

THE
Foundation of Maryland
AND THE ORIGIN OF THE
ACT CONCERNING RELIGION
Of

April 21, 1649.

THREE theories are advanced to account for the adoption of the principle of Religious Liberty in the Foundation of Maryland.

First. That Lord Baltimore, having acquired a principality, in order to develop it by speedy settlement, and promote his fortune, proclaimed and promised the largest liberality in grants of land and liberty of conscience to all who would emigrate to and colonize his new possessions.

"Lord Baltimore, as far as we can see, went into the task of colonization as a great English landed proprietor of the better sort administrators

"It was in 1649 that the Maryland Act of Toleration was passed, which, however, prescribed the punishment of death for any one who denied the Trinity. Of the small legislative body which passed it, two-thirds appear to have been Protestant, the recorded numbers being sixteen and eight respectively.

"The Colony was open to the immigration of Puritans and all Protestants, and any permanent and successful oppression by a handful of Roman Catholics was altogether impossible. But the Colonial Act seems to have been an echo of the order of the House of Commons at home, on the 27th of October, 1645, that the inhabitants of the Summer Islands, and such others as shall join themselves to them, 'shall, without any molestation or trouble, have and enjoy the liberty of their consciences in matters of God's worship; and of a British ordinance of 1647.' " 1

Third. The Roman Catholic theory that Lord Baltimore, being a devout Catholic, actuated by a desire to provide a refuge for his oppressed co-religionists, founded a Catholic Colony, composed in the main of Roman Catholics, and by his own authority, with their co-operation and sympathy, and through the promptings and teaching of Mr. Gladstone, in his "Preface to Rome and the Newest Fashions in Religion,"

subjects, and reform in the Church was pressed by the Chancellor. He resisted the pretensions of the Church to extend the jurisdiction of the canon law by convocation, whereby laws were made by priests alone and not by the representatives of the people, and whereby causes, matrimonial and testamentary, were swept within the circle of ecclesiastical authority, and trial by jury was in many cases denied in questions of right. But while he urged reform in the relations of the Church to the State, "his love for freedom, his revolt against the growing autocracy of the Crown, the very height and grandeur of his own spiritual convictions, all bent him to withstand a system which would concentrate in the King all the power of Church and State, would leave him without check and would make him arbiter of the religious faith of his subjects.

.... The later revolt of the Puritans against the King worship, which Cromwell established, proved the justice of the prevision which forced More, in the spring of 1532, to resign the post of Chancellor. By the Act of Supremacy of 1534, authority in all matters ecclesiastical was vested solely in the Crown. The supreme ecclesiastical jurisdiction passed to the Chancellor, who already exercised the supreme civil jurisdiction. More believed that the sacrifice of liberty and justice was too dear a price to priests, to examine the location of the proposed Roman Catholic Refuge.¹ In company with Baltimore, Father White and his associates explored the country north of the James and on both sides of the great bay of the Chesapeake. They reported to the Provincial that the land was pleasant to look upon and fitted for the homes of a happy people.²

Unfortunately, Arundel died, November 7, 1630, and the benefit of his co-operation and assistance was lost.³ But the influence represented by him survived. Baltimore, encouraged by Father Blount and the great families of the Roman Catholic Peerage, continued the undertaking in his name alone.

He obtained the grant of the country on the Chesapeake, and caused his charter to be pre-

pared, in substance a copy of that of Avalon. Before it passed the Great Seal he died, and on June 20, 1632, it issued to his son, Cecil Calvert, the second Lord Baltimore.

The provisions of that charter are well known. It secured to the Proprietary the princely jurisdiction and rights of the Palatinate of Durham. balance the difference of the power, between this Kingdome, and those parts, for the accomplishing of such a designe, and certainly (of the two) it were much better to throw that hazard, if it were any, upon Virginia and New England, than to have it continue here, much lesse cause is there to feare that they should grow strong enough of themselves to suppress the Protestants in those parts: For there are already at least three times as many Protestants there, as there are Roman Catholiques in England. And the Protestants in Virginia and New England are like to increase much faster by new supplies of people yearley from England, etc. than are the Roman Catholiques in Maryland, Moreover although they should (which God forbid and which the English Protestants in those parts will in all probability be still able to prevent) shake off any dependance on the Crowne of England; yet first England would by this means be freed of so many suspected persons now in it.

Secondly, it would loose little by it: And lastly even in that case, it were notwithstanding more for the Honour of the English Nation, that Englishmen, although Roman Catholiques, and although not dependant on the Crowne of England, should possesse that Countrey than Forraigners, who otherwise are like to do it: for the Swedes and Dutch have two severall Plantations already in New England, and upon the confines of Maryland, (betweene the English Colonies in New England and Maryland) and doe inroach every day more and more upon that Continent, where there is much more Land than all the Kings Protestant Subjects in all his Dominions (were they there) would be able to possesse. But the assurance of Protection from the Crowne and State of England, upon all just occasions, either of danger from a Forraigne Enemy, or of any wrongs which may be done unto them by his Majesties Protestant Subjects in those parts, and the benefit of trade with England for yearly supplies, without which they will not be able to subsist, will be strong tyes, if there were no other, to bind them to Continue their dependance on it.

The body of laws prepared for him are the work of a hand and head well acquainted with the technical knowledge of the Common Law, and learned in the origin, the cause and the inestimable value of English institutions. These

laws comprise the subjects, of securing the liberties of the people, of providing for General Assemblies of all the freemen, for the settlement of the Christian Church, for titles to and descent of lands, for the succession of the goods of intestates, and for the dividing of the Province into political subdivisions to be called baronies, and for the ratification and preservation of the manors, manor rights and manor courts, created under the Charter, and which were intended to provide proper police regulations for communities and separate settlements in the wilderness. This Code, so well considered, was committed to the hands of John Lewger, who arrived at St. Maries on the 28th of November, 1637. Lewger was born in London in 1602, and was a Bachelor of Arts of Trinity College, Oxford. He became a Bachelor of the Faculty in 1632, and then received the gift of a handsome benefice in Essex.

William Chillingworth, one of the fellows of Oxford, was Lewger's intimate friend, and when he became reconciled to the Church of Rome, Lewger followed him, about 1634. When Child acted by the County Court, police regulations enforced, jurors drawn, roads supervised, accounts of public officers — the sheriff, the coroner, the road-supervisor and the constable examined, and their conduct criticised or corrected. The people transact their private affairs — settle old contracts, make new ones, hear speeches from any one who chooses to speak on any imaginable topic, and "receive the accounts of their stewardship" from their servants in Congress or the State Legislature. Settlements run from court day to court day, and contracts are made to be performed on court days.

No broader, deeper, more influential institution for a free people exists anywhere to-day. By it all the freemen are brought into frequent contact, for the purpose of the exchange and diffusion of ideas and information, and by such frequent communication, they are enabled the more readily to protect their rights, by combining to redress wrongs, correct abuses and institute necessary changes and reforms.

Thus the institution of manors and manor rights had arisen at the very birth of the race,

long before a branch of it emigrated to England, and had for centuries been the Watch and Ward of Common Right. Baltimore proved his sagacity in seeking to plant them in Maryland, as well suited to an infant colony in a savage wilder- It is equally clear that the Proprietary, the Governor, Mr. Secretary Lewger, the convert from the Church of England, nor the Catholic gentlemen, who composed the majority of the Assembly would not have consented to participate in establishing the Anglican Church over them.

The Proprietary, in his original proclamation inviting adventurers, had promised freedom of religion to all Christian men.¹

In another proclamation, since the first settlement, he had prohibited "all unseasonable disputations in point of religion tending to the disturbance of the public peace and quiet of the colony, and to the opening of faction in religion."

In the preceding July, William Lewis, a Roman Catholic, had been fined 500 lbs. of tobacco for interfering, by opprobrious reproaches, with two Protestants, Francis Gray, a freeman, and Robert Sedgrave, a servant, for reading a Book of Protestant Sermons.

men and causes, and the abolition of all clerical exemptions was established.

Sir Thomas More led the Commons in their protest against the right of the Clergy in Convocation to legislate without the King's assent, or that of his subjects. And at last, Sir Edward Coke, in King's Bench, in Caudrey's case,¹ settled the law of England that "all causes testamentary and matrimonial are to be determined and decided by ecclesiastical judges according to the King's Ecclesiastical Law of this Realm."

This was the law of England. The question was whether it was, or could be in force in Maryland.

By the "Bulla in Ciena Domini," the Pope asserts full supremacy over all persons, and powers, temporal and ecclesiastical. That decree forbids all persons whatsoever, directly or indi-

rectly, to violate, depress or restrain the ecclesiastical liberties or rights of the Apostolic See and Church of Rome, howsoever or whensoever obtained, or to be obtained, under pain of excommunication, and all who presume to oppose any of its provisions are left under the displeasure of Almighty God.

his Lordship or to his heirs or to their Lieutenant Generals or to other Governors of the said Province for the time being. And as much as shall be in my power I will defend and protect the title, right and royal jurisdiction of his Lordship to and over the said Province and the Islands thereunto appertaining, according to the chart of his Lordship above mentioned. So help me God, &c., &c.1

The receipt of this document in the Province brought on a conference between the Governor, Leonard Calvert, Secretary Lewger and the Jesuit Fathers. The memorandum of that conference is preserved at Stoneyhurst, and is as follows:

Extracts from the Diary of Mr. Lewger and from the Letters of the Baron of Baltimore.

The Governor and I visited those Religious men, in order to treat of some difficulties with them.

1. One of these was about the publication of the new Conditions of this Plantation or Colony. This publication was to be made by the Governor with regard to that article especially by which all concessions made thus far were made subject to the Law of Mortmain. The Governor solved this difficulty by adding this interpretation of the said article: namely, that the concessions already made or to be made according to former conditions were not included in it: but the article was only intended for this, that no one should be allowed to profit by these new conditions unless he would submit all his property (fundos), as well granted already as to be hereafter granted, to this condition of non-alienation. As this did not seem to be any new ordi-

l Stoneyhurst MSS. Anglia, No. 108a, Vol. 4.

the Priest solemnizing, &c, and whether such a law be against liberty of marriage?

XIII°. Whether may Catholiques being members, &c., consent to a lawe which for publique custom barrs the female from inheriting, or houlding of lands, unless they marry within a time limited (only leaving them a liberty to sell or dispose thereof to theyr best advantage), and is such a law against conscience?

XIV°. Whether land granted by the Lord Proprietor, to religious persons by the ordinary and common conditions of plantations, doth eo ipso (because granted to religious) become spiri-

tual fee, and exempt from laica onera?

XV°. If a trespass be pretended to be committed upon the lands held by Religious Persons, whether may the Religious, without trying the trespass in some Court (spiritual or temporal), proceede against the pretended trespasser, by putting in force against him the censures Bulla) Ccenae? And whether by such declarations, the party be really and to all spiritual effects involved in the censures, afore to be adjudged a trespasser upon theyre land in some Court?

XVI°. When grants of lands, made by the Prynce to several persons lay and religious, are found prejudiciall to the publique, and fit to be reformed, whether may Cathls — being members of &c. consent to a law reforming all such grants? And whether may such a general lawe include the grants made to the religious; and whether may the Prynce, by virtue of such a lawe, resume or reform such grants made to them afore, or with a voluntary surrender of them by the Religious?

XVII°. Whether in such a country as this, may the Prynce or secular Judge, being a Catholique, summon Eccl' persons to the General Assembly, or draw them into secular Courts, where they are defendants in actions of debt, trespass, &c. & may he give sentence therein, as lawful Judge, and execute it upon theyr persons, lands, &c. without incurring the censures of Bull* Ccenas?

So

Illustrious Cecilius, Baron of Baltimore, the Lord and Proprietary of the said Province: and that some one or more of our said Society, have actually taken, or would take possession of the aforesaid properties, tenements or inheritances, or of some part of the same, without any concession made by the aforementioned most Illustrious Baron under his great seal of the aforesaid Province; and by name, of some properties situated in a place that is called Mattapony or in some other place or places within the aforesaid Province: have even divided some of the said properties into various domains, which they commonly call signories or manors, and have called one of them the domain or manor of the Immaculate Conception, another of St. Gregory. Let it therefore be known to all that I, the aforesaid Provincial, for various honorable causes and reasons, as well for my own part as for that of my successors, and our aforesaid Society, do by these presents concede, transfer, resign, and remit unto the aforementioned Cecilius, Baron of Baltimore, and his heirs, all right, title or interest of our said Society, of whatsoever kind or nature that right or title may be, in or to the aforesaid domains, properties, tenements or inheritances, within the aforesaid Province, to which we cannot derive or have any legitimate and judicial title, from or under any conces-

sion made by the aforementioned Baron of Baltimore, under the great seal of his most Illustrious Lordship of the aforesaid Province. So that henceforth it shall be lawful for the aforementioned Baron of Baltimore, or his heirs, or for any other person, or persons, for him or for them, in his or their name, to take possession, to hold, and to use, all the aforesaid domains, properties, tenements or inheritances, or any part of them quietly and peaceably for his most Illustrious Lordship or his heirs, notwithstanding any right, title or interest, which either I or my successors or our aforesaid Society or Church have or can pretend to have, in or to all of the aforesaid things, or any part of them. And moreover as well on my own part, as on that of my successors, and of our aforesaid Society, by these presents I renounce, resign, and This proposed treaty offered to abandon all claims by the Society of Jesus.

1. To the right to acquire lands from the Indians, or from any one else, or to have lands held by any one for the use of the Society, without license from his Lordship.

2. To the right of exemption from the equal operation of the laws, and to any privileges or exemptions in temporal matters, with the proviso, that corporal punishment should not be inflicted on any of "Ours" by the temporal Courts, except in capital cases, that is, that the Jesuits should be entitled to the benefit of clergy in all misdemeanours, and felonies not capital.

3. And that the Proprietary should control the ingress, egress and sojourn of the members of the Society to, from and in the Province at his discretion.

Lord Baltimore certainly declined to sign this agreement. No secret treaty between the Baron of Baltimore, and the Provincial of Jesuits, could control or limit the legislative power of the freemen of the Province. They had the right to make all laws, with the assent of the Proprietary. It is true, that he could have refused his assent to all acts making ecclesiastics subject to the lay jurisdiction, or denying them the benefit of clergy in crimes not capital, but he was determined that the pretensions of the exten-New Model of the Army under Cromwell were gradually assuming shape.

The Parliament struggled for a State religion; the Army insisted on religious toleration.

Cromwell wrote before Marston Moor: "The

State, in choosing men to serve it, takes no notice of these opinions. If they be willing faithfully to serve it, that satisfies." From the field of Naseby he wrote to the Speaker of the Commons: "Honest men served you faithfully in this action. Sir, they are trusty. I beseech you in the name of God not to discourage them. He that ventures his life for the liberty of his country, I wish he trust God, for the liberty of his conscience."1

In the law remodelling the Army, a clause was inserted to dispense with the signatures of the Covenant in the case of "godly men," and the New Model of the Army was thus formed on a principle of quasi-toleration.

III.

The position of the English Roman Catholics during the struggle had generally been in sympathy with the Parliament.

i Green's Hist, of English People.

That it shall be a capital crime if any Roman Catholic has intelligence with any foreign State or person whatsoever, hostile to this nation, concerning the public affairs thereof.

6. That the revocation of the penal statutes shall only extend to native subjects of this nation.

The kind of liberty of conscience offered by these propositions was not what the Roman Catholic nobles and clergy were striving for.

The overthrow of the Presbyterians, and the ascendancy of the Independents, in the Parliament put an end to all desire on the part of the latter, for toleration in matters of religion.

We do not know who "the Most Illustrious Baron" was, who was the leader and director of the negotiations, with the army of Cromwell, above described. Inasmuch, as Cecil Calvert was at that precise time, enforcing the largest toleration in Maryland, and inasmuch as he was in close and constant communication, with Henry More, the Provincial of England — and it appears that the "Baron" invoked the assistance of the Jesuits in those negotiations—there are some grounds for the surmise, that the nobleman referred to was the Baron of Baltimore. Whether that be so or not, it is certain that no such movement could have taken place among the

Roman Catholic nobles at that time, without Lord Baltimore being a party to, and participating in it.

"2ndly. That some competent support may be raised to your Lordship, and your Lieutenant here. 3rdly. That a stock of cattle may be raised again for your Lordship, and 4th. That all should be satisfied who had concurred to the regaining of the country. To that end, we have first chosen and selected out of all your Lordship's laws, such as seemed to us most conducive to confirm a long desired and settled peace among us."1

To this letter Baltimore replied at length, during the same year, and set forth his rights and claims under his charter. He says that "in the said body of laws there is provision made for freedom of conscience, for freedom of taxes, (but such as shall be laid by the Assembly's consent), for freedom from martial law, but only in time of camp or garrison, and within such camp or garrison, for freedom from being compelled in any kind to contribute to any war out of our said Province, without the consent of the Assembly, for freedom of trade with the Indians upon reasonable conditions," and he complains that some of them have "stumbled at" the title "absolute Lord and Proprietary" used in the laws and at the oath of fidelity provided by them to be taken. . . He shows that both are his right under the charter

He needed then wise counsel, a courageous heart, and a sincere and faithful friend.

The planting of the Colony had been undertaken by the English Roman Catholics, under the advice and supervision of the Society of Jesus.

Father Richard Blount, Provincial of the English Province, representing the ancient houses which had adhered to the Church, as well as wielding the power of the Society, had as we have seen, sent out Father Andrew White and two other Jesuit priests with the first Lord Baltimore, first to Avalon, and thence to explore the country southward to find a place suitable for colonization.1

When the charter of Maryland was issued to the second Lord Baltimore, he had maturely considered all the objections urged to it, and

had decided in favor of its practicability. Baltimore had also applied to the General of the Society, Mutius Vitelleschi, for advice and assistance, and by the direction of the General and the Provincial, Fathers Andrew White, John Alt-ham and Thomas Copley accompanied the expel Woodstock Letters, vol. 9, p. 158. Archbishop Carroll's narrative.

"He had three priests with him in Newfoundland in 1629, and emigrated with his whole colony to Virginia." Doyle's English Colonies in America, p. 278-279.

corne is by thornes and weedes overgrowen and chooked. Therefore all this matter he lefte undiscussed, and gave to every man free libertie and choise to beleve what he would."1

The Utopia was received by the scholars of Christendom, as the expression of enlarged views of the wisest polity, which should direct and control "the best commonwealthe." It was written in Latin, and translated into English, French, Italian, German, and Spanish.

The laws of Utopia upon the subject of religion, were the same in principle as the provisions of the Act concerning religion, subsequent to the first section.

The latter forbade "unreasonable disputations in point of religion." They prohibited any one from using reproachful words or speeches, or upon any occasion of offence, in a reproachful manner, calling or denominating any one in the Province, an Heretick, Schismatic, Idolater, Puritan, Presbyterian, Independent, Popish Priest, Jesuit, Jesuitical Priest, &c., enumerating seventeen names which might be applied by heated sectaries to different denominations.

They denounced punishments against the profanation of the "Sabaath, or Lord's Day, called Sunday."

1 Utopia, Book 2, chap. "Of the Religions in Utopia," p. 145-6. Arber's reprint, London, 1869.

be voluntarily surrendered or given up save by the consent of both.

The General Assembly met again on April 6, 1650, to complete the pacification of the Province by the adoption of the rest of the sixteen laws, as we have heretofore seen.

It consisted of the Upper House, of the Governor, Secretary, and Council, and of the

Lower House, composed of fourteen Burgesses, of whom eleven were from the Roman Catholic county of St. Mary's, one from the Isle of Kent, and two from the Puritan settlement, at Providence, subsequently at this session, erected into the county of Anne Arundel. Of the Upper House, the Governor, William Stone, the Secretary, Thomas Hatton, Capt. John Price, Muster Master General and Capt. Robert Vaughan, Commander of Kent, were Protestants, and Thomas Green and John Pile, Roman Catholics.

Of the Lower House, James Cox, Thomas Sterman, John Hatch, George Puddington, Robert Robins, Walter Bain or Beane, William Brough and Francis Poesy, were Protestants. Capt. Robert Vaughan, a Protestant and Councillor, was also Burgess for the Isle of Kent, but he sat in the Upper House. The Upper House was therefore composed of five Protestants and two Roman Catholics; the Lower House law, and then the Upper House will consider of it."

No relief having been given them by the Assembly, the Proprietary by proclamation in 1688, relieved them from the necessity of taking oaths in testamentary causes.

This statement of the facts, established by the records, concerning the foundation of Maryland, prove:

First. That Lord Baltimore did not undertake the management and development of his Province "without any special sense of responsibility to the community," and "that Religious toleration in Maryland must be not attributed solely the very commonplace law of self interest."

Second. That the act concerning Religion, was not the "echo" of any British order, or ordinance of the Long Parliament, securing or declaring Religious toleration, because the Puritans in England always, and on every occasion, when in power, persecuted all who differed with them in opinion, nor was it the work of the Protestant majority in the Province, because whenever they obtained control of the government, they immediately followed the example of their fellows at

home in persecuting all others, as in 1645 under Ingle, in 1651 under Cromwell's Commissioners, and in 1659 under Fendall, the renegade Governor of Baltimore.