

THE BORDERS OF ABSOLUTISM: WILLIAM
PENN, CHARLES CALVERT, AND THE LIMITS
OF ROYAL AUTHORITY, 1680-1685

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*I*n 1889 there was an unpleasant dispute between members of the Maryland Historical Society and some of their counterparts to the north, members of the Historical Society of Pennsylvania. The dispute was about the rights and wrongs of the Maryland-Pennsylvania boundary controversy, which had begun with the issue of Penn's charter in 1681, and ended only with the surveying of the Mason-Dixon line in the 1760s. According to one Dr. G. W. Archer, author of a pamphlet entitled "The Dismemberment of Maryland," it ought to have been impossible for any Pennsylvanian to "look us square in the eye without a burning blush of shame."¹

Heads have cooled in the intervening one hundred and twenty years. Treatment of the dispute, though, remains focused on the controversy as legal problem, or a mapmaking problem, or a source of difficulty for the small farmers who were attempting to stake land claims in the area. The overriding themes as presented in the scholarship are material, and the narrative is focused primarily on the settlement and development of the

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Maryland-Pennsylvania-Delaware area. The narrative moves very quickly from the conflicting charters, to the local violence, property disputes and vigilante actions of the early 1700s, the settlement between the Calvert and Penn families in the 1730s, and the eventual survey of the agreed-upon border in the 1760s. Even when historians deal with the proprietors' attempts to influence the privy council in the 1680s and 1710s, or the negotiations between the two families in the 1730s that eventually led to an agreement, such political maneuvering is cast as a straightforward attempt to solve a fairly obvious problem, one based on the need to define ownership of land. Ideas played little role.² Historians are not wholly wrong to take this approach to the problem. Certainly, both proprietors had a great deal of wealth and economic advantage riding on the outcome of the dispute. Moreover, scholars with an interest in the settlement of the region, and the social history of town formation, farming and land use, do well to look closely at the dispute's local effects. This type of focus, however, has caused us to miss the significance of the part of the dispute that took place in the 1680s. This earliest round of conflict is distinct from the eighteenth century rounds of violence and negotiation in terms of both the manner in which it was conducted, and much of the substance of the argument. The 1680s were a period of great political tension and conflict in the English-speaking world, and the part of the Maryland-Pennsylvania dispute that occurred at this time was closely bound up in that tension and conflict. As a result, the dispute became a political argument of an unexpectedly abstract and far-reaching kind. Between 1681 and 1685 Calvert and Penn ended up arguing, essentially, about royal absolutism.

This tells us a great deal about the relationship between early American history and Stuart political history. Specifically, it allows us to see some structures in American history, and English history, that are not otherwise evident. The Penn-Calvert dispute is as closely tied to events in the 1630s as it is to the eventual solution of the controversy in the eighteenth century. It is best seen oriented back as well as forward – and across the Atlantic as well as locally. Such a positioning tells us two things. First, this contributes to the discussion among Stuart political historians about how to periodize the later seventeenth century; this study suggests that at least as much weight should be placed on continuity with the early Stuart period as change into the eighteenth century. It also suggests a way to resolve a persistent tension in scholarship on Stuart politics about the relative importance of material concerns and ideas in driving or shaping conflict. Moreover, in making the claim for continuity through

the use of evidence from early America in both the 1630s and the 1680s, the argument suggests that the line that is still often drawn between early modern America and early modern Britain also needs reconsideration. As yet, Atlantic history has not yet had much to do with the somewhat insular debates of Stuart political historiography. The aim of this piece is to suggest that it should, because it allows us to see the continuity of a certain set of issues that is in some ways more obvious from the American than from the English side. Such a perspective, moreover, allows us to see the complexity and significance of this American boundary dispute in a way that we have not before. The Baltimore-Penn dispute began in the 1680s, during a constitutional crisis in England and a half-decade of fear about threats to the power of the crown, although the sources and nature of those threats were hotly disputed.³ Although the 1670s and 80s were not the 1630s and 40s, there are some clear parallels. As in the early Stuart period, disputes about the crown's powers, and potential limits on them, collapsed into arguments about loyalty, property and the law. Penn and Baltimore ended up arguing through, as Baltimore's father had back in the 1630s under Charles I, the problem of royal absolutism. Second, early American political history can be immensely useful to historians of early modern England, since the process of translating power, law and authority to the New World tended to press—as the following analysis will show—on some of the most fraught issues of seventeenth-century politics. Finally, there is a point about colonial charters that should be made here. Arguments about colonial charters and the meaning of boundaries were very common in the colonial world. Historians of early America have noted the importance of charters as avenues to arguments about rights or liberties in the American context.⁴ Here we will see that such charters are relevant to disputes about such topics on the English side of the Atlantic too. The Penn-Calvert dispute suggests that arguments about colonial charters, precisely they were so new and the context in which they were being deployed had so few precedents (although letters patent themselves, of course, had a long legal history), tended to collapse into arguments about the law, the powers of the crown, and the nature of English authority relevant to historians of both sides of the Atlantic.

I.

Because of the conceptual orientation of this study, it is necessary, before moving into an account of the dispute itself as it unfolded in the early 1680s,

to move back to the 1630s. There are several significant legal and political connections between the dispute of the 1680s, and two controversies of the 1630s and 1640s: the dispute between Cecil Calvert, second Lord Baltimore, and the Virginia company, and the dispute between Cecil Calvert and the Society of Jesus. Both of these were land controversies, and both reveal the ways in which colonial property disputes easily led into bigger arguments about the nature of law, property, royal power and the liberties of the subject.

The controversy between the proprietor of Maryland and the Virginia company was rooted in the circumstances of the company's dissolution in 1624. The revocation of the Company's charter was primarily the result of the company's non-profitability and the adventurers' mismanagement of the colony.⁵ However, the context here is key. Arguments about dissolving the company, the reasons for its dissolution, and whether to reincorporate it later were made primarily in terms of whether those involved were loyal or disloyal to the king—and, specifically, in terms of James I's fear of anti-monarchical cabals in Parliament and elsewhere.⁶ As one Virginia Company partisan noted some years later, one faction within the company managed to convince James that "the form of the company's government, as consisting of an excessive number of counselors and a confused popularity," was "a nurse of parliamentary spirits and obnoxious to monarchical government."⁷ 'Popularity' in James's mind was tied not only to threats to his power from below, but legal arguments that would seem to diminish the reach of the crown's prerogative, and elevate the power of laws or systems of laws that might limit it. Such fears would plague his son Charles even more deeply and persistently in the later 1620s and 1630s.⁸ In a sense, the 1620s and 30s provided the context for much of the rest of the century, in the sense that the political climate was to be sharply attuned to arguments about royal power and who was or was not a threat to it.

Even more germane to the Maryland charter in particular was the increasingly thorny relationship between the king's power, and subjects' liberties under the common law—particularly their right to the preservation of their own property and the necessity of due legal process for it to be taken from them.⁹ Although the Virginia Company's charter was revoked, adventurers in the company claimed to have been assured that the replacement of the company by a royal government was not intended to threaten or diminish their New World estates. Moreover, a legal technicality meant that it was unclear that procedurally the revocation was complete. When Charles I issued

the letters patent for the colony of Maryland in 1632, objections were raised that this new colony did, in effect, prejudice the interests of the erstwhile Virginia adventurers, since it gave away land potentially theirs under the old Virginia charter, according to which 'Virginia' had encompassed the entire Chesapeake region. George Calvert, first Lord Baltimore and original Maryland proprietor, believed that the land that was to become Maryland was "in his majesty's power to grant," but Virginian investors disagreed.¹⁰

In the end, the controversy over the Maryland patent became focused largely around the claims of one particular Virginian investor, William Claiborne. Claiborne, a member of the governor's council in Virginia in the 1620s and 1630s, had settled a trading post on Kent Island in the northern part of the Chesapeake in the 1620s. This area fell within the boundary of Maryland, but due to a clause in the Maryland charter that limited the area of the grant to land as yet unsettled by Europeans, Claiborne had reason to believe that his claim to the island would stand. Cecil Calvert, however (George Calvert had died early in 1632) would have none of it. He insisted that Kent Island was part of Maryland, and Claiborne had no business there without his authorization. The resulting conflict continued into the 1640s, and was behind several serious upsets of the Maryland government between 1652 and 1660.¹¹

The details of the Baltimore-Claiborne dispute are rehearsed at greater length elsewhere.¹² Most pertinent to our discussion here is the way in which a dispute over land essentially pushed the participants into a dispute over law, property rights in the new world, and the nature and extent of the king's powers both in England and in America. Baltimore's and Claiborne's claims both rested primarily on a royal charter—that of Maryland in the first case, and that of the Virginia Company in the second. The Virginia Company's charter had been revoked by a writ of *quo warranto*, but two things seemed to give validity to Claiborne's claims. First, there was the claim that the dissolution of the company had never been intended to jeopardize or diminish the investors' or planters' estates. Second, there was the 'hactenus inculta' clause of the Maryland charter, which provided that Baltimore did *not* get land that had been settled by Europeans before 1632 even if it lay within the boundaries of his patent. The Kent Island trading post dated from the 1620s. Ultimately, the issue devolved into an argument about the powers of the crown, and the property of the subject.

Cecil Calvert consistently offered the view that the king's power to distribute new world land was unfettered by any other sort of claim. His charter

was valid; that was the end of the matter. Claiborne's argument, and that of the erstwhile Virginia Company more broadly, rested to some extent on their charter, but the situation pushed them into a second, distinct argument, which was effectively that title to American property rested on something more than, or at least something distinct from, royal letters patent. Subjects could not simply be summarily dispossessed. Revoking or altering a charter and assigning that land to someone new, under a different charter, was in some sense a violation of the liberties of English subjects. Effectively, the arguments advanced by Claiborne and the Virginia investors suggested that in some way, English settlers in America brought the common law with them, including the precept that free subjects could not have their property confiscated without due process. In other words, the Calvert-Virginia Company conflict reveals that there were two fairly distinct views of how the law worked. Baltimore offered the idea, very congenial to Charles I by the 1630s, that the king's prerogative preceded and effectively trumped all other claims—if the king wished to give half of Virginia to him, he could do so. Claiborne and the others associated with the old company were arguing that certainly, the king's prerogative powers allowed him to grant American land to subjects, but once this happened, the fact that those on the receiving end were English subjects implied that some restraints were in place. Property could not simply be revoked and regranted. The king's personal powers, in other words, operated under limitations that were outside the crown's control.

This, of course, was part of a larger argument that extended through Charles I's reign into the 1640s about the proper balance between common law, statute law, and the personal powers of the crown. Charles consistently took a view that looked very much like that offered by Cecil Calvert—that in England as well as in America, the prerogative powers of the crown preceded and limited all other kinds of claims. By the 1630s, Charles had also come to believe that those who argued otherwise were not advancing good-faith legal arguments, but rather, they were disloyal subjects, and their political views indicated that they posed a danger to monarchical power in general, and his power in particular. Cecil Calvert's views on the validity of his own charter in comparison to the Virginia Company claims was good politics as well as in his own interest—it allowed him to both stress his loyalty to the crown, and repudiate claims that threatened his charter. Significantly, he would take a very similar line when he became embroiled in a dispute with the Society

of Jesus over their obligations to the civil government and the legitimacy of some of their land claims in Maryland.¹³

The issue of loyalty is important here because it became a key term in the disputes of the 1630s and 40s over Kent Island, and it would form the center of the accusations and counter-accusations exchanged by Charles Calvert and William Penn in the 1680s. It is closely related to the issue of law and royal power because first of all, disloyalty to the king was often the charge made against those who stressed the importance of the law and its limitation of prerogative power; those who made the kind of argument Claiborne and the Virginia investors did in the 1630s had to answer charges that they discounted too much the power of the crown. Governor John Harvey of Virginia, a sometime ally of Baltimore's with regard to Kent Island, called Claiborne malicious and rebellious; Claiborne and his supporters were quick to claim royal backing for their position and to argue that Baltimore (and Harvey) were the ones disobeying royal commands.¹⁴ We will see language like this again in the 1680s—both sides, particularly those individuals who wanted to make a case for certain limits on royal power, had to engage with this problem of loyalty.

This was not just a calculated political move; the issue of whether the nation's interests were better served by subjects acknowledging the primacy of the prerogative powers of the crown, or whether the interests of the polity were better served by attention to legal forms and precedents was, in a sense, the great political battle of the seventeenth century Anglophone world.¹⁵

Here, the point to stress is that the newness of the American situation effectively pushed the participants into arguments about fundamental political issues. Because there were few precedents for this type of dispute, and no obvious mode of solution, and because the points at issue touched on concepts fundamental to the most serious political divisions of the day, such as subjects' rights to their property, and the extent of royal power, and who was a loyal or disloyal subject, this type of controversy could easily drag on for decades. And indeed, the Claiborne dispute did continue well into the later part of the century; Claiborne himself was still making claims to Kent Island in the 1670s.¹⁶ The dispute dragged on in a larger sense, too. The problems this dispute highlighted about royal power, property and related legal issues were at the center of the civil wars of mid-century—and in this case, too, as historians of Stuart politics have noted, many of the big issues were smoothed over in 1660 rather than resolved.¹⁷ Indeed, the continuity

of issues in America was precisely the result of the continuity of problems in England—until the latter were resolved, it is hard to see how the former could be.

II.

Having sketched out the best context for understanding the controversy, we can move on to the dispute itself. The Calvert-Penn controversy originated in a series of fairly complex land transactions. In June of 1680, the privy council's committee for trade and plantations received William Penn's petition for a grant of land in America to satisfy the crown's debts to Penn's father. Penn asked for land "lying north of Maryland, on the east bounded with Delaware River on the west limited as Maryland and northward to extend as far as plantable." Aware that situating Penn's grant between Baltimore's to the south and the Duke of York's possessions to the north and east would be a tricky business, the committee sent copies of Penn's petition to York's agent and Baltimore's "to the end they may report how far the pretensions of Mr. Penn may consist with the boundaries of Maryland or . . . New York."¹⁸

Within two weeks, on June 25, the agents of both York and Baltimore had replied. According to the former, the area Penn wanted was already owned by James, and Penn would have to apply to the duke if he wanted it. Baltimore's agents had written indicating that the Susquehannock Indians' village would be an acceptable boundary between his colony and Penn's. Penn said he was satisfied with this. Discussion of Penn's patent and how to settle its borders with Maryland and New York continued through November and December 1680 and into January 1680/1.¹⁹

The Pennsylvania charter was formally issued on March 4, 1680/1. This patent, though, did not include the area along the southernmost stretch of the Delaware River. Penn wanted this land in order to ensure that his colony had an outlet to the sea, and so was obligated to seek this portion separately from the Duke of York, who gave him title to it in August of 1682. Specifically, Penn was provided with two separate deeds from York, one for the two lower counties of the Delaware settlements, and a second for a circle with a radius of twelve miles, centered on New Castle. This odd-sounding second deed was necessary because Penn's charter set the southern bound of the colony as running from the Delaware River westward along a circle of radius twelve miles, centered on New Castle, until the circle intersected 40°

north, at which point the boundary ran due west. James's second deed gave Penn the inside of the circle.

These deeds from James were simple land titles, it should be noted, not a second charter or an alteration of the first. In addition, during the course of this agreement, York promised to provide Penn with whatever papers he might need to prove legal ownership of the area, as long as the Pennsylvania proprietor paid the costs of obtaining the new title. York's own claims to the area, as this exchange with Penn suggests, were not indisputable. Charles II had granted his brother what had been New Netherlands, but only so far as the east bank of the Delaware River. James's authority was recognized in fact, if not in law, on both sides of the Delaware, but given the limits of his brother's formal grant to him, his own gift to Penn of lands on both sides of the river rested on a slightly doubtful foundation.²⁰ In addition, Baltimore's patent placed the northern boundary of Maryland at precisely 40° north, with no dips, bumps or circles of any kind, a point unrecognized either in Penn's patent or James's two deeds. This would place most of the area of the twelve-mile circle, as well as the lower Delaware River settlements, in Maryland. Baltimore, in fact, had laid claim to this Delaware area for years.²¹

A royal letter to Baltimore of April 2, 1681, described the boundaries of Penn's colony as set out in the charter, without the additions of the grants from the Duke of York, and requested that Baltimore and Penn "make a true division and separation of the ... provinces of Maryland and Pennsylvania according to the bounds and degree of northern latitude" specified in Penn's charter, and that they survey and mark the border.²² On April 10, Penn wrote to Baltimore to offer friendship and hopes for "a future good correspondence."²³

Within months, however, signs of trouble to come had emerged. Settlers from Maryland had already established themselves on land southwest of the Delaware. This was the area which Penn wished to claim, but could do so only through the deeds he would receive from James, not through his charter. On September 16, 1681, he wrote to several Maryland colonists of the Delaware area "at their plantations in Pennsylvania" to inform them that they were within his patent. He expressed his good will, and assured them that he was not out to squeeze profits from them, and that they would "find me and my government easy, free and just." If they paid "any more taxes or [a]ssessments by any order or law of Maryland," however, it would be "greatly to your own wrong as well as my prejudice, although I am not conscious to

myself of such an insufficiency of power here with my superiors as not to be able to weather that difficulty if you should." If the settlers in the Delaware submitted willingly to his jurisdiction, Penn's letter implied, there would be no trouble. If they did not, some settlement would be reached, preferably by non-violent means, but Penn clearly did not intend to give up his claims to the area southwest of the Delaware.²⁴ In March 1681/2, Baltimore complained to colonial office administrator William Blathwayt that Penn had been "unkind and unneighborly" in writing so to the planters in northeastern Maryland. He also indicated one of Penn's greatest concerns with regard to the Maryland-Pennsylvania boundary, that of ocean access. Penn wanted to ensure that he had a usable port in his colony, and thus it was in his interest to have the boundary line fall as far south as possible.²⁵

III.

There were, then, two distinct problems here. The first was whether Penn's titles from York were valid. Penn clearly was prepared to argue that they were. Baltimore was not. Baltimore's charter for Maryland specified that the Maryland boundary was at 40° from the Atlantic westward. Penn's was consistent with this—at least for the area westward from a point on the fortieth parallel twelve miles west of New Castle. But Penn's claims to the lower Delaware pushed a question. Could this area that was within the Maryland patent be transferred to William Penn without Baltimore's agreement? Baltimore said it could not. Although he never mentioned York explicitly, Baltimore in effect was arguing that York's titles, and by extension Charles II's gift of the area to his brother, were invalidated by the Maryland charter. The original disposal of American land might be purely a function of the prerogative—certainly, Parliamentary statute or the common law had little to do with the granting of colonial charters—but there was an implicit claim that once an English subject had it, other rules came into play. Subjects could not be summarily dispossessed, although it was far from clear why this might be the case.

It might seem to be a matter of equity, but none of the participants brought this up, probably because it would require some sort of equity jurisdiction to be in operation in America, and no one at the time made this argument. Penn at one point mentioned that Baltimore had engaged in underhanded surveying practices that were counter to "common equity," but

this was the only reference to this term, and Penn seems to have been using this term in a colloquial more than a legal sense.²⁶ Moreover, Baltimore was not arguing that he could not be dispossessed of his claims because it was counter to equity – he argued that this could not happen because Maryland was his property. As he apparently told Penn's kinsman and representative in Pennsylvania William Markham at one point, he would not submit to the king's adjudication of the dispute because "the land was his."²⁷

Where things really got interesting, though, was with the second portion of the dispute. In addition to his claims of land south of 40° north via grants from the Duke of York, Penn also eventually argued that the northern boundary of Maryland was not actually 40° north, despite what it might say in Baltimore's charter. Using a letter from the king that implied Maryland's boundary was two degrees of latitude north of the southern boundary specified in the Maryland patent, regardless of whether that two degrees reached to 40° north or not, Penn claimed that Baltimore's charter did not give him what the Maryland proprietor might think it did, and to argue otherwise suggested that Baltimore's interest in protecting his wealth and property outweighed his loyalty to the king. This assertion, and the subsequent dispute over who was a loyal subject in accepting or rejecting that letter, is what ultimately drew the two proprietors into a dispute about the powers of the crown that was perhaps somewhat bigger than they realized. Ultimately, the letter and how much weight to put on it relative to Baltimore's charter was what pushed the two into an argument over absolutism.

The letter in question was dated August 19, 1682, and it instructed the two proprietors to come to an agreement about the boundary between their colonies. It further noted that the best way of doing this would be to take an "admeasurement of the two degrees north from Watkins Point," a promontory on the Chesapeake side of the eastern shore which formed part of the southern boundary of Maryland. The northern boundary of Maryland would thus fall somewhere around 40° north, but perhaps not exactly. Here it was assumed not that Maryland ended precisely at 40° north, but rather that the colony encompassed two degrees of latitude from north to south, and to measure north 2° from Watkins Point and then draw a line east and west from there, would accurately determine its northern extent.²⁸ Baltimore's charter for Maryland did specify that Watkins Point lay along the southern border of Maryland. No mention was made of two degrees in the charter, however, the stated northern bound being the fortieth parallel.

Calvert consistently refused to agree that this letter had any legal weight at all, while Penn repeatedly suggested that in taking this position, Calvert was implicitly setting aside not simply the letter itself, but also the legitimate authority of the crown. As Penn reported in an account of one of his numerous meetings with Calvert, the Maryland proprietor refused to consider that an order from the king might alter his patent, and “this was the substance of what he said from first to last during the whole conference.”²⁹

Penn first brought the letter up during a meeting the two proprietors had in December of 1682. According to Penn’s account of the exchange Calvert immediately objected, suggesting that “his majesty hath received some misinformation,” since the bounds described in this letter conflicted with the boundaries described in his patent. Penn suggested that simply to place Maryland’s northern border at 40° north without reference to the limit of two degrees north of Watkins Point was to “waive and wholly lay aside” the king’s letter, which was very likely, Penn went on, “grounded upon strong presumption and sound circumstances.” He said he was willing to set this matter aside from the time being, but when Calvert continued to argue by pure repetition for his own view of the boundary and how to ascertain it, Penn went so far as to imply that Baltimore was more loyal to his own patent than he was to the crown, noting that “in short I have here produced the king’s letter in answer to which the Lord Baltimore sayeth that he will rather abide by his patent, which is under the great seal, than to the bare contents of a letter.” Baltimore, in reply, asked whether “were it your case, would you not stick to a patent so plain as mine is?”³⁰

The two proprietors found themselves clashing again about this letter at their next meeting in May of 1683. According to the account of the meeting from Calvert’s side, Penn claimed as before that the letter would not be “insisted upon by him as to the two degrees mentioned therein.”³¹ In Penn’s own account of the 1683 meeting, written for the Privy Council’s committee on foreign plantations, the royal letter loomed a little larger. Penn prefaced his account of the May 1683 meeting with some further details about that of December 1682. Penn first indicated that Calvert took himself and his authority very seriously. Calvert arrived at their meeting, which was held in Maryland, “attended suitable to his character,” and “took occasion by his civilities to show [Penn] the greatness of his power.” Calvert, in other words, might well be an overmighty subject, who did not show due deference to the powers of the king.

The very next issue was the royal letter. The Pennsylvania proprietor pointed out that the letter from the king made Maryland out to be smaller than Baltimore believed, with a northern boundary that did not necessarily lie at 40° north. Baltimore read over the letter to himself and then aloud, and “he told me the king was greatly mistaken and that he would not leave the patent to follow the king’s letter, nor could a letter void his patent.” Penn here emphasized the slight to Charles II that Baltimore’s statement might seem to imply. He told Baltimore that “the king might be misinformed rather than mistaken,” and later went on to note in his account of the meeting that “my pressing the king’s letter” had left Baltimore “uneasy.”

Penn here went on to describe the May 1683 meeting, during which Calvert again refused to give ground about the royal letter. According to Penn, the Maryland proprietor continued to refuse even to consider that an order from the king might alter his patent. In addition, during the course of an account of the long negotiations over measuring and measuring instruments, Penn took care to note, almost as an aside, that he had himself “exactly followed the Bishop of London’s council by buying and not taking away the natives’ land,” as, he implied, Baltimore did.³² Penn here again lined himself up with the authority of the crown, and the bishops—in implied contrast to Lord Baltimore. Given the furor in the late 1670s and early 1680s about threats to the crown in the form of threats to the church, as well as the king’s attempt at many points during these years to position himself as a champion of the English church so as to stave off criticism and respond to murmurs of popish conspiracy,³³ Penn’s reference to the Bishop was probably not an accident.

Penn, here, was arguing that a letter from the crown indicating the king’s wishes had the same legal force as a charter that had passed the great seal. As Penn himself said, Baltimore did very wrong to “set his patent in direct opposition” to a subsequent command via letter from the king.³⁴ This is a fairly extraordinary argument. Penn was saying, in effect, that the king’s word was law. Both the Maryland charter and the royal letter had come from the king; both indicated what he wanted. Whether one was a formal legal document and one merely a directive—this was beside the point. Slighting even the latter was a sign of disloyalty.

Calvert was fully aware that this was what Penn was doing. In response, he offered his own charges of disloyalty. On September 17, he commissioned his kinsman George Talbot “to repair forthwith to the Schuylkill at Delaware and in my name to demand of William Penn, esq. or his deputy all that part

of land on the west side of the said river that lyeth to the southward" of 40° "according to an east line run out from two observations, the one taken the 10th of June 1682 and the other the 27th of September 1682 in obedience to his majesty's commands" to lay out the border, which royal commands "were at that time rejected by the agents of the said Penn."³⁵ Baltimore here was being slightly disingenuous. His statement implied that the king had ordered the proprietors to lay out the border, and these observations had been the direct and only result of the order, and thus Penn's rejection of a boundary derived from them was disobedience. Of the two observations mentioned, the first was taken without input from Penn, because Penn's deputy, William Markham, had failed to come to a surveying meeting arranged in early June of 1682, and the second had been taken the day after Markham departed from a similar meeting to fetch some surveying equipment, but had not returned due to business in Pennsylvania. Baltimore evidently considered that if Penn would not agree with him about the border, the Pennsylvania proprietor was disobeying the order to settle the matter, and Baltimore was thus allowed to proceed as he thought best. Talbot made the demand as ordered on September 24.³⁶

Penn wrote to Baltimore in October to express a formal refusal of Baltimore's demand on a variety of levels. The commission Baltimore had given to Talbot, first of all, was irregular. It was "slight, abrupt and unprecedented" to send such a commissioner "without some letter or memorial to state the demand with the reasons of it." Heads of state regularly sent such letters, and what was proper procedure for kings might be so also for humbler authorities such as themselves. Moreover, "William Penn, Esq." or "the said Penn" was "not my American style." Penn did not live in the west side of the Schuylkill, where Talbot had gone, and neither did "any deputy of mine." Indeed, Penn noted that "I keep no deputies," and the man to whom Talbot had given the declaration was certainly not empowered "to treat, and conclude away mine inheritance." More importantly, Baltimore's implication that Penn had ignored royal commands was groundless. The king had ordered them to agree on the line to be made the boundary, and to survey it together. The line specified in Talbot's orders was based on observations taken by Baltimore or his commissioners without Penn or Markham's presence or approval. "Those observations, and the line run by them, are performed by the Lord Baltimore, and his agents only, and therefore not according to his majesty's command in his letter of the 2nd of April 1681, nor, in my opinion, common equity, for I knew nothing of them."

Penn went on to indicate that it was Baltimore, in fact, who made a habit of ignoring royal commands. Traveling through disputed land on his way to New Castle, Baltimore had "forbad the inhabitants to pay me quit rent, and named the place a new name, before any line was run, or any observation agreed" which was a "breach of the king's commands." Similarly, Baltimore had set his own patent above the king's letter of August 19, 1682. He had also treated Penn with scant civility on numerous occasions, rebuffing his offers of compromise and even issued a proclamation, that of May 15, 1683, which changed the rules for land-holding and gave discounts for the Delaware area, "to invite people to plant those parts in my possession under his royal highness, and that before any demand had been made" or their earlier friendly relations ended, which Penn noted was disrespectful to York as much as to himself.

As for the main point of the declaration, that Penn cede all the Delaware land below 40°, Penn thought it "very odd the demand should be made several months after the proclamation was put forth to encourage people to plant most of the parts demanded," and especially given that Baltimore had told him earlier that he would not "without further provocation given, proceed to demand those parts." Talbot, moreover, had not comported himself with "common decency" toward Penn. Besides disrespect toward Penn himself, Talbot had "[abused] the king's people under my charge, by threats or drawing them of their obedience by degrading mine, and invitations to Lord Baltimore's government."³⁷ Penn, in other words, was offering a picture of himself as a loyal and obedient subject, and Baltimore as not only rude and lacking in courtesy, but also disobedient, and even disloyal.

Baltimore drew up a response to Penn's refusal soon after its arrival. Penn had no reason to expect a memorial or letter of explanation with Talbot's commission, since Penn "very well knows" that Baltimore was "under some promise, that he would not trouble him with any more writing until he had first purged and fully cleared himself of some black crimes Mr. Penn, in his last letters, had charged him with." Moreover, Baltimore had made all his reasons clear at their last conference. "And perhaps the Lord Baltimore not being in his own thoughts, so great a seigneur and ruler as Penn knows himself to be, might be one reason the memorial was omitted, his lordship priding more, that he is the son and grandson of persons ever loyal to their prince (a truth all his neighbors cannot walk up to) than that he is a seigneur in this part of the world." This was a slight against Penn's father, who had served in the English Navy under the Commonwealth before later returning

his loyalties to Charles II after 1660. Baltimore also at acid length apologized for not addressing Penn by his proper "style."

As for the question of whether the line in Talbot's commission had been done according to the king's commands or not, Baltimore marveled "what an obligation doth the Lord Baltimore lie under for Mr. Penn's kindness in owning under his own hand, that the Lord Baltimore did in obedience to his majesty's commands . . . act and perform his part when others stood out in contempt of the same commands. Now, of Mr. Penn would be so ingenuous as to let the world know why he has approved of his agents not joining with those appointed by the Lord Baltimore according to those commands . . . I say would Proprietor Penn be so much a gentleman, and a professor of the truth, and satisfy us why his agents durst presume to slight and contemn those positive commands of his majesty's, as also why they showed that unkindness and rudeness," Baltimore would be much pleased. But, Baltimore continued, since Penn was unlikely to do this, he would himself explain. Penn had been misinformed by Quakers both in America and England about how far south 40° lay. On his arrival in America, Baltimore had treated him with all appropriate neighborliness. Penn, anxious to confirm the boundary since he thought it would fall to his expectations, wrote letters to "quicken" Baltimore in this matter, even going so far as to issue veiled threats as to what would happen if Baltimore failed to obey the king's command to settle the boundary, this even "though he and his agents resolved to slight and reject the king's favor." Baltimore continued to treat Penn with "all respect, reverence and regard imaginable." Next Baltimore described what he saw as Markham's deliberate delays and evasions, which had been the result of the realization in Penn's circle that 40° would fall much further south than any of them had supposed. The Maryland proprietor also suggested that the king's letter of August 19, with its description of Maryland as stretching two degrees north to south, was due to "misinformation" supplied to the privy council by Penn himself, at which "abuse" Baltimore professed himself shocked. Such, Baltimore concluded, was "the true account why neither Mr. Penn's agents, nor himself thought fit to give obedience to his majesty's commands" to lay out the boundary.

Baltimore penned several more pages of ill-edited and, here and there, crudely sarcastic argument. In his opinion, the blame for the unsurveyed boundary lay entirely with Penn, and Baltimore was forced at every turn to deal with evasion, deceit, and once, even inadequate hospitality for his entourage. The "mysteries" and "juggling shifts" of Penn and Markham

were legion. "Rude letters, and underhanded treacherous proceedings" were cloaked beneath professions of "great respect, friendship and kindness." Penn, Markham and the others, he concluded, were disloyal to the king, and aimed at the utter undoing of the Maryland patent.³⁸

Baltimore had good reason to try to counter Penn's suggestion of disloyalty with accusations of his own. However, he was on weaker ground than his neighbor to the north. Penn's interests lay in stressing the powers of the crown in every way possible. Baltimore had to balance assertions of his own loyalty and upstandingness as a subject with his claim that the king's power had certain limits. In the political climate of early 1680s, it is not surprising that Baltimore ultimately had to suffer the loss of some of the property he claimed below the fortieth parallel.³⁹

IV.

Given the background provided above in section I., one particularly striking thing about the controversy that unfolded between the Maryland and Pennsylvania proprietors in the 1680s is that the Maryland proprietor, Charles Calvert, was now on the other side of the argument. In the 1630s, his father Cecil had been the one arguing in favor of the king's ability to redistribute American land through charters without regard to claims made under previous charters; Charles, now, found himself arguing against this proposition.

This tells us little about Charles Calvert other than that he was possessed of a certain amount of intellectual flexibility; certainly in other circumstances, he revealed a very strong affection for unfettered royal power.⁴⁰ What it tells us about the political world of the late seventeenth century, though, is significant. First, the process of conveying, claiming and asserting title to new world land tended to force discussion of laws and rules concerning property, and questions of law and property were at the center of some of the most contentious political debates of Stuart England. Second, it allows us to address the relationship of material concerns to political ideas. To get to this second point, though, it is first necessary to address an underappreciated point in the historiography of the early modern English imperial (or Atlantic) world.

The political arguments that arose around conflicting colonial charters may seem to be distinct from the political arguments centered in England

or Britain itself. Certainly most historians who have addressed the issue of the transferal or establishment of English law and authority in America have tended to understand this process as a separate issue from domestic English and British disputes about the balance of common law and royal prerogative, and the limits and nature of each.⁴¹ This is not necessarily the case. Charters did not make the world of difference that one might suppose.

First, arguments about land that were limited specifically to the wording of particular charters tended not to do what those advancing them wanted to do. The best example of this is the 'hactenus inculta' clause in the Maryland charter mentioned above. This phrase specified that Baltimore got only those areas within the specified bounds that had not been previously settled by Europeans. Claiborne used this to argue in the 1630s that Kent Island was his; he met with small success. Penn similarly instanced the 'hactenus inculta' clause of Baltimore's patent to argue that the area in question in the 1680s controversy had never been part of Maryland, regardless of what one thought of the 40° north boundary, because the Dutch and the Swedes had been there before Baltimore. This, in fact, became for a time a significant part of the dispute.⁴² But as in the 1630s, it did not provide the basis for a solution, probably because the lands that the Dutch and Swedes had settled did not line up precisely with the boundary line that Calvert and Penn were disputing—even had Penn proven his point about the Dutch, that still left some land below 40° north unsettled by Dutch or Swedes, and claimed by both Penn and Calvert. As a strategy, it was not comprehensive enough to work. Penn's strategy of pushing the king's powers to dispose of land had the advantage of both simplicity and political expedience. Claiborne and the former Virginia Company adventurers came to a conclusion similar to Penn's decades before; their attacks were focused on the illegality of Baltimore's patent as a whole, not Kent Island specifically.⁴³ The issue, effectively, was whether subsequent royal charters and orders could countermand previous royal charters and orders so entirely as to render previous land claims completely null. This in essence threw the issue back onto what the king was permitted to do with his power, and what mechanisms were or were not in place for limiting it.

Even more strikingly, no one in the course of the 1680s dispute argued that the crown ought to issue a writ of *quo warranto* against Baltimore's charter. This type of writ required the recipient to prove by what right he held the office, charter, or similar possession in question. The privy council threatened Baltimore with one of these several times during the late seventeenth century,

usually in connection with the Maryland government's peculiarly persistent inability to enforce the Navigation Acts.⁴⁴ But no one, in the context of the Pennsylvania dispute, brought up this possibility. The reason for this, of course, was the problem in this context was not Baltimore's authority more broadly, or his claim to the entire colony, but a particular *part* of his colony. As with the Virginia Company's claims thirty years before, the trouble was what to do when the crown altered or wished to alter a part of the chartered colony, rather than the whole. In the Pennsylvania case, voiding Baltimore's entire charter was not the solution to the problem—but, if his charter *was* valid, it was not clear what to do about the part that now quite possibly belonged to some one else. As a result, the participants ended up arguing not about charters as such, but about property rights. In other words, the fact that this was a dispute about royal disposition of American land meant that there were some aspects of the controversy, such as charters, that were distinct from the way disputes about prerogative and property tended to work in England. But, given the way that these charters worked, it was possible to get into disagreements about them that were not resolvable by the methods normally used to deal with inconvenient charters, like writs of *quo warranto*. As a result, those like Penn and Calvert who became involved in disputes over charters ended up arguing over it in terms of property, which pushed the discussion squarely into the extremely knotty problem of what the king could legally do with subjects' property. This, as noted, was one of the more persistent points of tension in seventeenth-century English politics—it caused a series of political crises in the 1620s, proved controversial in the 1630s, and arose again later in the century. Penn and Calvert may have been at the geographical periphery of the empire, but they were not so far from its political center as geography might suggest.

What emerged in America, moreover, was a persistent idea that somehow, English subjects brought with them a right, separate from whatever charter they might live under, not to have their land taken without some sort of due legal process. There were liberties attached to being an English subject that did not derive from the powers of the crown. In much of the literature on the moving of English authority to America, there is useful discussion about the nature of royal authority, the ideas about liberties or property that English people brought with them, and the legal history of charters and letters patent.⁴⁵ This literature, though, does not seriously engage with the historiography on sixteenth- or seventeenth-century English politics. Historians of the Atlantic world often discuss early modern claims about the powers of the prerogative,

and the monarch's capacity to distribute New World land and authority over subjects to proprietors without considering how contentious this sort of claim might have been in the seventeenth century. Citing, for example, the Maryland charter as an example of how English authority was established in America is in effect to take a side in a seventeenth-century political controversy that caused two revolutions.⁴⁶ After all, the Maryland charter was contested for most of its seventeenth-century existence on the grounds that it violated subjects' liberties—there was a persistently-voiced claim that the charter or some of its provisions were illegal, that the king had been deceived when he granted it, or even that the king had given the Calverts powers and privileges that the law did not permit him to grant. As a group of Maryland inhabitants wrote in 1676, the king had been “surprised by the pen man” back in 1632, and the “absolute” powers that the charter gave to the Maryland proprietor were given “by misinformation and undoubtedly intended conditionally,” as was suggested by some aspects of even the charter itself.⁴⁷ By 1689, the Protestant Associators who overthrew the proprietary government were effectively arguing that the entire Baltimorean regime had been, essentially, illegal.⁴⁸ English subjects in America were making distinctively different arguments than those implied in the charter (or certain readings of it) about how the transfer of authority worked, and in doing so implied that certain types of liberty almost inhered in English subjects, and they brought such liberties with them to the New World regardless of what the monarch might think. This kind of argument about where subjects' liberties came from, and whether those liberties limited the prerogative powers of the crown, or the other way around, was, again, among the issues driving the great political controversies of seventeenth-century England and Britain.

Some, like Charles Calvert, were pushed into this kind of claim almost in spite of themselves, and certainly made completely contrary assertions in other situations.⁴⁹ But an absence of explicitly principled conflict does not mean we are not dealing with a conflict about principles. Certainly Penn and Calvert were not knowingly engaged in principled conflict over theories of government. The motives here are fairly ordinary—Penn wanted ocean access, and Calvert did not want any of his land being granted away to William Penn. What happened here was that as a result of all the long-standing disagreements—and, indeed, the very real ambiguities—as to how the various components of the English state and legal system fit together, conflicts about material interests were almost necessarily going to turn into conflicts about ideas, because the very positions that the two proprietors'

material interests required them to take placed them on opposite sides of a fairly important question.

This suggests a way to resolve a persistent problem in the historiography on Stuart politics, namely, the role of ideas versus material interests. Most schools of English historiography have tended to be either strongly materialist, or strongly oriented towards ideas as the driving force in politics. The 'Whig' view of early modern English history privileged a certain set of legal and political ideas as the framework for understanding events. Marxist scholars offered a sharply contrasting view of events, based on class struggle and material interests. Much of the revisionist scholarship of the 1970s and 80s on Stuart politics, in a reaction against the Whiggish view of the period, reacted against both Whig ideas and ideas in general as motivation for crown/parliament and other conflicts, stressing instead innate conservatism that expressed itself largely in anti-tax sentiments and a desire that the state should not spend money.⁵⁰ Recent scholarship has offered a more nuanced view of Stuart politics, but this has tended to be in terms of a more subtle and complex view of the ideas at work.⁵¹ As a result, there remains a cleavage in the scholarship between understandings of the period based on material issues, and understandings based on ideas. Early American history suggests that this division is unnecessary, and even counter-productive. Disputes such as the one between the proprietors of Maryland and Pennsylvania suggest that conflicts over property were often necessarily conflicts about ideas—the two concepts are not truly separable. Such a line of reasoning suggests that there may be other controversies in the early modern American world that remain as yet understudied in political terms because the participants do not appear to be taking principled ideological stands.

This brings us back to Maryland and Pennsylvania. Broadly, this essay has attempted to provide context for, and a reassessment of, an incident in Maryland and Pennsylvanian history that is relatively understudied. There is an interpretive payoff for historians of early modern Britain here—but what about for the history of the colonial Chesapeake and Mid-Atlantic? First, there is the broader argument that it is necessary to read colonial history outwards as well as forwards. That is, some aspects of early American history are as much early modern as they are American or even specifically "colonial." But there is also a point more specific to the political history of Pennsylvania. Scholars have made efforts to situate early Pennsylvania in its imperial and transatlantic context.⁵² This paper has argued that one crucial way to get at this imperial context is to look not only at Pennsylvania's ties to England and

Europe, but also at its government's clashes with neighboring colonies. Such local conflicts, such as that between Penn and Charles Calvert, can reveal much about the broadly shared political ideas, loyalties and fears that shaped the colony's earliest decades.

NOTES

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