from passing on the validity of the senatorial apportionment. When the court failed to rule on senatorial apportionment, the question was appealed. The Court of Appeals remanded the case for a decision on this point. The Circuit Court then found the senatorial apportionment valid, this decision being upheld by the Court of Appeals.[82] The Court of Appeals' decision was in turn appealed to the Supreme Court, which held that the Senate apportionment and the "stopgap" apportionment of the House of Delegates were both unconstitutional under the equal protection clause of the Fourteenth Amendment.[83] The Supreme Court directed that the General Assembly be given an opportunity to enact the necessary reapportionment of both chambers, but specified that in no case should the 1966 legislative elections "be conducted pursuant to the existing or any other unconstitutional plan."

In the arguments before the courts defending the existing apportionments in Maryland much was made of the "federal analogy." This analogy was, of course, to the bases of representation in the House of Representatives and in the Senate of the United States Congress. The comparability of the relationship of Maryland counties vis-a-vis the State of Maryland need not be considered here, for even a cursory examination of the history of apportionment in Maryland reveals there has never been an analogy to the federal system. In the beginning under the colonial charter all freemen had a duty to appear in the assembly in person or by proxy, not to initiate laws but to pass on laws proposed by the proprietor. A bicameral system soon evolved in which the counties were more-or-less equally represented in the Lower House while the Upper House was an aristocratic body, the Council, holding office at the pleasure of the proprietor. Following the Revolution, the counties were given equal representation in the House irrespective of population, while the Senate was indirectly elected. There was here no parallel to the system adopted under the United States Constitution. The subsequent constitutions of 1851 and 1864 did not adopt the federal analogy. In fact, as noted earlier, the convention that drafted the 1864 Constitution specifically rejected the federal analogy and refused to apportion the House of Delegates on the basis of population. The 1867 Constitution in turn not only did not apportion the House on the basis of population but instituted limitations that increased the malapportionment under the 1864 Constitution. The 1867 Constitution compounded this violation of the federal analogy by recognizing a population factor in the Senate with regard to Baltimore City. Since adoption of the 1867 Constitution, representation in the House has had progressively less correlation with population, while the absolute population adjustment for the City of Baltimore has increased in the Senate. But even if both houses are considered together, there has been no relevant correlation between population and total representation in the General Assembly. In the light of this history it is difficult to defend the inequities of Maryland apportionment on the alleged federal analogy.

The Supreme Court remanded the case of *Maryland Committee v. Tawes* to the Maryland Court of Appeals with directions that the Maryland courts need take further affirmative action only if the legislature did not enact a consti-

[82] 229 Md. 406, 184 A.2d 715 (1962).
[83] 377 U.S. 656 (1964).