

of tolerance and liberty.⁷ Similarities have been pointed out between the first colonial government of Maryland and the American plan of government under the Constitution, in particular with religious liberty, general suffrage, an elective branch of the legislature and an appointive upper branch and three independent departments of government.⁸

The scope of this paper will not extend beyond a sketch of the important events concerning the theme of toleration and its development in Maryland, from a background setting of religious persecution in the early 1600's, to the recent cases involving church and state. A solution to the underlying question of interpretation, whether the Establishment Clause requires complete separation of church and state, or whether it permits nondiscriminatory government participation, will not be attempted—although some conclusions will be suggested.

THE SETTING IN EUROPE:

GEORGE CALVERT

The early part of the 17th Century was an age of religious persecution in both continental Europe and Great Britain. The Spanish Inquisition, aimed

chiefly at the Jews, was at the height of its activity. Germany was in the midst of the Thirty Years' War, a bloody conflict born of theocratic animosities; religious affiliations, public policies and national politics were so intertwined with the governments of state and church that they could not be separated. Austria was bound up in the same struggle. France alone was a haven for toleration, the only country in Europe where Protestants and Catholics alike enjoyed their form of religion. However, France, too, was the scene of more than one theological skirmish, especially those involving Papal acknowledgment of the French King's selection of Church officers.⁹

Catholics in Ireland were made to suffer under the established Church of England; they were taxed for the support of the Church, and they were fined for not attending Sunday morning services of the Church. When the Irish rebelled, they were massacred—3,000 in one day on the Island Magee. Scottish Presbyterians were forced by James I, King of England, to accept his five articles of religion, and Scotland, too, was aroused to rebellion. Wales was hopelessly caught in between.¹⁰

In England itself, the established Church was becoming more and more dictatorial. Roman Catholics could neither vote nor hold office. Conformity of worship was enforced by fines and imprisonment. Priests were tortured, prisons were crowded with "Papists," and people were burned at stake for denying the Trinity.¹¹

⁷ Truman, *Maryland and Tolerance*, 40 MD. HIST. MAG. 85, 86 (1945). Mr. Truman, in an address before the Maryland Historical Society, noted that "Truly all history is but an introduction into the future. The greatest tragedies in history have been made by people who did not read and analyze history."

Of the two original havens for the religiously persecuted, Rhode Island and Maryland, the latter seems to have stood for a truer concept of toleration. See E. RILEY, *MARYLAND—THE PIONEER OF RELIGIOUS LIBERTY* 33 (1917); J. IVES, *THE ARK AND THE DOVE* 242 (1936); and, particularly, W. RUSSELL, *MARYLAND: THE LAND OF SANCTUARY*, ch. 12 (1907).

⁸ B. LONG, *GENESIS OF THE CONSTITUTION* 96 (1926).

⁹ See generally RILEY, *supra* note 7 at 13-25.

¹⁰ *Id.* at 10-13.

¹¹ For a more detailed background, see *id.* at 7-9; IVES, *supra* note 7 at 13-20; and RUSSELL, *supra*, note 7, chs. 1-2.