First charter of Annapolis, in Chancery Record 2, p. 594.

¹⁵⁰ 1708, c. 7, *Md. Arch.*, XXVII, 358-360. For a brief mention of the dispute over the charters of Annapolis, see Jordan, "Elections and Voting in Early Colonial Maryland," pp. 250-251. Jordan is similarly brief in *Foundations of Representative Government in Maryland, 1632-1715*, p. 225.

Charles B. Clark's treatment of Seymour's granting of the charter of Annapolis is confusing. Charles B. Clark, "The Career of John Seymour, Governor of Maryland, 1704-1708," *Maryland Historical Magazine*, XLVIII, No. 2 (June 1953), pp. 156-157.

¹⁵¹ David Jordan says that:

This legislation effectively concluded the Assembly's efforts to assert full control over all elections. Representation could henceforth be bestowed only by act of Assembly, not by executive measures.

Jordan, "Elections and Voting in Early Colonial Maryland," p. 251. For Seymour's signing the bill on 17 December 1708, see *Md. Arch.*, XXVII, 358-360.

¹⁵² First charter of Annapolis, in Chancery Record 2, p. 592; second charter of Annapolis, in *ibid.*, p. 599; Riley, *The Ancient City*, p. 89.

¹⁵³ TNA (PRO), *Calendar of State Papers: Colonial Series*, XXIV, Nos. 410, 410.i, 410.ii.

¹⁵⁴ "The Titles of the Severall Laws made the Last Session of Assembly in December 1708 with Remarques thereon," *Maryland Historical Magazine*, XVII, No. 2 (June 1922), pp. 221-222.

¹⁵⁵ Thomas Bacon, *Laws of Maryland at Large* (Annapolis: Jonas Green, 1765), under 1708, c. 7.

¹⁵⁶ *Md. Arch.*, XXVII, 267.

¹⁵⁷ On Tuesday afternoon — 30 November 1708 — the Committee of Elections and Privileges reported "that as to the Members returned for the City of Annapolis they leave the Consideration of them to the House." *Ibid.*, p. 270. But it was not until Friday, 3 December, that the lower house informed Hunt and Bordley that it would not admit them as delegates until the bill was passed. *Ibid.*, p. 278. That was the day after the two houses reached their compromise. See Text above at Notes

139-145.

Wornell Hunt attended the first two days of this session and Thomas Bordley the first three. *Md. Arch.*, XXVII, 266, 267, 271, 273, 278.

The session lasted from 29 November of 17 December 1708. *Ibid.*, pp. 225, 259, 265, 334. Some of the headers in the published *Archives* are wrong, as is the title page for each house. *Ibid.*, pp. 223, 263.

¹⁵⁸ *Ibid.*, pp. 260-263, 333-334.

¹⁵⁹ *Ibid.*, pp. 377, 409. At the session of the assembly that began on 25 October 1709 Wornell Hunt continued to have his problems. While the delegates would allow him to be the recorder of Annapolis, they ruled that he was not eligible to sit in the lower house because he had not lived in the province for three years before he was elected (*Md. Arch.*, XXVII, 414), as the law required. 1694, c. 1, *Md. Arch.*, XIX, 100-101; 1704, c. 93, *Md. Arch.*, XXVI, 429-430.

For Seymour's opinion of the laws on residency, see *Md. Arch.*, XXV, 269-270; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 78-79.

4. Reflections

¹ I point out that the second charter of Annapolis was not democratic only because on the website of the “Annapolis Alive!” for the celebration of the tricentennial of the second charter I see the astounding claim that “In 2008 and 2009, Annapolis will celebrate a most significant anniversary — 300 years of democracy.” <http://www.annapolisalive.org/about.html>. [visited on 2 July 2007] I explain this here only because an early reader of this article complained that when in my consideration of the political system of the early eighteenth century I use the term “democratic” I “extrapolate backwards.”

² Second charter of Annapolis, in Chancery Record 2, pp. 598-599, 599-600.

³ *Ibid.*, p. 598. In both charters Seymour provided that the mayor would be elected for one year and could not succeed himself. First charter of Annapolis, in *ibid.*, p. 591; second charter of Annapolis, in *ibid.*, p. 598.

⁴ Second charter of Annapolis, in Chancery Record 2, pp. 599-600.

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