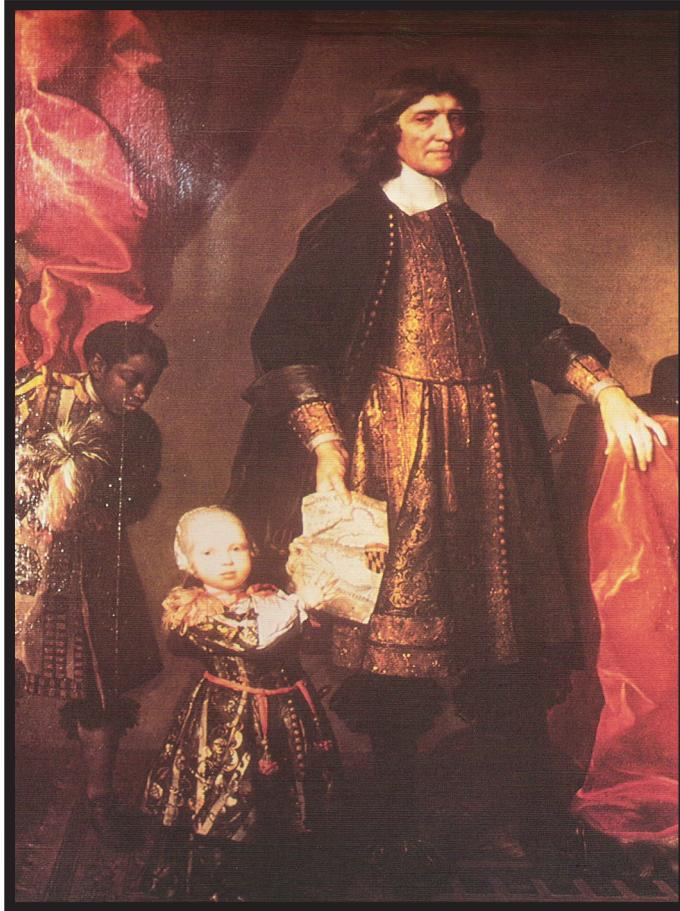




CENTER FOR THE STUDY OF DEMOCRACY

... a joint project of St. Mary's College of Maryland and Historic St. Mary's City

# Maryland Designe: The First Wall Between Church and State



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*By Thomas Penfield Jackson*

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## **The Center for the Study of Democracy: A Better Understanding of Maryland and the World**

Although we often focus on contemporary issues associated with democracy and liberty, the Center for the Study of Democracy was originally inspired by the historical importance of St. Mary's City and the discussion of innovative 17th-century ideas about politics that helped establish effective civil government in the Maryland colony. This occasional paper brings us back to our 17th-century roots.

Among the most important principles of civil government instituted at St. Mary's City is 'freedom of conscience'—a principle that remains in practice today and one that continues to act as the bedrock for many other core democratic values in the United States. This principle not only provides support for democratic liberties concerning freedom of speech and freedom of the press, but also directly supports the legal notion of separation of church and state. In the early years of Maryland's founding, colonists, through the Assembly of Maryland, officially separated religion from civil government by passing An Act Concerning Religion. This act, as Judge Thomas Penfield Jackson points out "...represented the first time in the English-speaking world that government formally renounced by legislative enactment the right to dictate to its citizens what they must believe or how they must evince it." It allowed settlers of different Christian faiths to vote and hold public office without a religious test and it remains a foundational civil liberty in the United States today; citizens of all faiths are entitled to freely participate in our democracy, irrespective of religious beliefs.

This occasional paper by Judge Jackson explores the political motivations of George Calvert's 'Maryland Designe' and its connection to the religious tensions in English politics during the 17th century. Jackson's essay shows how Maryland's early attempt to establish religious toleration in the New World was deeply connected to English politics beginning with the rule of King James I. The reverberations of English politics continued to shape the Maryland colony throughout the century, while ultimately contributing to the demise of Maryland's experiment in secular civil society in 1692.

This essay invites us to reflect on the significance of 'liberty of conscience' and the 'Maryland Designe' for American democracy. However, it also asks us to reflect on the state of religious freedoms today—both in our country and throughout the world. How can religious animosities be reconciled in modern states? Are these animosities best reconciled by democratic liberties? The Center for the Study of Democracy invites you join us in thinking about these issues, while visiting St. Mary's College of Maryland and Historic St. Mary's City. I suggest you visit our Web site at [www.smcm.edu/democracy](http://www.smcm.edu/democracy) to see the full array of programs we provide for our students and our community.

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*“Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof...”*

U.S. Constitution, 1st Amendment, cl.1

It didn't last long, and left only a faint footprint on the land, but the legacy of Cecil Calvert's small colony of Maryland on the Chesapeake Bay may be found in the First Amendment to the U.S. Constitution, and its lesson for posterity only now belatedly acknowledged to be a fundamental principle of good government in a religiously divided world: Successful civil government requires that the militant forces of religion and politics must be kept at a distance from one another.

As the state of Maryland celebrates the 375th anniversary of its founding at St. Mary's City, the festivities will be muted. The Queen of England is not expected to attend. No commemorative voyages will be launched. The festivities will not be given the worldwide publicity as they were for Jamestown's 400th in 2007. Nevertheless it deserves to be commemorated, if only to honor the memory of its patrons, George and Cecil Calvert, father and son, the first and second Lords Baltimore, and the first Englishmen to attempt to form a functional secular civil government in a violently sectarian society. They fought against endemic religious prejudice and through a bloody political revolution to preserve their prototype for over half a century, but lost.

This essay seeks to demonstrate that Maryland's earliest years mirrored contemporaneous events in, and reflected the tensions of 17th-century England, more than in any of the other original North American colonies. What happened in England then happened to Maryland, almost simultaneously and for similar reasons. Thus the lessons of early Maryland history are instructive precisely because they were yielded by an important and—at the time—improbable experiment in religious toleration. The experiment would be more successfully replicated by many future democratic governments, including England's, but a clear precedent is found first in Lord Baltimore's “Maryland Designe.”

Cecil Calvert's tiny band of volunteer venturers settled in March of 1634 upon a promontory on the north shore of the Potomac River 60 miles by water from Jamestown, Virginia, to found the first capital of Maryland, St. Mary's City. Within that first decade, the mother country would erupt in a bloody civil war, fomented as much by religious strife as a contest over governmental power. The war would end with the monarch whose favor Calvert coveted deposed from his throne and beheaded. By the end of the century the colony would eschew both Baltimore's own religion and his rule, as we shall see, for the wrong reasons. The value of a genuinely secular government would not be fully appreciated even in America until long after its independence from England. Fragile and short-lived as it proved to be, however, Lord Baltimore's colony of Maryland represented the first experiment in the English-speaking world to disengage matters of religious belief from the exercise of governmental power: his “Maryland Designe,” as this essay contends, was a pioneering achievement in the evolution of democratic institutional structure and deserves both further reflection upon and appreciation of its significance.

### **Catholic Subjects of an English King**

In mid-16th century, Henry VIII had dispossessed the Pope of his English properties and his ecclesiastical authority and proclaimed himself prelate-in chief of the Protestant Church of England—the Anglican Church. When his Catholic daughter, Mary Tudor, by his first wife, Catherine of Aragon, was enthroned in 1553, she almost succeeded in returning England to the Roman fold. Her brutal persecution of Protestant “heretics” during her short reign—she had them burned at the stake—earned her the title of “Bloody Mary” and intensified the enmity between her Protestant and Catholic subjects. Elizabeth I, who followed her in 1558, and then James I and Charles I, all Protestants, were mostly indifferent towards their Catholic subjects, but by the Baltimores’ time the penal laws enacted by Parliament required all Englishmen to acknowledge the supremacy of the King rather than the Pope in matters of religious belief. The Vatican still aspired to temporal as well as spiritual power, in which it was supported by its powerful ally, ultra-Catholic Spain. England and Spain had been intermittently at war for many years, and English Catholics were regarded by their Protestant countrymen as a dangerous subversive element. Indeed, in the year Cecil Calvert was born, Catholic terrorists had attempted to blow up Parliament.

Catholicism was officially outlawed in England when Cecil Calvert first settled Maryland. Catholics were forbidden to worship publicly. Those who adhered to their faith did so in private, clandestinely, ever conscious of the penal laws that, when enforced, governed every aspect of their lives. Like all English subjects, Catholics were required to attend Anglican services 52 Sundays a year and on numerous feast days; to pay the tithes that supported the Anglican clergy; and in order to hold public office to swear oaths of allegiance to the monarch as the supreme magistrate, both spiritual and temporal. Jesuit priests were outlaws, and any person who gave aid or comfort to them was guilty of a felony. To receive written orders from the Vatican was treason. Catholics were forbidden to leave the country or to travel any distance from home without official permission. The affairs of state and church were still deeply entangled in the 17th century, with both secular power and civil liberty requiring a religiously correct imprimatur.

### **The Calverts: Loyal English Catholics**

Cecil Calvert, the second Lord Baltimore, was 26 years old in 1632 when he succeeded to his father’s title and estates upon George Calvert’s death. He also inherited two of his father’s lifelong tenets: a conviction that religious affiliation and political allegiance were not synonymous, not inextricably connected, and in no way dependent upon the other; he also shared his father’s ambition to found an English colony in North America to be governed upon that premise.

George Calvert, a Catholic at his birth and again at his death, had converted to the Church of England at the age of twelve. He had devoted his life in service to King James I and his successor, Charles I. At various times he served as privy councilor, secretary of state, and diplomat for the Crown for 22 years, and he also sat in Parliament. His patron and mentor at court, Sir Robert Cecil, Earl of Salisbury, a vehement anti-Catholic himself, had no reason to question his young protégé’s loyalty. George Calvert took the required oaths of allegiance and supremacy, and

he lived as an Anglican until he resigned his offices in 1625 and reclaimed his religion of birth. In 1622 James I had made George Calvert Baron of Baltimore, with estates in the County of Longford, Ireland, thus becoming the first of that title.

George Calvert's interest in North American colonization dated from 1609 when he became an original subscriber to the Virginia Company. He was granted permission by King James to found his own proprietary colony in Newfoundland and did so in the summer of 1621, calling it Avalon and dispatching his first party of colonists, all Protestants, to a site near Argentia still known as the Avalon Peninsula. In 1628, now out of government service, George Calvert moved with some of his family to Avalon, intending to make it his permanent home. He found the settlement in poor shape, suffered through a severe winter of 1628-29, had to repulse the raids of French privateers, and gave Newfoundland up as uninhabitable. He sailed for home by way of Virginia where he encountered a temperate climate and fertile soil, and audaciously petitioned King Charles to grant him a patent for a new colony on the Chesapeake Bay. He did not live to see it granted.



Courtesy of the Library of Congress

*Religious & civil liberty established in Maryland in 1649:  
Allegorical scene of Lord Calvert showing Lycurgus the document  
establishing civil and religious liberty in Maryland in 1649*

Virginia partisans vigorously opposed him. Not only did his petition ask for land the Virginians considered a part of Virginia (by then a royal colony), they contended his colony would be a haven for “papist” subversives who would welcome the Spanish, thus endangering Protestant

settlers in both Virginia and New England. Old friends on the Privy Council came to George Calvert's defense, but King Charles was preoccupied with his quarrels with a restive Parliament, and it was not until June 1632 that the charter was sealed and delivered—to his son, Cecil. George Calvert had died in London at the age of 52, two months earlier.

The young second Lord Baltimore set about recruiting volunteers for his new colony indiscriminately without regard to their religious predilections, but with only modest success. He had somewhat more so attracting gentleman Catholics who would prove to be the leadership nucleus to govern at first. His affairs in England were sufficiently unsettled that he determined he must remain at home, and he appointed his brother Leonard, younger by four years, as the first governor to rule in his stead. He meant “rule” literally. The charter gave the Lord Proprietor virtually regal power in the colony of Maryland. All powers of governance—executive, legislative and judicial—were vested in him, although he was to be “advised” in their exercise by the freemen of the colony.

The principal incentives Cecil Calvert used to entice volunteer colonists were the land grants he proposed to make in accordance with the size of the labor force they would bring with them to work the land. There were no other qualifications, religious or otherwise. Land had always been a source and symbol of wealth and status in England. Great estates bespoke great men. Generations of common law lawyers had devoted themselves to protecting land titles and directing where they might go in the future.

To minister to the minority of Catholics among the colonists, Baltimore sought priests willing to accompany them. Ultimately only the Jesuits, who saw both worldly and evangelical opportunity in the invitation, responded. The Jesuits were often to prove troublesome to a Lord Proprietor seeking to be scrupulously neutral in matters of religion. They were expected to live in Maryland as any other gentlemen, lay or clerical, and work for a living without government subsidy. They sought special status almost from the beginning.

The Jesuits, the most dynamic of Catholic orders, were drawn to Maryland by the prospect of converting the heathen Indians to Christianity, but also by the prospect of land ownership. In Maryland the only legal source of land ownership was a grant, or patent, from the Lord Proprietor himself. But Baltimore's charter required him to conform to the laws of England, and in England religious orders could not take title to land without royal permission. In Catholic countries the Catholic Church claimed ownership of all lands held in the name of any of its orders, which could not then be transferred without permission of the Pope. Although Catholic and Protestant churches alike had sought to evade these strictures by the use of trusts, for Baltimore to have given the Jesuits the land they wanted would have risked the forfeiture of his charter, on the one hand; on the other, by refusing to do so he risked excommunication. He took the latter risk. Jesuits could accept grants from him in their proper names as gentleman planters, if they chose, but in no other capacity. Furthermore, because Catholics could not by law worship publicly in England, no chapel or other overtly religious structure would be allowed.

The Jesuits chafed at all the restrictions placed upon them that no other “Catholic” country (as they thought of Maryland) deigned to impose. They were denied exemptions from taxes, obliged

to render public service when called upon, and when they tried to circumvent the restrictions on land ownership by acquiring land directly from the Indians their titles were not recognized.

Both Calverts, George and Cecil, had seen enough of religious acrimony in England to understand that civil government is confounded and injustices are done when theological certitude is fused with political power. They intended that in their colony there would be none of it. A man's (or woman's) religious affiliation was to be of no business to the government. It would represent no qualification for public office, nor grounds for persecution. There were no penal laws. All worship was to be a private matter, and to take place inconspicuously or not at all. No faith would receive public support or preference. There would be no tithes. Religion, in short, was of no concern to the Lord Proprietor or his officers so long as he and his government retained the political allegiance indispensable to civic order. No oaths would be required other than an oath of fealty to the Lord Proprietor. He, in turn, would swear allegiance to the Crown, thus assuring the loyalty of all.

Such, in essence, were the instructions Cecil Calvert gave to his brother Leonard in November 1633 as the first party of colonists was about to depart from the Isle of Wight for the Chesapeake. It would be three years before Roger Williams abandoned the fiercely Puritan Massachusetts colony and founded Rhode Island upon similar aspirations.

### **Religion and Politics Divide the English Nation**

Meanwhile, England seethed in controversy both religious and political. Politically, Charles I was beset by an angry Parliament which resented his propensity to rule by royal prerogative rather than laws enacted by Parliament. Parliament sat at the King's summons, and Charles I summoned Parliament into session only when he needed money, which was often. Parliament refused to accede to his demands, and Charles dismissed them sine die in 1629. Parliament was not to be called into session again until 1640. In the meantime, he enforced assessments known as "ship money" using his prerogative courts such as Star Chamber rather than the common law courts.

Religiously, the country was torn not only by virulent antipathy toward Catholics but by dissension between Protestant sects as well. England was almost entirely a Christian country, to be sure—such non-Christians as were to be found were foreigners—and most Englishmen were quite religious. But following the Reformation, Protestantism had splintered into numerous sects, while the Church of Rome had remained a monolith.

The Psalms had been translated into English as early as 1535, and in 1611 the authoritative English version of the entire Bible came into common use. So, too, had literacy become common. A substantial proportion of Englishmen could interpret the Scriptures for themselves, if they chose, without clerical help. The result was a proliferation of sects, and English Protestants were of many sorts: Anglicans, of course, but also Puritans (sometimes called Calvinists); Presbyterians (also Calvinist, but different); Quakers; Anabaptists; Ranters; Levellers; Millenarians; Seekers; and others of no determinate persuasion. They all had one convention in common, however: anticipation of a heavenly reward. The fundamental difference between the sects—and they often differed vehemently—was how to achieve eternal salvation.

For their salvation, Anglicans relied primarily upon the Roman traditions of baptism

and absolution, and the Church of England retained much of the Catholic liturgy, ceremony, and ornamentation as well. The Puritans, loosely defined, found the path to salvation prescribed in the Bible to be a life of godliness and industry and scorned the Anglican ritual and ostentation as popish and impious. The Presbyterians, reading the same Bible, believed that God had predetermined whom He would save, but would abandon those who did not live righteously as He ordained.

When Parliament was finally reconvened in 1640 it was comprised primarily of Puritans, Presbyterians, and Anglicans. It came to be called the Long Parliament and did not adjourn until after the Civil War.

### **Lord Baltimore's Colonists Settle in Maryland**

Between 140 and 160 prospective colonists had sailed for Maryland in 1633 in two ships, the 360-ton Ark and the 30-ton Dove. Most were Protestants. The ships were separated early in the voyage by storms and made their way independently to a first landfall in the Windward Islands in January 1634 where they were reunited. By March they had entered the Chesapeake Bay, made a ceremonial landing at a small island several miles up the Potomac River, and then dropped back down the river to the mouth of what is now the St. Mary's River to settle into an encampment they grandiosely named St. Maries City as the capital of the new province.

The Maryland colonists benefited from the grim experiences of the first Virginians who had preceded them to the Chesapeake region 27 years earlier. There was no "starving time." They quickly made accommodation with the peaceable Yaocomoco Indians who inhabited the woodlands of the north shore of the Potomac and began cultivation of the single cash crop—tobacco—that the Virginians had discovered they could profitably export to England. For a time the governance of the colony proceeded according to plan. There was no dissension to speak of, religious or otherwise. Governor Leonard Calvert, not yet 25, was aided by the counsel of three able deputies, all Catholic gentlemen: Thomas Cornwaleys; John Lewger, who had once been an Anglican priest and arrived in 1637; and Giles Brent who came a year later.

### **The English Civil War and the Rise of Oliver Cromwell**

Shortly before he died, George Calvert had seen one of his oldest and closest friends, Thomas Wentworth, Earl of Strafford, appointed the Lord Deputy of Ireland.

Wentworth ruled Ireland efficiently but ruthlessly, made enemies in Parliament, and was recalled in 1639 to face charges of treason. He was convicted despite a personal plea by the King himself in his defense, and his fate was a portent of what would befall Charles I a few years hence. Wentworth went to the scaffold less than a fortnight after his conviction. He would be accounted by history as simply one more victim of those unfortunate times but for his famous exclamation upon learning that the King had declined to commute his sentence: "Put not your trust in princes!"

Cecil Calvert, barely 30 years of age at the time and his colony in existence for only five, could not have missed the ominous import of Wentworth's execution for his own fortunes. His father's staunch supporter at court had died in disgrace, and the King who had granted him his own

colonial charter had been powerless to defy a Parliament that despised all Catholics and counted none among its members.

By the summer of 1642 the King and Parliament were at war. The King's Royalist forces (called "cavaliers") were led by nobles who had gained experience in warfare in conflicts on the Continent and were at first successful. Parliament's troops, referred to as "roundheads," were ill-trained and poorly armed, and above all ineptly led. The Royalists prevailed at the first battle, Edgehill, in October 1642 and again at Roundway Down in July 1643.

From those defeats emerged a new leader of the Parliamentary forces, a 44-year-old gentleman farmer from Cambridgeshire and a member of Parliament named Oliver Cromwell. Cromwell was serving as a cavalry officer under the commander-in-chief, Sir Thomas Fairfax, who would continue in that role after the war.

Cromwell reorganized the Parliamentary forces into what became known as the New Model Army. He recruited the best men he could find, starting in his own native county, and insisted upon financial support from Parliament. Cromwell's troops were well-trained, armed, disciplined, and, importantly, well-paid. They did not fight for plunder, and they revered their commanding officer. Cromwell led them in successful battles at Marston Moor in January 1644 and in what was to prove the final major battle of the first years of civil war at Naseby in June of 1645.

Most historians assume Baltimore's sympathies were Royalist, and perhaps they were, but if he personally gave support or assistance to the King's forces in England he did so discreetly and was never found out. Altogether about 100,000 English soldiers were slain in the first four years of civil warfare. No one apparently counted the civilian casualties, but at the end of the carnage Baltimore's title, properties, and his own family remained unmolested, although many of his co-religionists' great houses were sacked and burned, including Wardour Castle, the home of his wife's brother, Sir Thomas Arundel.

Yet he cannot have remained oblivious to the sights and sounds of the war raging about him. Much of it was fought in the Midlands not far from his home in Wiltshire. He must have been aware at the time of Marston Moor where 50,000 foot and cavalry engaged in a single day, or of opposing armies converging at Naseby, some 100 miles distant. His survival is testimony, at least in part, to his reputation among all factions as a man of principle and honor, and above all as a loyal Englishman.

### **The Invasion of Maryland**

In spite of his personal stature in England, however, he could not prevent the English political turbulence from infecting the colony. Maryland was the only North American colony to experience a quasi-military incursion during the English civil war. Richard Ingle, a London-based tobacco trader and ship captain of openly Parliamentary sympathies, had been trading with Maryland since the beginning. In February 1645 Ingle returned to the Chesapeake on his annual voyage aboard his ship, *Reformation*, a well-armed merchantman, and recruited a band of mercenary troops in Virginia to invade Maryland, vowing to exterminate the "papists" and sack their homes. He captured a Dutch merchant ship anchored at St. Mary's as a prize, landed a party

to seize, loot, and burn Catholic manors throughout the colony, and arrested prominent Catholic citizens and priests. Governor Calvert evaded capture, but John Lewger, Giles Brent, and several Jesuits were taken back to England as prisoners aboard the *Reformation* in April. Accompanied by his prize, both vessels laden with stolen goods, Ingle arrived in London in June. Marylanders referred to Ingle's invasion as "the plundering time."

As matters turned out, the High Court of Admiralty would not honor Ingle's claims to his booty, and his prisoners were eventually freed, further evidence that the Parliamentary government did not regard Lord Baltimore or his "papist" colonists as a threat.

In the colony, however, the damage proved irreparable. Ingle's invasion opened a breach between Maryland's Catholics and Protestants that would never completely heal. A number of Protestant freemen and servants of Catholic gentry that Ingle had emancipated had joined with him, some undoubtedly for the opportunity to pillage, but many for the purpose of supplanting a Catholic-dominated government with a Protestant one. After Ingle departed, the Protestant rebels took control of much of the colony and the functions of government.

In the fall of 1645 they sent a delegation to London to petition Parliament to revoke Lord Baltimore's charter, divest him of his colony, and legitimize the de facto Protestant rule. The House of Lords passed such a bill in December 1646 and readied it for submission to the Commons. Lord Baltimore belatedly entered his objections and asked to halt proceedings on it. Whatever his arguments, he still retained influence even with a wholly Protestant Parliament now at war with the King. By March 1647 the bill was off the table. No more was heard of it.

At the time of Ingle's invasion, Leonard Calvert had escaped to Virginia. By late fall of 1646 he had raised a company of Virginians and fugitive Marylanders in sufficient strength to retake St. Mary's, and he was once more acting as governor. In January 1647 he offered a general pardon to the rebels and promised no reprisals if they would submit to his authority. Most did. Six months later Leonard Calvert was dead of an unknown natural cause at the age of 37.

### **The End of the Civil War and the Monarchy**

In England, Charles I had been thoroughly bested militarily, despaired of receiving assistance from abroad, and reluctantly surrendered himself to Parliamentary forces in Scotland in May 1646. With the King at home in genteel captivity at Hampton Court and later on the Isle of Wight, Parliament attempted to negotiate with him over constitutional reform, which would have included a less authoritarian national church, as well as his return to the throne as a monarch subject to laws enacted by Parliament. Charles temporized while secretly treating with the Scots (as well as with the Vatican and Irish Catholics) for an invasion of England to rescue him. Parliamentary Presbyterians, now a majority who wanted a Presbyterian kirk as the English state religion, connived with him. When a Scottish army finally invaded, Oliver Cromwell led a Parliamentary army north and defeated them at the battle of Preston in August 1648. By then the Army, commanded at home by Sir Thomas Fairfax, had become the dominant force in England, and Cromwell the pre-eminent politician in Parliament. They took control of the country.

Parliament was purged of Presbyterians, and the remainder (the "Rump" as it was called),

drawing upon principles dating to Magna Carta, voted in January 1649 to put Charles on trial—not truly for treason (although the indictment so read), but for tyranny. The trial before Parliament’s 70 handpicked judges began ten days later in Westminster Hall. The result was, like Strafford’s case, a foregone conclusion. Charles I, as expected, refused to acknowledge the court’s jurisdiction. The King, he said, was above the law. He was overruled, convicted, sentenced to death on a Friday, and beheaded the following Tuesday. Unlike Strafford he had no prince to whom to appeal.

Charles I had comported himself with regal dignity throughout the trial, however, and went to his execution the same way. Before the axe fell he observed that he went “from a corruptible to an incorruptible crown, where no disturbance can be.”

Monarchy had ended in England for the present.



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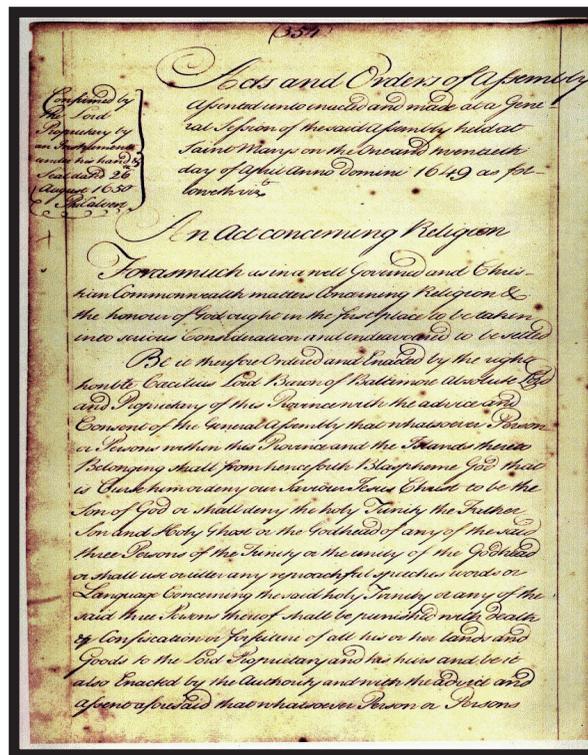
*Trial of Charles I*

### **Maryland Enacts its Statute of Religious Toleration**

In the last months of Charles I’s reign, Lord Baltimore had been preoccupied with developments in Maryland. No sooner had he learned of Leonard Calvert’s successful repression of Ingle’s invasion than he was told of his brother’s untimely death. Baltimore determined to replace him with his own man. Knowing which way English winds were blowing, in the summer of 1648 he chose a prominent Protestant, a Virginia soldier and planter, William Stone, to be the new governor of Maryland. He did not know Stone personally, but Stone was well-connected in Parliament and in the London merchant community, and he promised to bring with him an influx of new colonists, primarily non-conforming Virginia Protestants who found the religious strictures of resolutely Anglican Virginia repressive.

In his instructions to his new governor, Lord Baltimore reiterated those he had given his brother fifteen years earlier, namely, “not to trouble, molest or discountenance” any person in respect of religion.

Baltimore's charter had given him exclusive law-making powers in his colony, but he was to do so "with the advice, assent and approbation" of the freemen. Leonard Calvert's practice had been to summon assemblies from time to time to consider legislation he presented to them. He usually acceded to their will, however, and in 1638 they had won the right to initiate legislation. By 1649 the war had made clear that Parliament, not the King, made the laws of England, and the Lord Proprietor bowed to the inevitable. Baltimore presented to the now Protestant-dominated Assembly of Maryland a legislative code of his own drafting, titled An Act Concerning Religion. Modified to its liking, the Assembly passed it while retaining its essential purpose intact: No person was to be compelled to believe in or exercise any religion against his or her consent. The statute protected only Christians—non-believers in the divinity of Christ were outlaws—but the Maryland Act Concerning Religion of 1649 represented the first time in the English-speaking world that government formally renounced by legislative enactment the right to dictate to its citizens what they must believe or how they must evince it. The Act of 1649 thus expressed a profound principle that foretold the importance of the separation of church and state that would become so essential to well-functioning democracies today.



Courtesy of the Maryland State Archives

Page One of the Act Concerning Religion

### **England Under Cromwell, the Lord Protector**

England was now a headless state, figuratively as well as literally. In February 1649 Parliament created a Council of State to govern the new commonwealth/republic with Oliver Cromwell as its first chairman. It then dispatched him with an army to Ireland to quell a Catholic revolt that had smoldered since Stafford's departure a decade earlier. Cromwell was so brutal in the event that the Irish revile his memory to this day. Many Irish Catholic estates were confiscated and sold to Protestant gentry. (Lord Baltimore's were spared.) Young Charles Stuart, the late king's son who had taken refuge on the Continent during the war, had planned to return to England at the head of a Royalist army from Ireland to recover his father's crown and reign as Charles II. He abandoned the plan after Cromwell had subdued Ireland and sought help in Scotland.

Cromwell returned to England in June of 1650 to learn that the Scots had proclaimed Charles Stuart the new king, not only of Scotland but of England and Ireland as well. He took his army north and defeated the Scottish forces at Dunbar in September, and again at Worcester a year later. It was on this expedition to Scotland that an exasperated Cromwell exclaimed in the course of a heated theological debate with an unrepentant delegation of presbyters of the Kirk, "I beseech you in the bowels of Christ, think it possible you may be mistaken?"

Cromwell was now in effective control of the entire English nation. In April 1653, at Cromwell's bidding, Fairfax and his troops forcibly ejected the fractious Rump Parliament that had remained continuously in session for over 12 years. Then Cromwell and his supporters appointed a new "parliament" of supposedly reliable military officers and gentry—called the "Barebones Parliament"—that dissolved itself in December. Its remnants hastily drafted a muddled document titled *An Instrument of Government*, conferring de jure on Cromwell the monarchical powers he already exercised de facto through the Army. Cromwell took the title of Lord Protector of England.

### **Baltimore Survives a Puritan Usurpation**

With Ireland and Scotland pacified, the Rump Parliament, before disbanding, briefly turned its attention to what it had been told were the obdurate colonists in "papist Maryland." It appointed two commissioners—one a Virginian who had been a long-time adversary of Baltimore's—to compel submission to the essentially all-Puritan regime in England. Once in Maryland the commissioners roused the newly arrived like-minded Puritan immigrants from Virginia in opposition to the new governor who had brought them there. In 1654 the Assembly, called into session by the commissioners (sans Calvert partisans), amended the Act Concerning Religion of five years earlier to exclude Catholics and Anglicans alike from its protections. In March 1655, after a pitched battle at the Severn River to the north of St. Mary's where most of the émigré Virginians had settled, Governor Stone and his proprietary supporters were defeated, many were executed, and Stone surrendered the government to the commissioners who no longer had a Parliament to oversee them.

Lesser men than Cecil Calvert would have given up, but he was not prepared to relinquish what had become his life's work. He had nowhere to turn, however, but to Oliver Cromwell.

Cromwell was now 56 years old, a despot who could be expected to rule England as a military autocracy for the foreseeable future. He was himself a devoutly religious man. Nominally a Puritan, Cromwell could actually be identified with no discrete faith. He distrusted Catholics in general, as most Englishmen did, but he also abhorred the national church with its rituals and ceremonies, as well as its hierarchical clergy all too similar in his mind to the Roman church. He personally believed that men should worship as they pleased so long as they posed no threat to public order, and his tolerance extended even to Catholics who were not ostentatious in their worship.

While the rebellion was still in progress in Maryland and the usurpers in apparent control, Lord Baltimore and influential friends approached the Council of State, undoubtedly with trepidation, to complain that the parliamentary commissioners had deposed his government in Maryland. On the only occasion Cromwell is known to have turned his personal attention to the controversy, he sided provisionally with Baltimore and instructed the commissioners to restore the status quo ante until he, Cromwell, should make a final decision. Cromwell then passed the matter to advisors.

Nothing changed in Maryland, however, and Baltimore waited impatiently for a decision. Cromwell's advisors reported in Baltimore's favor, but the Virginians and commissioners appealed to the Council of State. Once again they cast their arguments in religious terms: The Protestants of Maryland were being oppressed by a "papist overlord" whose loyalty to the "commonwealth" and the Lord Protector was suspect.

The Council of State did what timeless governments have always done with difficult problems: They referred it to committees for further study and report. Two reports ultimately issued, but Cromwell, ever a procrastinator until the Lord's will was revealed to him or events overtook him, rendered no decision. Finally, with the assistance of a sagacious new governor of Virginia acting as mediator, Baltimore and the Virginians negotiated a settlement in late November 1657. The dispute had languished in the bureaucracy for nearly five years and disrupted the peace of Maryland for much longer.

By the settlement Lord Baltimore kept his proprietorship, the rebel Protestants in the north kept their lands (provided they acknowledged his authority), and the Act Concerning Religion was reinstated in full force. Baltimore named his 26-year-old half-brother Philip as the new governor, and by March of 1658 the commissioners' government pro tem had reluctantly surrendered the apparatus of government to him. Religious toleration remained the law of the land in Maryland, and Lord Baltimore had once more managed to regain control of his colony.

### **Cromwell's Death and the Restoration of Monarchy**

Six months later Oliver Cromwell was dead. He died in September 1658, probably of an abdominal abscess. He had never officially named a successor and had earlier refused the Crown which would have assured a line of succession at his death. His eldest son, Richard, was promptly drafted to take his father's place, but lacking his father's esteem with the Army and his political acumen in all other respects, Richard Cromwell was quickly gone in less than a year.

By late spring 1660 Charles Stuart had returned to England, this time by invitation, and to the throne as King Charles II. With Charles II came a reinvigorated Church of England. The people detested the military government by which Cromwell had governed, and in retrospect Charles I had acquired saintly proportions. Cromwell's corpse was exhumed and publicly hanged, then beheaded; the head was hoisted on a pike at Westminster. Charles I's parliamentary persecutors still living were tried, convicted, hanged, drawn and quartered.

With relative peace restored in England, Lord Baltimore's colony remained tranquil as well. Cecil Calvert died in 1675 at the age of 69 without ever having seen his colony. Maryland prospered, but political power passed inexorably into the hands of the Protestant freemen who comprised the vast majority of the population, now centered in its northern reaches between the Patuxent and Severn Rivers. Nevertheless, to the end Cecil Calvert insisted, if he could no longer command, that his colonists adhere to his and his father's principles: that the laws enacted by the Assembly be reasonable, not contradict the laws and customs of England, and above all, be consistent with the Act Concerning Religion of 1649. His wishes were apparently respected, as was Baltimore himself. The capital remained at St. Mary's City where the Jesuits were at last permitted to build a fine new chapel in 1667, and a grand State House for governmental business was erected there in 1676. Distinguished Catholics continued to emigrate, such as Charles Carroll, who was appointed attorney general of the colony in 1668 by Governor Charles Calvert, the Lord Proprietor's son, and founded a Maryland dynasty of his own. The era was perhaps the high water mark of religious toleration in 17th century Maryland.

### **The Glorious Revolution Ends Catholic Monarchy**

Charles II had ruled England for 25 years when he died in 1685, but for all his faults of licentiousness and extravagance he exhibited a remarkable tolerance towards his Catholic subjects. Indeed, he maintained a long-term liaison with Catholic Louis XIV of France upon whom he was financially dependent and was suspected by many of plotting to return England to the Catholic fold. After Charles died, he was succeeded by his brother James who, as King James II, although himself an avowed and practicing Catholic, nevertheless promised to protect the Anglican faith. When his illegitimate nephew, the Duke of Monmouth, claimed to be a Protestant champion and invaded England with a small force and sought to raise a rebellion in the southwest, he was quickly vanquished, captured, and executed.

Notwithstanding his assurances, during his short reign James II boldly sought (as had Mary Tudor a century earlier) to restore England to official Catholicism. It was the Protestants' turn again to experience royal estrangement. James II promiscuously appointed Catholics to high office in both state and church, and when admonished for it by seven prominent Anglican bishops he put them on trial for seditious libel. They were acquitted to much public acclaim. Anger and resentment affected the whole country—Protestants of all sects, former Royalists and Roundheads, even perceptive Catholics embarrassed by the King's excesses of preferment. Unable to trust even his own standing army, James II committed the ultimate affront to the English nation by sending for an Irish army commanded by a Catholic Irish peer to cross the Irish Sea to protect him.

At the instance of prominent Englishmen of many stripes, in November 1688 the King's 38-year-old son-in-law William of Orange, Prince of Holland, landed in Devonshire with a mighty force of Dutch and English troops who had served on the Continent, escorted by an equally impressive war fleet. Before battle could be joined, James II fled with his family to France, his Irish army disbanded and dispersed, and William of Orange entered London in triumph without a fight. In February 1689 William and his English wife, Mary, were proclaimed co-sovereigns for their joint lives. (William, however, was to do the ruling, which he did until his death in 1702.)

### **The Demise of Maryland as a Secular Colony**

In 1661 Cecil Calvert had replaced his brother with his 23-year-old son and heir, Charles, as Maryland's governor. Charles Calvert governed, and then after his father's death in 1675 ruled as a Lord Proprietor in residence for 14 more years, during which the colony prospered and grew. Most new arrivals were Protestants, and most Protestants who professed any faith at all were Anglicans. As anti-Catholic sentiment revived and reached crescendo with the flagrant espousal of Catholicism by James II, it rose in Maryland as well. Anglican protestations of the paucity of state-supported Anglican clergy in Maryland to minister to the spiritual needs of an increasingly irreligious population (ignoring the fact that Catholics got no support either) reached a sympathetic audience in the Church of England.



*Courtesy of Historic St. Mary's City Archives*

*Chapel at Historic St. Mary's City*

Charles Calvert was neither the man nor the politician his father had been. Having been away from England for so many years, he also had no friends or powerful allies in government. His response to the unrest in his colony and complaints of a “papist tyranny” was to retrench and become ever more Catholic in his own circle of advisers, governmental appointments, and preferments. In 1689, the year of William of Orange’s successful coup de état in England, Maryland Protestants followed his example by deposing the third Lord Baltimore and relieving him of his colony. Ratification was quickly forthcoming from the government of William III, and a royal governor soon took control of the colony.

In 1692 the Assembly voted to establish the Church of England as the official religion of Maryland. Three years later it moved the capital from St. Mary’s City to Annapolis where it remains today. The “Maryland Designe” so presciently envisioned by the first Lord Baltimore and nurtured by the second had expired. Charles Calvert died in England in 1715, the last of the Lords Baltimore of Maryland.

St. Mary’s City was never a “city” as such, but it was a thriving village for over 60 years. Over 200 people resided there permanently at one time, and the population expanded when the Assembly was in session. There were taverns and hostels, artisans’ and tradesmen’s shops, a print shop, and private dwellings with gardens lining the streets. It even had a fort or two for defense in times of trouble. After 1695 it was abandoned, and its remnants sank slowly into the soil of southern Maryland where it was planted over in corn and tobacco for the next 300 years. Some of it still remains underground today.

### **A Lesson Yet To Be Learned**

Contrary to a misperception common even in Maryland, neither Calvert ever envisioned his colony as a haven for persecuted Catholics. When proposals were put forth at times of the most intense anti-Catholic sentiment in England to deport all of its Catholics to Maryland, Baltimore was conspicuously silent, although he would clearly have been a beneficiary. To Baltimore’s mind, if Maryland was to be a religious haven for anyone, it should be so for all pious Englishmen of any denomination who wanted to be left alone by pious people of other persuasions, and above all by the government.

Religion has been an integral part of American national life since its inception, but Americans wanted no repetition of the religious travails of the mother country. And so the Americans, over 100 years after Baltimore’s audacious experiment, erected a metaphysical legal “wall between church and state.” The Americans who adopted a charter of government for the new United States of America demanded a First Amendment to the document that emanated from Philadelphia in 1787 in order to foreclose Congress from intermeddling in matters of religion, but this was not because they were fully convinced that religion was not the proper business of government. It would remain the province of the state governments, not the new national one, to regulate religion, which most of them still did to greater or lesser extent. Eleven of the 13 original states, including Maryland, had “established” churches, although others were tolerated. Not until

the 14th Amendment did the Bill of Rights of the U.S. Constitution extend to state as well as the federal government, and not until 1947 did the Supreme Court declare that no government, state or federal, could support or prohibit religious activity of any sort so long as it did not threaten public order.

Today we are still a religious people, but of many diverse faiths. Yet we have a stable, functional national as well as state government which does not trouble us much about how we worship or aid us in doing so. (So, of course, does England, but it is also true that by law England will never have a Catholic monarch again.) We are proud of the religious liberty that characterizes our American way of life, and we ask why can't other nations learn to do it. In the 1990's, we watched with dismay as Yugoslavia, once a functioning nation-state, disintegrated into a host of provinces ready to massacre one another over religious grievances that dated back to medieval times. Today, we are exasperated over the inability of the Iraqis to form a working government able to suppress or sublimate religious animosities dating back even further. Does it take an autocratic government to do so? Must all the world's boundaries be redrawn to embrace only single homogeneous people with a common religion within the same territory?

Surely stable nations sharing a common religious faith don't go to war with one another. Or do they? Our own Civil War had much of a religious fervor to it. And it was not so long ago that we were at war with an ostensibly Christian Germany whose soldiers wore belt buckles embossed with "Gott Mit Uns," while Americans "praised the Lord and passed the ammunition."

## Photograph Reference

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**Page 3:** *Religious & civil liberty established in Maryland in 1649.* Designed, engraved & published by James Barry, R.A. Feby. 28 1793. Courtesy of the Library of Congress.

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### **Purpose and Inspiration for Our Work**

The Center for the Study of Democracy was founded as a joint initiative of St. Mary's College of Maryland and its partner institution, Historic St. Mary's City, the site of Maryland's first capital. The purpose of the Center is to explore contemporary and historical issues associated with democracy and liberty in national and international contexts. The Center provides a forum for presentations by government officials, journalists, and scholars; publishes scholarly writings on subjects of civil governance; encourages and supports public participation in political processes; and engages undergraduate students in study and research on related subjects.

Founded in 1634, the English colony of Maryland represented the first attempt in English-speaking world to establish effective civil government unencumbered by concerns with the religious beliefs of its citizens. "Liberty of conscience" in religion, representative political practices, freedom of the press, the importance of the rule of law, defense and liberty as well as minority rights are all a part of the history of St. Mary's City as Maryland's first capital. Although Maryland's experiment in religious toleration did not survive, the Center commemorates that effort by examining the origins and causes of dysfunction in democratic process, religious and otherwise, and celebrating its accomplishments in the quest for just and durable popular government.





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