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STATE CONSTITUTIONAL LAW FOR MARYLAND LAWYERS: INDIVIDUAL CIVIL RIGHTS

Charles A. Rees†

"[A]lthough in the past it might have been safe for counsel to raise only federal constitutional issues in state courts, plainly it would be most unwise these days not also to raise the state constitutional questions." 1

I. INTRODUCTION

This guide to selected aspects of Maryland state constitutional law is designed for use by lawyers and law students who are familiar with the principles of federal constitutional law. After stating the justifications for studying the state constitution, this article compares provisions regarding individual rights of a civil nature in the Constitution of Maryland with related provisions in the Constitution of the United States.

This study does not compare state and federal constitutional rights of a criminal nature, 2 and does not consider the constitutional and policy limitations on judicial relief for violations of individual rights. 3

II. WHY STUDY THE STATE CONSTITUTION

As shall be demonstrated, the Constitution of Maryland and the Constitution of the United States have been construed similarly with respect to many individual rights. 4 Nonetheless, the study of the state constitution is useful for several reasons. 5

First, according to the theory of our system of federalism, state law is the primary source of protection for the fundamental

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3. Examples of such constitutional and policy limitations include the case-or-controversy doctrine, the requirement of standing, the requirement of justiciability, the doctrines of sovereign and official immunity, the abstention doctrine, the requirement of exhaustion of remedies, and the principle of stare decisis.


privileges and immunities of citizens. This theory was a reality for most of our country's existence. The Maryland Constitution of 1776, the predecessor to the Maryland Constitutions of 1851, 1864 and 1867, preceded the adoption of the Constitution of the United States in 1788 and the federal Bill of Rights in 1791. Initially, the United States Supreme Court held that provisions of the Bill of Rights by their own terms applied only against federal, not state, governmental action, and even after adoption of the fourteenth amendment in 1868, the first provisions of the Bill of Rights were not incorporated through the due process clause as against state governmental action until 1925.

Second, certain provisions of the Bill of Rights, applying as against federal governmental action, have never been incorporated through the due process clause of the fourteenth amendment to apply as against state action. These unincorporated provisions are the second amendment right to keep and bear arms, the fifth amendment right to indictment by grand jury, and the seventh amendment right to jury trial in civil cases.

The incorporation of certain other rights as against state action is in doubt, and the only guarantee of such rights may be by state law. The third amendment right not to have soldiers quartered in one's home, the eighth amendment right to reasonable bail, and the eighth amendment right to fines which are reasonable in amount are examples of rights which may not apply to the states, absent a comparable state constitutional provision.

7. At least one provision of the Maryland Const. of 1776, Decl. of Rights, article 16, the prohibition of bills of attainder, apparently served as a model for its counterpart in the federal constitution. See B. Schwartz, 1 The Bill of Rights 279 (1971).
8. See generally A. Niles, Maryland Constitutional Law 1-352 (1915).
10. Gitlow v. New York, 268 U.S. 652 (1925), assumed that the first amendment freedoms of speech and press were among the fundamental "liberties" protected by the due process clause of the fourteenth amendment from impairment by the states.
15. Cf. Tate v. Short, 401 U.S. 395 (1971) (holding that the equal protection clause of the fourteenth amendment prohibits imprisonment of indigents for failure to pay fines arising from convictions for traffic offenses, where no imprisonment is imposed on those who pay the fines).
Third, the state constitution protects certain rights which are not guaranteed by the federal constitution. The state constitution also protects certain other rights more completely than does the federal constitution. In addition, the various state statutes, court rules, and principles of common law that implement the state constitutional provisions may offer greater protection than does federal law.

Fourth, certain rights, such as "liberty" and "property," that are within the procedural protections of the due process clause of the fourteenth amendment, may be defined with reference to state law.

Fifth, where rights are guaranteed by both state and federal constitutions, the state ground may be judicially preferred as the ground of decision. When a state court judgment rests on both federal and state law, the Supreme Court will not grant review, because the judgment rests on "adequate and independent state grounds." When a federal court hears a case that includes both federal and state constitutional issues, that court may abstain, in order to permit litigation of the state claims in state courts.

Sixth, many commentators have noted that the Supreme Court is taking an increasingly conservative view of the nature and extent of the individual rights which are protected by the federal constitution. The state constitution, to the extent that it is more protective of individual rights than the federal constitution, may provide the only protection for individual rights.

16. See discussion at Part III infra, especially notes and accompanying text.
17. See notes 177-86 infra and accompanying text.
19. Cf. notes 126-28 infra and accompanying text (state and federal law offer similar protection).
22. One commentator has concluded that, as a matter of logic, a state constitutional claim should be disposed of before reaching a similar federal constitutional claim. Linde, Without "Due Process," 49 OR. L. REV. 125, 133-34 (1970).
27. See the sources cited in note 2 supra.
28. A state is ordinarily free as a matter of state law to protect individual rights not guaranteed by the federal constitution. See Cooper v. California, 386 U.S. 58 (1967).
III. INDIVIDUAL RIGHTS

Individual rights of a civil nature\(^ {29} \) under the constitutions of Maryland and the United States are discussed below generally in the order in which they appear in the Constitution of the United States. Two collateral matters are considered separately: (1) the “state action” requirement, which is an element of most constitutional rights, and (2) remedies, without which the protections afforded by constitutional rights would be only theoretical.

A. Rights

1. Impairment of Contracts. The provision of the Constitution of the United States that prohibits state laws impairing the obligation of contracts\(^ {30} \) has no counterpart in the Constitution of Maryland.\(^ {31} \) There is, however, a somewhat similar state statute.\(^ {32} \)

29. As stated in Part I supra, this article does not include individual rights of a criminal nature, including those guaranteed by U.S. Const. art. I, § 9, cl. 2 (habeas corpus); art. I, § 9, cl. 3 and § 10, cl. 1 (bills of attainder and ex post facto laws); art. III, § 2, cl. 3 (criminal trial by jury); art. III, § 3 (treason); amend. IV (searches and seizures); amend. V (grand jury, double jeopardy and self-incrimination); amend. VI (speedy and public criminal trial by jury, notice of charges, confrontation of witnesses, compulsory process and counsel); amend. VIII (bail, fines and cruel and unusual punishment).


31. Cf. Md. Const. of 1851 art. X, § 7: “All rights vested, and all liabilities incurred shall remain as if this Constitution had not been adopted.”

The common law prohibits laws impairing the obligation of contracts. Watkins v. Worthington, 2 Bland. 486 (1830), held that since English courts had no power to impair the obligation of contracts, neither do courts of Maryland, especially in view of the fact that the state has adopted by constitutional provision the common law of England.

Note that Md. Const., Decl. of Rights art. 5, set forth below, expressly does not constitutionalize the common law:

That the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that Law, and to the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of Law or Equity; . . . except such as may have since expired, or may be inconsistent with the provisions of this Constitution; subject, nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State.

Thus, the legislature may change the common law. Day v. State, 7 Gill. 321 (1848).


The adoption of this Code shall not affect or impair any right, vested or acquired and existing at the time of its adoption, nor shall it impair, discharge or release any existing contract, obligation, duty or liability of any kind whatsoever. All pending suits, actions and prosecutions for crimes or misdemeanors, including all civil and criminal proceedings whatsoever, shall be prosecuted and proceeded with to final determination, and judgment entered therein as if this Code had not been adopted.

Cf. Md. Ann. Code art. 1, § 4 (1976): “No rights, property or privileges held under a charter or grant from this State shall be in any manner impaired or affected by the adoption of this Code.”
While the federal constitutional provision clearly is not an absolute bar to state laws impairing the obligation of contracts, the effect of the state statutory provisions, which have not yet been interpreted in a reported judicial opinion, is unclear.

2. Full Faith and Credit. The federal constitutional provision that requires each state to give full faith and credit to the statutes and judicial decisions of other states has no counterpart in the state constitution. State statutes on the subject relate to the means of proving such statutes and judicial decisions, but do not deal with whether they should be given effect.

3. Interstate Privileges and Immunities. The federal constitutional provision that requires a state to accord citizens of other states all the privileges and immunities of its own citizens has no counterpart in the state constitution.

4. Religion. The federal and state constitutions include three guarantees of religious liberty; each constitution prohibits the use of religious tests and the establishment of religion and each protects the free exercise of religion. The Maryland provisions that prohibit religious tests and the establishment of religion appear to offer less protection for individual rights than do the federal provisions. the Maryland provision regarding the free exercise of religion appears to offer the same protection as does the federal provision.

(a) Religious Tests. The constitutions of the United States and Maryland prohibit, in almost identical terms, any religious test as a qualification for office. The Maryland Constitution,

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35. U.S. Const. art. IV, § 1 provides in pertinent part: “Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State.”
38. U.S. Const. art. VI, cl. 3 provides in pertinent part: “[N]o religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.”
39. Md. Const., Decl. of Rights art. 37 provides:

That no religious test ought ever to be required as a qualification for any officer of profit or trust in this State, other than a declaration of belief in the existence of God; nor shall the Legislature prescribe any other oath of office than the oath prescribed by this Constitution.

See also the discussion of Md. Const., Decl. of Rights art. 36 at note 44 infra.
however, permits the use of a test requiring a declaration of belief in the existence of God;[40] this test has been held to violate the freedom of belief and religion protected by the first and fourteenth amendments to the federal constitution.[41] A 1970 amendment to another provision of the Maryland Constitution, however, apparently abolishes the unconstitutional test.[42]

(b) Establishment. The general provision of the Constitution of the United States[43] and the more specific provision of the Constitution of Maryland[44] that prohibit an establishment of religion are substantially different.[45] The Maryland Constitution's statement of a duty of every man to worship God and its suggestion of incompetence of witnesses and jurors who do not declare a belief in the existence of God[46] have been held to violate the right to free

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40. See generally A. Niles, Maryland Constitutional Law 55–56 (1915) for a discussion of the religious belief requirement.


42. See the second paragraph of MD. Const., Decl. of Rights art. 36, set forth at note 44 infra.

43. U.S. Const. amend. I provides: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

44. MD. Const., Decl. of Rights art. 36 states:

That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore, no person ought by any law to be molested in his person or estate, on account of his religious persuasion, or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural civil or religious rights; nor ought any person to be compelled to frequent, or maintain, or contribute, unless on contract, to maintain, any place of worship, or any ministry; nor shall any person, otherwise competent, be deemed incompetent as a witness, or juror, on account of his religious belief, provided, he believes in the existence of God, and that under His dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor either in this world or in the world to come.

Nothing shall prohibit or require the making reference to belief in, reliance upon, or invoking the aid of God or a Supreme Being in any governmental or public document, proceeding, activity, ceremony, school, institution, or place.

Nothing in this article shall constitute an establishment of religion.

45. But see A. Niles, Maryland Constitutional Law 54–55 (1915) (concluding that the federal and state provisions respecting establishment religion are similar in nature).

46. Cf. MD. Const., Decl. of Rights art. 39 (prescribing the form for the declaration of belief): “That the manner of administering an oath or affirmation to any person, ought to be such as those of the religious persuasion, profession, or
exercise of religion protected by the first and fourteenth amendments to the federal constitution.47

The Court of Appeals of Maryland arrived at the same conclusions under both the federal and state establishment clauses when considering the validity of tax exemptions for places of public worship48 and when considering the validity of statutory valuation procedures in condemnation of church property.49 When considering the question of state construction grants to private colleges with religious affiliation, however, the court of appeals construed the federal and state provisions differently; grants to certain colleges were upheld and grants to others were struck down under the "purpose" and "effect" test of the first amendment, but all the grants were upheld under Maryland law, since the constitution had never been held to invalidate grants to educational institutions controlled by religious orders and operating at a level beyond which the state provided universal educational facilities for its citizens.50

Examples of other traditional state regulation of religious matters include MD. CORP. & ASS'NS CODE ANN. §§ 5-301 to -336 (1975), pertaining to religious corporations, and MD. ANN. CODE art. 62, § 3A (1972), authorizing certain
(c) **Free Exercise.** The federal\(^{51}\) and state \(^{52}\) constitutional provisions that protect the free exercise of religion have been given a similar construction by the Maryland Court of Appeals.\(^{53}\) As noted above, certain provisions of the Maryland Constitution have been held to violate the free exercise of religion protected by the federal constitution.\(^{54}\)

5. **Expression.**

(a) **Free Speech and Press.** The federal\(^{55}\) and state\(^{56}\) constitutional provisions protecting free speech and press have been construed in pari materia, and have substantially similar legal effect.\(^{57}\)


52. MD. CONST., DECL. OF RIGHTS art. 36 is set forth in note 44 supra.
53. McMillan v. State, 258 Md. 147, 265 A.2d 453 (1970); Snyder v. Holy Cross Hosp., 30 Md. App. 317, 352 A.2d 334 (1976), cert. denied, 276 Md. 760 (1976). See generally A. NILES, MARYLAND CONSTITUTIONAL LAW 54-55 (1915). To the extent, however that article 36 would permit limitations on one’s free exercise of religion where “he shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality,” the state’s interest may be less than the compelling interest required by McMillan. In Snyder, the court found a compelling state interest in safeguarding “the peace, health and good order of the community.” Later passages in Snyder stated, however, that individual free exercise rights must be weighed against state interests, and that, in order for religious conduct to be regulated, it must pose a substantial threat to public safety, peace, or order.


In 1948, an amendment was added to MD. CONST., DECL. OF RIGHTS art. 38, which had the practical effect of prospectively nullifying the mortmain provision. Constitutional Revision Study Documents 32, 39 (1968).

55. U.S. CONST. amend. I provides in pertinent part: “Congress shall make no law abridging the freedom of speech, or of the press.”

56. MD. CONST., DECL. OF RIGHTS art. 40 states: “That the liberty of the press ought to be inviolably preserved; that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege.”


The phrase in the Maryland provision, holding persons responsible for abuse of the free speech and press privilege, see note 56 supra, has no counterpart in the first amendment, see note 55 supra. However, the first amendment has been construed as leaving persons responsible for certain abuses of free speech and press. Thus, the first amendment offers no protection for certain types of expression, e.g., intentional defamation, misrepresentation, obscenity, perjury, false advertising, solicitation of crime and conspiracy. In addition, the first amendment permits certain incidental limitations on the time, place, and manner of expression, where those limitations are justified by strong governmental interests. See Konigsberg v. State Bar, 366 U.S. 36 (1961).
One difference between the two results from a state statute. Although there is no first amendment "newsmen's privilege" not to reveal confidential sources to a grand jury, there is such a state statutory privilege. Thus, the state right appears to be somewhat broader than the federal right.

(b) Petition. The rights to petition the government under the federal and state constitutions have been construed similarly.

(c) Association. While the right of association is not expressly recognized in the federal constitution, the United States Supreme Court has held it to be within the scope of protection afforded by the first amendment. No right of association has been recognized under the Maryland Constitution. It is likely, however, that such a right will be implied in Article 40 of the Constitution of Maryland, which, as noted above, has been construed in pari materia with the first amendment.

6. Keep and Bear Arms. The federal constitutional right of the people to keep and bear arms is conditioned upon the right being reasonably related to a well-regulated militia. A state constitutional provision, which has a similar effect, grants no such right, but affirms the value of a militia.

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   A person engaged in, connected with, or employed on a newspaper or journal or for any radio or television station may not be compelled to disclose, in any legal proceeding or trial or before any committee of the legislature or elsewhere, the source of any news or information procured or obtained by him for and published in the newspaper or disseminated by the radio or television station where he is engaged, connected with, or employed.

The statute, being in derogation of the common law (at which there was no newsmen's privilege), has received a strict construction. Lightman v. State, 15 Md. App. 713, 294 A.2d 149 (1972), aff'd, 266 Md. 550, 295 A.2d 212 (1972), cert. denied, 411 U.S. 951 (1973).

60. U.S. Const. amend. I provides in pertinent part: "Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."


64. See discussion preceding note 57 supra.
65. U.S. Const. amend. II provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

67. A. Niles, MARYLAND CONSTITUTIONAL LAW 50–51 (1915).
68. Md. Const., Decl. of Rights art. 28 provides: "That a well regulated militia is the proper and natural defense of a free Government." None of Maryland's constitutions has ever included language regarding the right of the people to keep and bear arms. See Debates of the Maryland Constitutional Convention of
Since the federal constitutional provision has been held not to be incorporated through the due process clause of the fourteenth amendment to apply as against state action, only the state constitutional provision offers protection against state action. 69

7. Quartering of Soldiers. The federal and state constitutions, in almost identical terms,72 prohibit the quartering of soldiers in any house in peacetime without consent of the owners, and in wartime except as prescribed by law.

Since the federal constitutional provision has never been incorporated through the due process clause of the fourteenth amendment to apply as against state action, the state constitutional provision may offer the only protection against state action.

8. Due Process. The federal constitution includes due process clauses in both the fifth amendment, impliedly applicable only as against action of the federal government,73 and in the fourteenth amendment, expressly applicable as against action of the states. Due process is treated in part 14 infra in the context of the fourteenth amendment.

9. Just Compensation. The federal and state provisions requiring just compensation in the event of a governmental taking

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69. See note 11 and accompanying text supra.
70. U.S. Const. amend. III provides: "No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law."
71. Md. Const., Decl. of Rights art. 31 provides: "That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, except in the manner prescribed by law."
72. See generally A. Niles, Maryland Constitutional Law 51 (1915).
73. Cf. Barron v. Mayor of Baltimore, 32 U.S. (7 Pet.) 243 (1833) (just compensation clause of the fifth amendment applies only as against action of the federal, not the state, government).
74. U.S. Const. amend. V provides in part as follows: "[N]or shall private property be taken for public use, without just compensation." The due process clause of the fourteenth amendment to the Constitution of the United States has been held to imply a just compensation requirement where the states exercise the power of eminent domain.
75. Md. Const. art. III, § 40 states: "The General Assembly shall enact no Law authorizing private property, to be taken for public use, without just compensation, as agreed upon between the parties, or awarded by a Jury, being first paid or tendered to the party entitled to such compensation." The right of just compensation is also implicit in Md. Const., Decl. of Rights art. 23, which is set forth in note 112 infra. Bureau of Mines v. George's Creek Coal & Land Co., 272 Md. 143, 321 A.2d 748 (1974). See Md. Const. art. III, §§ 40A to 40D and art. XI-B to XI-D for just compensation provisions relating to takings of property by certain subdivisions. The "public use" requirement of article III, § 40 is, apparently, no more restrictive of the eminent domain power than its counterpart in the fifth and fourteenth amendments to the Federal Constitution or than the
have been equated.\footnote{76} Indeed, the Maryland Court of Appeals has stated that the decisions of the Supreme Court on the federal right of just compensation are practically direct authorities as to the construction of the state right.\footnote{77} The prior payment or tender requirement of the state constitutional provision,\footnote{78} however, is lacking in the fifth amendment;\footnote{79} this provision requires only that reasonable, certain, and adequate provision for obtaining compensation be made before the taking.\footnote{80} Thus the protection afforded by the state constitution appears to be greater than that provided by the federal constitution. Statutes and court rules modify the substance of both the federal\footnote{81} and the state\footnote{82} rights in similar ways.

10. \textit{Jury Trial in Civil Cases}. The federal\footnote{83} and state\footnote{84} constitutional provisions that protect the right to jury trial in civil cases are somewhat similar. Since the federal provision has been held not to be incorporated through the due process clause of the fourteenth amendment to apply as against state action, only the state constitutional provision offers protection against state action.\footnote{85}

The federal and state provisions can be compared in the following respects: (a) the nature of the right, (b) incidents of the right, (c) judicial supervisory techniques, and (d) reexamination.
(a.) The Nature of the Right. Except for the difference in the value or amount in controversy required by the federal and state provisions,86 the nature of the rights of trial by jury in civil cases are similar in nature. Under both constitutions the rights obtain regarding issues of fact87 where historically there was a right to a jury trial, but do not obtain in equitable actions, where there was no such right at common law;88 the failure to make a timely demand for a jury trial constitutes a waiver of the right under both the federal and state constitutions,89 and neither provides a constitutional right to trial to the court without a jury.90

(b.) Incidents of the Right. Controversy over the incidents of the right to jury trial has centered on the questions of (i) whether a jury of twelve is required and (ii) whether there must be unanimity.

(i.) Jury of 12? A court rule providing for a jury of six persons was upheld under the federal constitution,91 and the Attorney General of Maryland has opined that the state legislature might also provide for a jury of six under the state constitution.92

(ii.) Unanimity? The question of whether jury unanimity is required by the federal and state constitutions in civil cases has not been definitely resolved.93

86. See notes 83 and 84 supra.
87. The right of trial by jury under the Constitution of Maryland is expressly limited to "issues of fact." See note 84 supra; cf. Md. Const. art. XV, § 5 (jury is the judge of law, as well as fact, in criminal cases). The right of trial by jury under the Constitution of the United States is not expressly limited to issues of fact, except by reference to the Reexamination Clause. See note 83 supra. However, the right, even without reference to that clause, has been construed to be limited to issues of fact. See Byrd v. Blue Ridge Rural Elec. Coop., 356 U.S. 525 (1958); Sioux City & P.R.R. v. Stout, 84 U.S. (17 Wall.) 657 (1874).
88. The federal and state rights are compared in Bringe v. Collins, 274 Md. 338, 335 A.2d 670 (1975); appl. for stay of execution denied, 421 U.S. 983 (1975). Interpretation of the federal right has, of course, advanced beyond a mere historical test. See, e.g., Dairy Queen, Inc. v. Wood, 369 U.S. 469 (1962) (the right to jury trial of a legal issue is not lost because the issue exists in a case that is essentially equitable in nature).
89. The federal and state rights are compared in Bringe v. Collins, 274 Md. 338, 335 A.2d 670 (1975).
93. Cf. Apodaca v. Oregon, 406 U.S. 404 (1972) (unanimity not required by the sixth and fourteenth amendments to the Federal Constitution in state criminal cases, and dictum that unanimity required by the sixth amendment in federal criminal cases); State v. McKay, 280 Md. 558, 375 A.2d 228 (1977) (jury unanimity guaranteed by Maryland Constitution may be waived by criminal defendant); Md. Decl. of Rights art. 21 ("That in all criminal prosecutions, every man hath a right . . . to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty").
(c.) Judicial Supervisory Techniques. A variety of means by which the judge controls the jury have been upheld under both the federal and state constitutions, e.g., summary judgment,\textsuperscript{94} directed verdict,\textsuperscript{95} remittitur,\textsuperscript{96} and new trial.\textsuperscript{97} The Maryland appellate courts use Supreme Court precedents as persuasive authority on these matters.\textsuperscript{98}

(d.) Reexamination. Although the Constitution of Maryland includes no Reexamination Clause,\textsuperscript{99} prohibiting another court’s reexamination of facts tried by a jury (except according to the rules of common law), such a clause has been implied.\textsuperscript{100}

11. Slavery and Involuntary Servitude. The federal\textsuperscript{101} and state\textsuperscript{102} prohibitions of slavery are similar.\textsuperscript{103} The Maryland constitution, unlike the federal,\textsuperscript{104} no longer contains a provision prohibiting involuntary servitude.\textsuperscript{105}

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\item \textit{Compare} Md. Const. art. XV, § 6 (note 84 supra) \textit{with} U.S. Const. amend. VII (note 83 supra).
\item Bd. of Shellfish Comm’re v. Mansfield, 125 Md. 630, 94 A. 207 (1915).
\item U.S. Const. amend. XIII, § 1 provides: “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”
\item Md. Const., Decl. of Rights art. 24 provides in pertinent part: “That Slavery shall not be re-established in this State.” Only one reported Maryland case construes article 24. In Brown v. State, 23 Md. 503 (1865), the Maryland Court of Appeals upheld a Negro apprentice law, compelling apprenticeships for certain minor Negroes having indigent parents, against an attack under article 24 in its 1864 form. (See note 105 \textit{infra}). The court held that an apprenticeship was neither slavery nor involuntary servitude within the meaning of that provision. Brown has been criticized. \textit{See} \textit{A. NILES, MARYLAND CONSTITUTIONAL LAW} 49 (1915).
\item See id. at 13.
\item See notes 101 and 102 supra.
\item \textit{Cf.} Md. Const. of 1864, Decl. of Rights art. 24 states: “Hereafter, in this State, there shall be neither slavery nor involuntary servitude, except in punishment of crime, whereof the party shall have been duly convicted; and all persons held to service or labor as slaves, are hereby declared free.”
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The right of persons, regardless of race, to be witnesses is only impliedly protected by the federal constitution, but is expressly protected by the state constitution.  

12. Citizenship. The federal constitutional provision that defines citizenship in the United States and in the states has no counterpart in the state constitution. The Maryland Court of Appeals has held that state citizenship, where no question of federal rights or jurisdiction is involved, is generally synonymous with domicile, that is, permanent residence within the state.  


14. Due Process. The federal and state constitutions include guarantees of (a) substantive due process and (b) procedural due process. The provisions of federal and state constitutions are similar, except that the Maryland Constitution grants certain procedural rights not protected by the United States Constitution.

107. Md. Const. art. III, § 53 provides “No person shall be incompetent, as a witness, on account of race or color, unless hereafter so declared by Act of the General Assembly.”  
108. U.S. Const. amend. XIV, § 1 provides: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”  
109. In Crosse v. Board of Supervisors of Elections, 243 Md. 555, 221 A.2d 431 (1966), the court of appeals held that a candidate for county sheriff, by his residence, became a citizen of the state, for purposes of the requirements of the state constitution, before he became a citizen of the United States. The court noted, however, that the requirements for state citizenship “depend not upon definition but the constitutional or statutory context in which the term is used.” Id. at 559. In Sec'y of State v. McGucken, 244 Md. 70, 222 A.2d 693 (1966), the court of appeals held that state citizenship is not synonymous with residence for purposes of determining the constitutional qualifications for governor. The definitions of “residence” and “domicile” are more thoroughly explored in Bainum v. Kalen, 272 Md. 490, 325 A.2d 392 (1974).  
110. U.S. Const. amend. XIV, § 1 provides: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.” This clause has been held to be a dead letter. Slaughter-House Cases, 83 U.S. (16 Wall.) 36 (1873).
(a) **Substantive Due Process.** The federal\(^{111}\) and the state\(^{112}\) constitutional provisions have been equated.\(^{113}\) In reviewing legislation not violative of some other constitutional provision, the Maryland Court of Appeals has held that due process, federal or state, requires only that the legislation have a rational basis.\(^{114}\)

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111. U.S. Const. amend. V provides: "No person shall . . . be deprived of life, liberty or property, without due process of law." U.S. Const. amend. XIV, §1 provides: "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

112. MD. Const., Decl. of Rights art. 19 provides:

That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the land.

MD. Const., Decl. of Rights art. 20 states: "That the trial of facts, where they arise, is one of the greatest securities of the lives, liberties and estate of the People."

MD. Const., Decl. of Rights art. 23 provides: "That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land."

Articles 19, 23, 24, and 32 of the Declaration of Rights have been characterized as comprising due process. Report of the Constitutional Convention Commission 103 (1967). Article 24 is set forth at note 105 supra, and article 32 provides: "That no person except regular soldiers, marines, and mariners in the service of this State, or militia, when in actual service, ought, in any case, to be subject to, or punishable by Martial Law." Like the fifth amendment to the Constitution of the United States, article 32 prohibits the military trial of a civilian. Constitutional Revision Study Documents 297-300 (1968).


114. The Maryland Court of Appeals has indicated some uncertainty in describing the due process test:

The test for constitutionality under the Due Process Clause is whether a statute, as an exercise of the state's police power, bears a real and substantial relation to the public health, morals, safety, and welfare of the citizens of this state. The exercise by the Legislature of the police power will not be interfered with unless it is shown to be exercised arbitrarily, oppressively or unreasonably. The wisdom or expediency of a law adopted in the exercise of the police power of a state is not subject to judicial review, and the law will not be held void if there are any considerations relating to the public welfare by which it can be supported. Such a statute carries with it a strong presumption of constitutionality.

Bowie Inn, Inc. v. City of Bowie, 274 Md. 230, 236, 335 A.2d 679, 683 (1975) (citations omitted). The uncertainty was in deciding whether the "real and substantial" relation formulation imposed a more stringent standard than that suggested by the other aspects of the test, or than that suggested by the Supreme Court in North Dakota State Bd. of Pharmacy v. Snyder's Drug Stores, Inc., 414 U.S. 156 (1973) (reasonableness test), overruling Liggett Co. v. Baldridge, 278 U.S. 105 (1928) ("real and substantial relation" test). The uncertainty has apparently been resolved by ignoring the "real and substantial relation" formulation in favor of a "reasonableness" test. See Governor of Maryland v. Exxon Corp., 279 Md. 410, 370 A.2d 1102 (1977).
The substantive due process interests — life, liberty, and property — are subject to reasonable governmental regulation under both the federal and state constitutions.

(b) Procedural Due Process. As noted above, the due process clauses of the federal and state constitutions have been equated. Both limit the power of courts to hear cases involving persons outside the jurisdiction both require that notice and opportunity to be heard be given when government deprives any person of life, liberty, or property, and both prohibit certain irrebuttable presumptions.

In addition, the Maryland Constitution expressly protects certain procedural rights, including the right to local venue and the right of a party to automatic removal or change of venue upon certification by the party that a fair and impartial trial in the court in which the case was initiated is impossible.

115. Regarding the definition of these interests, see note 21 and accompanying text supra.


118. See note 113 and accompanying text supra.


120. See Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969) (federal); Barry Properties, Inc. v. Fick Bros, Roofing Co., 277 Md. 15, 353 A.2d 222 (1976) (state). Barry, the latest significant decision regarding procedural due process requirements under the Maryland Constitution, follows the analysis of Sniadach and Fuentes v. Shevin, 407 U.S. 67 (1972), and holds that once a government deprivation of a life, liberty or property interest has been shown, the presumptive right to prior notice and hearing may be overcome only by a showing of "extraordinary circumstances." Barry Properties, Inc. v. Fick Bros. Roofing Co., 277 Md. 15, 30, 353 A.2d 222, 231 (1976). The current federal approach, however, suggests that no presumptive right to prior notice and hearing exists and that the requirements of due process are determined by weighing the individual private and governmental interests in each case. Riger v. L & B Ltd. Partnership, 278 Md. 281, 363 A.2d 481 (1976), citing Mathews v. Eldridge, 424 U.S. 319 (1976).

121. See, e.g., Stanley v. Illinois, 405 U.S. 645 (1972) (federal); Mahoney v. Byers, 187 Md. 81, 48 A.2d 600 (1946) (state). While the state rule apparently adopts a per se prohibition of irrebuttable presumptions, the federal rule is harder to characterize. In Vlandis v. Kline, 412 U.S. 441 (1973), the Supreme Court held that the due process clause forbids a presumption that "is not necessarily or universally true in fact . . . when the State has reasonable alternative means of making the crucial determination." Id. at 452.


123. MD. CONST., art. IV, § 8 provides:

[I]n all suits or actions at law, issues from the orphans' court, or from any court sitting in equity, and in all cases of presentments or indictments for offenses, which are or may be punishable by death, pending in any of the courts of law in this State, having jurisdiction thereof, upon suggestion in writing under oath of either of the parties to
Aside from these constitutional provisions, venue is the subject of somewhat similar state and federal laws. State statutes deal with the laying of venue and with stay or dismissal under the *forum non conveniens* doctrine. State court rules provide for transfer to another court within the same county, for procedure after transfer and detail the consequences of improper venue. Federal statutes deal with the laying and change of venue, and the consequences of improper venue. Federal decisional law authorizes dismissal under the doctrine of *forum non conveniens*.

15. *Equal Protection.* The equal protection provisions of the federal and state constitutions each offer more protection in certain respects than the other.

The Maryland Court of Appeals has recently assumed, without deciding, that the state due process clause includes an equal

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125. Id. §§ 6–104.
126. MD. RULE 515.
127. MD. RULE 542.
128. MD. RULE 317.
130. Id. §§ 1404, 1406.
131. Id. § 1406.
133. U.S. CONST. amend. XIV, § 1 provides: “[N]or shall any State . . . deny to any person within its jurisdiction the equal protection of laws.”
134. See notes 135 to 138 and accompanying text infra.
protection element.\(^{135}\) In view of the Maryland precedents\(^{136}\) and the meaning of the concept of due process,\(^{137}\) it is likely that the court will decide that equal protection is indeed implied in due process.\(^{138}\)

\(^{135}\) See Governor of Maryland v. Exxon Corp., 279 Md. 410, 370 A.2d 1102 (1977). In Exxon Corp. the court noted:

The Maryland Constitution does not contain an express equal protection clause as does the Fourteenth Amendment [to the Constitution of the United States]. The trial court's equal protection holding was apparently premised upon the Due Process Clause of [article 23 of] the Maryland Declaration of Rights. For the purposes of appeal, we shall assume that the Due Process Clause, Art. 23, embodies the concept of equal protection. We shall further assume that the standard of review under both the Maryland Constitution and the Equal Protection Clause of the Fourteenth Amendment is the same where economic regulation is challenged on equal protection grounds.

\(^{136}\) See United States Mortgage Co. v. Matthews, 167 Md. 383, 173 A. 903 (1934), rev'd on other grounds, 293 U.S. 232 (1934). After noting that the equal protection clause of the fourteenth amendment invalidates state statutes which unreasonably or arbitrarily discriminate between persons or classes, the court in Matthews states: "Those portions of the Maryland Constitution and Declaration of Rights (Articles 19, 23, and 44) relied on afford protection to its citizens against unreasonable or arbitrary discrimination in like manner and to the same extent as the Fourteenth Amendment of the Federal Constitution." Id. at 395, 173 A.2d 903, 909. Discriminatory classifications were invalidated on the authority of the equal protection clause of the fourteenth amendment and article 23 of the Maryland Declaration of Rights in Bruce v. Dir., Chesapeake Bay Aff., 261 Md. 585, 276 A.2d 200 (1971); Mayor of Baltimore v. Charles Center Parking, Inc., 259 Md. 595, 271 A.2d 144 (1970); Maryland Coal 9 realty Co. v. Bureau of Mines, 193 Md. 627, 69 A.2d 471 (1949); Dasch v. Jackson, 170 Md. 525, 183 A. 534 (1936). A discriminatory classification was held unconstitutional under authority of article 23 alone in Cohen v. Frey & Son, 197 Md. 586, 80 A.2d 267 (1951).

\(^{137}\) In Bolling v. Sharpe, 347 U.S. 497 (1954), the Supreme Court held that the fifth amendment due process clause, which applies in the event of federal governmental action, implicitly includes an equal protection element.

\(^{138}\) This conclusion may be reached by either of two approaches: (a) by arguing that two things are equal to a third are equal to each other, or (b) by arguing that the concept of due process, wherever it appears in our federal or state constitutions, is a single idea.

The due process clause of article 23 of the Maryland Constitution is like the due process clause of the fourteenth amendment. See note 113 and accompanying text supra. The due process clause of the fifth amendment is like the due process clause of the fourteenth amendment. See Bureau of Mines v. George's Creek Coal & Land Co., 272 Md. 143, 321 A.2d 748 (1974), implying in the fourteenth amendment a just compensation provision, and Slaughter-House Cases, 83 U.S. (16 Wall.) 36 (1873), equating the due process clause of the fifth amendment, as it applies against federal governmental action, with the due process clause of the fourteenth amendment, as it applies against state governmental action. Therefore, the due process clause of article 23 is like the due process clause of the fifth amendment and, since the fifth amendment includes an implicit equal protection element, so does article 23. See Maryland Comm. for Fair Representation v. Tawes, 229 Md. 406, 423, 184 A.2d 715, 724 (1962) (Brune, C.J., dissenting).

As to the concept of due process, wherever it appears, being a single idea, see Slaughter-House Cases, 83 U.S. (16 Wall.) 36 (1873). The constitution of at least one other state has been held to include, implicitly, an equal protection provision. In re Christoph, 205 Wis. 418, 237 N.W. 134 (1931) (holding that equal protection is implicit in the rights of "life, liberty and the pursuit of happiness.").
With respect to the test to be applied in equal protection cases, the Maryland precedents suggest an "any rational basis" test. If the equal protection element of the state due process clause is to be controlled by precedents under the federal equal protection clause, however, the court of appeals will adopt the "two tier" analysis; under this analysis a "strict scrutiny" test, requiring government to show a "compelling interest," is applied when governmental action discriminates on the basis of "suspect classifications" or interferes with "fundamental rights" and an "any rational basis" test is applied in other situations.

In addition to the general guarantee of equal protection, both federal and state constitutions include certain specific guarantees of equal protection. The federal interstate privileges and immunities clause, which has no state counterpart, has been discussed above.

Both federal and state constitutions generally guarantee an equal right to vote. Both constitutions also expressly prohibit poll taxes. The federal, but not the state, constitution expressly guarantees the equal right to vote free of discrimination on the basis of race, sex and age (if 18 years or older).

On the other hand, the state constitution, but not the federal, includes express, specific guarantees of equal protection against

139. See, e.g., cases cited in notes 135-36 supra.
141. See note 37 and accompanying text supra.
143. Md. Const. art. III, § 4 provides: "Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions."

Md. Const. art. III, § 5 provides:
Upon petition of any registered voter, the Court of Appeals shall have original jurisdiction to review the legislative districting of the State and may grant appropriate relief, if it finds that the districting of the State is not consistent with the requirements of either the Constitution of the United States of America, or the Constitution of Maryland.

144. U.S. Const. amend. XXIV, § 1 provides:
The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Md. Const., Decl. of Rights art. 15 provides: "The levying of taxes by the poll is grievous and oppressive and ought to be prohibited."

145. U.S. Const. amend. XV, § 1 provides: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State or account of race, color, or previous condition of servitude."

146. U.S. Const. amend. XIX, § 1 provides: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

147. U.S. Const. amend. XXVI, § 1 states: "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age."
discrimination in taxation\textsuperscript{148} and on the basis of sex.\textsuperscript{149} The only federal guarantee of equal protection in those areas is the equal protection clause.\textsuperscript{150} Regarding taxation, the express state provision and the federal equal protection clause are comparable; both apparently prohibit only unreasonable discrimination.\textsuperscript{151} With respect to sexual classifications, however, the express state provision requires strict equality between the sexes,\textsuperscript{152} while the federal equal protection clause requires something less.\textsuperscript{153} 

The express state constitutional prohibition of monopolies,\textsuperscript{154} which has no federal counterpart, may also be considered a specific guarantee of equal protection against certain economic discrimination.\textsuperscript{155} Likewise, the express state constitutional prohibitions of

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\textsuperscript{148} Md. Const., Decl. of Rights art. 15 provides: \\
\textsuperscript{149} See note 133 supra. \\
\textsuperscript{151} See, e.g., Craig v. Boren, 429 U.S. 190 (1976). \\
\textsuperscript{152} See, e.g., Rand v. Rand, 280 Md. 508, 374 A.2d 900 (1977). \\
\textsuperscript{153} Raney v. County Comm’rs, 170 Md. 183, 183 A. 548 (1936). \\
\textsuperscript{154} Md. Const., Decl. of Rights art. 41 (quoted at note 179 infra). \\
\textsuperscript{155} Raney v. County Comm’rs, 170 Md. 183, 183 A. 548 (1936).
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local and special legislation,\textsuperscript{156} which have no federal counterparts,\textsuperscript{157} may be considered specific guarantees of equal protection.

16. Vote. The protection for the right to vote offered by the state constitution appears broader than that offered by the federal constitution. The Constitution of the United States provides that members of the House of Representatives\textsuperscript{158} and the Senate\textsuperscript{159} shall be chosen or elected "by the people," and thus guarantees the right to vote in the election of federal legislators.\textsuperscript{160} The federal constitution also guarantees the right to vote in presidential elections.\textsuperscript{161} No right to vote in the election of state and local officials is expressly guaranteed by the federal constitution.\textsuperscript{162} Once the franchise is granted, however, the equal right to vote in such elections is protected by a number of provisions.\textsuperscript{163}

\textsuperscript{156} MD. CONST. art. III, § 33 provides:

The General Assembly shall not pass local, or special Laws, in any of the following enumerated cases, viz.: For extending the time for the collection of taxes; granting divorces; changing the name of any person; providing for the sale of real estate, belonging to minors, or other persons laboring under legal disabilities, by executors, administrators, guardians or trustees; giving effect to informal, or invalid deeds or wills; refunding money paid into the State Treasury, or releasing persons from their debts, or obligations to the State, unless recommended by the Governor, or officers of the Treasury Department. And the General Assembly shall pass no special Law, for any case, for which provision has been made, by an existing General Law. The General Assembly, at its first Session after the adoption of this Constitution, shall pass General Laws, providing for the cases enumerated in this section, which are not already adequately provided for, and for all other cases, where a General Law can be made applicable.

\textsuperscript{157} But cf. U.S. CONST. art. I, § 9, cl. 6: "No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another."

\textsuperscript{158} U.S. CONST. art. I, § 2, cl. 1 provides: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States."

\textsuperscript{159} U.S. CONST. amend. XVII, cl. 1 states: "The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof."

\textsuperscript{160} See Wesberry v. Sanders, 376 U.S. 1 (1964).

\textsuperscript{161} U.S. CONST. amend. XXIV, § 1 provides in part: "The right of citizens of the United States to vote in any . . . election for President . . . shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax." See Williams v. Rhodes, 393 U.S. 23 (1968).

\textsuperscript{162} Compare Reynolds v. Sims, 377 U.S. 533 (1964) (citizens have a right to vote in state elections) with Harper v. Virginia State Bd. of Elections, 383 U.S. 663 (1966) (leaving open the question of whether citizens have a right to vote in state elections, but deciding that once the franchise is granted, they have an \textit{equal} right to vote). But see U.S. CONST. ampls. XV, XIX, and XXVI, quoted at notes 145–47 \textit{supra}, which prohibit states from denying the right to vote on account of race, sex, or age.

By contrast the Constitution of Maryland provides a right to vote "at all elections . . . held in this State." Contrary to several early decisions holding that the right to vote was not an absolute, unqualified, personal right, the Maryland Court of Appeals has more recently held that a person with the requisite constitutional qualifications has the absolute right to vote.

17. Travel. By implication the federal constitution, but not the state, guarantees the right to travel. There is, however, a state statute acknowledging a right of air travel. Of course, to the extent that the right to travel is based on the due process clauses of the fifth or fourteenth amendments of the federal constitution, a right to travel may be implied in the due process provisions of the state constitution, which provisions have received a similar construction.

18. Privacy. By implication the federal constitution, but not the state, guarantees the right of privacy. Of course, to the extent

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164. Md. Const. art. I, § 1 provides:

[E]very citizen of the United States, of the age of twenty-one years, or upwards, who has been a resident of the State for six months, and of the Legislative District of Baltimore city, or of the county, in which he may offer to vote, as of the time for the closing of registration next preceding the election, shall be entitled to vote, in the ward or election district, in which he resides, at all elections hereafter to be held in this State.


166. See Jackson v. Norris, 173 Md. 579, 195 A. 576 (1937); Smith v. Hackett, 129 Md. 73, 88 A. 140 (1916); Langhammer v. Munter, 80 Md. 518, 31 A. 300 (1885); Kemp v. Owens, 76 Md. 235, 24 A. 606 (1892); cf. 56 Md. Att'y Gen. Op. 189 (1971) (students and citizens 18 to 20 years old must be considered emancipated for voting purposes and the same standards must be used to determine their voting residences as are used for other citizens under the twenty-sixth amendment and equal protection clause of the Federal Constitution).


168. Md. Transp. Code Ann. § 5-1001 (1977) provides: "There is a public right to freedom of transit in air commerce through the airspace of this State."

169. See notes 111-13 and accompanying text supra.

170. See, e.g., Griswold v. Connecticut, 381 U.S. 479 (1965) (right to privacy is within "liberty" protected by the fourteenth amendment due process clause).

that the right of privacy is based on the due process clauses of the fifth or fourteenth amendments of the federal constitution, a right of privacy may be implied in the due process provisions of the state constitution, which provisions have received a similar construction.\textsuperscript{172}

19. Other Rights. Both the federal\textsuperscript{173} and the state\textsuperscript{174} constitutions affirm in similar terms the existence of other rights not expressly enumerated.\textsuperscript{175} While the federal provision has spawned certain substantive rights, such as the right to privacy,\textsuperscript{176} the state provision lies dormant.

The Constitution of Maryland expressly protects certain other substantive rights, which are not protected by the Constitution of the United States, including the right of revolution,\textsuperscript{177} the right of

\textsuperscript{172} See notes 111-13 and accompanying text supra.

\textsuperscript{173} U.S. CONST. amend. IX provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

President Jimmy Carter has stated that a basic human right, defined in the Declaration of Independence, is the pursuit of happiness, which includes "the right to a basic standard of material existence — to food, shelter, health care, and education." Baltimore Sun, Sept. 19, 1977, at A 11, cols. 3-5.

\textsuperscript{174} Md. Const., Decl. of Rights art. 45 provides: "This enumeration of Rights shall not be construed to impair or deny others retained by the People."

\textsuperscript{175} A. Niles, Maryland Constitutional Law 64-65 (1915).

\textsuperscript{176} Griswold v. Connecticut, 381 U.S. 479 (1965).

\textsuperscript{177} Md. Const., Decl. of Rights art. 1 provides: "That all Government of rights originates from the People, is founded in compact only, and instituted solely for the good of the whole; and they have, at all times, the inalienable right to alter, reform or abolish their Form of Government in such manner as they may deem expedient." Md. Const., Decl. of Rights art. 6 provides:

[W]henever the ends of Government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the People may, and of right ought, to reform the old, or establish a new Government; the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of mankind.

According to commentary, these provisions guarantee a right of revolution. Constitutional Revision Study Documents 13 (1968); Report of the Constitutional Convention Commission 100 (1967). See Debates of the Maryland Constitutional Convention of 1867 98-99 (1923), where proposed amendments to article 1 were defeated. The amendments would have limited the exercise of the right to the use of those means prescribed by law or by the constitution. Opponents of the amendments argued, among other things, that the right was inalienable and, therefore, could not be limited. But cf. Md. Const. of 1851, Decl. of Rights art. 1, which included such a limitation. Compare Bd. of Supervisors of Elections v.
paupers not to be taxed for the support of the government, the right to be free of monopolies, the right to free public education, the right to be free of imprisonment for debt, the right of a wife to

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178. Md. Const., Decl. of Rights art. 15 provides: "[P]aupers ought not to be assessed for the support of the government." This provision may be violated by the sales tax. Lewis, The Tax Articles of the Maryland Declaration of Rights, 13 Md. L. Rev. 83, 92 (1953).

179. Md. Const., Decl. of Rights art. 41 provides: "That monopolies are odious, contrary to the spirit of a free government and the principles of commerce, and ought not to be suffered." See generally A. Niles, Maryland Constitutional Law 62-63 (1915). The question of whether article 41 prohibits all monopolies, or only those granted by the state, was expressly reserved in Grempler v. Multiple Listing Bureau, 258 Md. 419, 266 A.2d 1 (1970), comparing Wright v. State, 88 Md. 436, 41 A. 795 (1898) (a monopoly must be granted by the state) with Levin v. Sinai Hosp., 186 Md. 174, 46 A.2d 298 (1946) (implicitly assuming that the practices of a private corporation might constitute a monopoly). The prohibition of article 41 excludes monopolies reasonably required for the protection of the public interest and those given in return for a public service or given in reference to a matter not of common right. Id. at 183, 46 A.2d 298, 302.

180. Md. Const., Decl. of Rights art. 43 provides: "That the Legislature ought to encourage the diffusion of knowledge and virtue, the extension of a judicious system of general education, the promotion of literature, the arts, sciences, agriculture, commerce and manufactures, and the general amelioration of the condition of the People." See generally A. Niles, Maryland Constitutional Law 63 (1915). Md. Const. art. VIII, § 1 provides: "The General Assembly, at its First Session after the adoption of this Constitution, shall by Law establish throughout the State a thorough and efficient System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance." The latter provision has been said in dictum to grant a right to a public school education. State ex rel. Clark v. Maryland Institute, 87 Md. 643, 41 A. 126 (1898).

181. Md. Const. art. III, § 38 provides:

No person shall be imprisoned for debt, but a valid decree of a court of competent jurisdiction or agreement approved by decree of said court for
have property free from her husband's debts, the right to have a reasonable amount of property free from execution, the right to be free from usurious interest rates and the power of the referendum. Commentary has also suggested the guarantee of an opportunity for economic well-being.

the support of a wife or dependent children, or for the support of an illegitimate child or children, or for alimony, shall not constitute a debt within the meaning of this section.

Federal law offers some protection against imprisonment for debt. The equal protection clause of the fourteenth amendment prohibits imprisonment of indigents for failure to pay fines arising from convictions for traffic offenses, where no imprisonment is imposed on those who pay the fines. Tate v. Short, 401 U.S. 395 (1971). A federal statute prohibits federal courts from imprisoning persons for debts in states which prohibit the same. 28 U.S.C. § 2007 (1970). In addition to the express exceptions to the term "debt" in article III, § 38, the following are not "debts," i.e., a person may not be imprisoned for failure to pay the obligation: fine of a court upon conviction for a crime, Ruggles v. State, 120 Md. 553, 87 A. 817 (1887), and statutory obligation of a tax collector to pay taxes collected by him to the state treasury, State v. Nicholson, 67 Md. 1, 8 A. 817 (1887).

182. Md. Const. art. III, § 43 provides: "The property of the wife shall be protected from the debts of her husband." Article III, § 43 precludes recovery from a wife of the cost of maintenance and care of her husband in a state mental hospital, where the husband was involuntarily committed by a criminal court judge for the protection of the public. Rowe v. Dep't of Mental Hygiene, 247 Md. 542, 233 A.2d 769 (1967) (invalidating, as applied, a statute that made a wife liable for the support of her husband in such a case).

183. Md. Const. art. III, § 44 provides: "Laws shall be passed by the General Assembly, to protect from execution a reasonable amount of the property of the debtor. A reasonable amount of cemetery property, obtained to accommodate the debtor and his family and not for speculative purposes, is not "property of the debtor," within the meaning of article III, § 44, which can be executed against. Diffendall v. Diffendall, 239 Md. 32, 209 A. 769 (1965).


184. Md. Const. art. III, § 57 provides: "The Legal Rate of Interest shall be Six percent, per annum; unless otherwise provided by the General Assembly."

This provision has been held not to invalidate a usurious contract in whole or in part, a task that is left to the legislature. Scott v. Leary, 34 Md. 389 (1871).


185. Md. Const. art. XVI, § 1(a) provides:

The people reserve to themselves power known as The Referendum, by petition to have submitted to the registered voters of the State, to approve or reject at the polls, an Act, or part of any Act of the General Assembly, if approved by the Governor, or, if passed by the General Assembly over the veto of the Governor.

186. Md. Const., Decl. of Rights art. 43 provides: "That the Legislature ought to encourage . . . the general melioration of the condition of the People."

The Committee on Personal Rights and the Preamble of the Maryland Constitutional Convention of 1967 proposed a constitutional provision, based on article 43, which stated the legal policy of the state for all persons to have economic security, the opportunity for employment and the means to provide a decent standard of living. 1 Maryland Constitutional Convention, 1967-68 Publications, Committee Recommendation No. R&P-2 (Nov. 17, 1967) and Committee Memorandum No. R&P-1 (Nov. 15, 1967).
B. "State Action"

Most rights under the federal constitution are guaranteed only against infringement by federal and/or state governments, not against infringement by private individuals. However, certain rights, including the right to travel and the rights to be free of slavery and involuntary servitude, are guaranteed against infringement by private persons as well as by federal and state governments.

Whether the state constitution guarantees rights only against infringement by the state government, or also by private individuals, has not received extensive comment. Certain constitutional rights by their nature or language suggest a "state action" requirement. Provisions prohibiting a religious test as a qualification for office, protecting religious freedom, permitting the right to petition the legislature, securing just compensation where property is taken by eminent domain, preserving the right of trial by jury, guaranteeing the rights to vote, recognizing the right of revolution, freeing paupers from assessment of taxes, establish-
ing a system of free public schools,\textsuperscript{198} prohibiting imprisonment for debt,\textsuperscript{199} protecting a wife's property from her husband's debts,\textsuperscript{200} protecting a reasonable amount of a debtor's property from execution,\textsuperscript{201} reserving to the people the power of the referendum\textsuperscript{202} and guaranteeing an opportunity for economic well-being\textsuperscript{203} all apparently require some degree of state action.

Judicial constructions of other constitutional rights have suggested a "state action" requirement with respect to provisions preserving freedom of press and speech\textsuperscript{204} and guaranteeing due process.\textsuperscript{205}

The language of certain other constitutional rights, however, suggests no "state action" requirement. Examples include the provisions abolishing slavery\textsuperscript{206} and establishing a legal rate of interest.\textsuperscript{207}

The Maryland Court of Appeals has expressly reserved the question of whether there is a "state action" requirement in the provision prohibiting monopolies.\textsuperscript{208}

Once it is clear that "state action" is required by certain provisions of the state constitution, the question becomes, what amount of state participation constitutes "state action."\textsuperscript{209} The court of appeals apparently considers the "state action" requirements of the due process clauses of the state and federal constitutions to be similar in nature.\textsuperscript{210} Even if federal law on the subject is followed, however, a determination of the degree of state action required rarely would be difficult. This is partly because of the "case-by-case" approach endorsed by the Supreme Court,\textsuperscript{211} because the "state action" requirement seems to have changed over time,\textsuperscript{212} because the amount of state action required depends upon whether the constitu-

\begin{itemize}
  \item \textsuperscript{198} Md. Const. art. VIII, § 1; Decl. of Rights art. 43 (quoted at note 180 supra).
  \item \textsuperscript{199} Md. Const. art. III, § 38 (quoted at note 181 supra).
  \item \textsuperscript{200} Id. § 43 (quoted at note 182 supra). The "state action" might include the statute or court rule authorizing the attachment, the court ordering the attachment and/or the sheriff attaching the property.
  \item \textsuperscript{201} Id. § 44 (quoted at note 183 supra).
  \item \textsuperscript{202} Id. art. XVI, § 1(a) (quoted at note 185 supra).
  \item \textsuperscript{203} Id. Decl. of Rights art. 43 (quoted at note 186 supra).
  \item \textsuperscript{204} Id. art. 40 (quoted at note 56 supra); see Howard Sports Daily, Inc. v. Public Serv. Comm'n, 179 Md. 355, 18 A.2d 210 (1941).
  \item \textsuperscript{206} Md. Const., Decl. of Rights art. 24 (quoted at note 102 supra).
  \item \textsuperscript{207} Md. Const. art. III, § 57 (quoted at note 184 supra).
  \item \textsuperscript{208} Grempler v. Multiple Listing Bureau, 258 Md. 419, 266 A.2d 1 (1970).
  \item \textsuperscript{209} Burton v. Wilmington Parking Auth., 365 U.S. 715 (1961).
  \item \textsuperscript{210} Barry Properties, Inc. v. Fick Bros. Roofing Co., 277 Md. 15, 353 A.2d 222 (1976).
  \item \textsuperscript{211} Burton v. Wilmington Parking Auth., 365 U.S. 715 (1961).
\end{itemize}
tional provision applies of its own force or is enforced by statute and, perhaps, because the amount of "state action" required varies between different constitutional rights.

The state, by constitutional provision, statute, regulation, rule or order, may define what amount of "state action" is required. For example, the Governor's Code of Fair Practices prohibits state agencies and employees from discriminating on the basis of politics, religion, marital status, race, color, sex, creed, age and national origin. The Code also prohibits state agencies and employees from authorizing the use of state facilities in furtherance of discriminatory practices or from authorizing their use by any group which discriminates on those bases.

C. Remedies for Violation of Constitutional Rights

Appropriate civil remedies for violation of constitutional rights have been implied in the federal constitution or have been enacted by statute. Such remedies are expressly suggested by the state constitution.

D. Conclusion

Provisions for individual rights under the Constitution of Maryland, as we have seen, are largely similar in language and construction to provisions for individual rights under the Constitution of the United States. This conclusion seems less a result of the state's abdication of its role in our federal system as the primary repository of governmental powers and the primary protector of

In McIver v. Russell, 264 F. Supp. 22 (D. Md. 1967), a case decided before Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971), the court stated: There does not appear to be any Maryland statute, comparable to the federal enforcement provision set out in 42 U.S.C. §1983, which implements private enforcement of the rights secured by Article 23 of the Declaration of Rights. Further, there appear to be no Maryland cases which have determined or even discussed whether the State constitutional rights secured by Article 23, or by any other provision of the Declaration of Rights, may be enforced in a civil action for damages in the absence of such a statute. This is a matter which remains to this day unsettled as a general proposition of constitutional law.
individual rights\textsuperscript{219} than a result of the framers of both constitutions relying on a common constitutional law tradition.\textsuperscript{220}

The Constitution of Maryland, as we have seen, is more protective of certain individual rights than is the Constitution of the United States.\textsuperscript{221} The Constitution of Maryland may become even more protective of individual rights by (1) constitutional amendment,\textsuperscript{222} (2) liberal legislative, judicial and administrative interpretation of the scope of individual rights,\textsuperscript{223} (3) minimizing any "state action" requirement\textsuperscript{224} and (4) free provision of remedies for violations of constitutional rights.\textsuperscript{225}

\textsuperscript{219} U.S. Const. amends. IX (quoted at note 173 supra) and X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."). See also Slaughter-House Cases, 83 U.S. (16 Wall.) 36 (1872); The Federalist No. 45 (J. Madison); Report of the Constitutional Convention Commission 98 (1967).

\textsuperscript{220} See B. Schwartz, The Bill of Rights 179-81, 983 (1971).

\textsuperscript{221} See notes 27-28 and accompanying text supra.

\textsuperscript{222} See, e.g., Md. Const., Decl. of Rights art. 46 (quoted at note 149 supra).

\textsuperscript{223} See note 215 and accompanying text supra.

\textsuperscript{224} See part III B supra.

\textsuperscript{225} See Part III C supra.