

give financial aid, directly or indirectly, to parochial education. "Anyone suggesting that the answer, as a matter of constitutional law, is clear one way or the other is either deluding or deluded."¹⁶⁸

However, the path to follow in re-considering the pertinent provisions of Maryland's century-old Constitution is more clear-cut, if not obvious.

Article 36 of the Declaration of Rights has in large measure been declared unconstitutional by *Torcaso* and *Schowgurow*, *supra*. *Torcaso* has expressly voided Article 37. Article 38 is self-cancelling, in that every post-1948 transfer of property to a religious organization or representative is valid. Article 39, while never specifically challenged in the courts, is not likely to withstand the wind of *Torcaso* so long as it refers to a Divine Being.

Thus, the only four provisions in the Maryland Declaration of Rights which directly relate to church and state, are either inoperable (Article 38) or violative of the federal Constitution. Since problems surrounding freedom of religion are handled by the Supreme Court's interpretations of the First Amendment, which in turn are applicable to the states by way of the Fourteenth Amendment, a new Maryland constitution cannot attempt to limit the scope of the Establishment or Free Exercise Clauses. To do so would be only to anticipate the Supreme Court, and success in that venture, especially in view of the still developing clarification of policy by the Court, is highly improbable.

On the other end of the spectrum, a

¹⁶⁸ P. KURLAND, RELIGION AND THE LAW 111 (1961).

broadening or more absolute statement of religious liberty would not offend the First Amendment. It is difficult, however, to formulate a more concise and unfettered declaration than that found in the United States Constitution. The National Municipal League after exhaustive scholarly research and dialogue, emerged with identical language—"no law shall be enacted respecting an establishment of religion, or prohibiting the free exercise thereof."¹⁶⁹ Although all states guarantee the freedom of religion,¹⁷⁰ few constitutions protect citizens with such simplicity.¹⁷¹ The added advantage of using the First Amendment language, of course, is that the interpretive policy rules handed down by the Supreme Court will automatically apply to the State—no further analysis of variant state constitutional provisions on religious liberty would be necessary.

In the end, adoption of First Amendment language would be an appropriate reflection of the valuable contributions Maryland has made to the Law of the Land, the effect her past struggles have had upon the declaration of religious freedom. Because, for that basic liberty America must remain largely indebted to Maryland, where "at no time in her history did the 'temperament which persecutes' . . . find an abiding place."¹⁷²

¹⁶⁹ NATIONAL MUNICIPAL LEAGUE, MODEL STATE CONSTITUTION §1.01 (6th ed. 1963).

¹⁷⁰ *Id.* at 29.

¹⁷¹ NATIONAL MUNICIPAL LEAGUE, SALIENT ISSUES OF CONSTITUTIONAL REVISION 12 (J. Wheeler ed. 1961). See generally, Paulsen, *State Constitutions, State Courts and First Amendment Freedoms*, 4 VAND. L. REV. 620, 635-42 (1951).

¹⁷² C. HALL, THE LORDS BALTIMORE AND THE MARYLAND PALATINATE 98 (1902).