

THE RELIGIOUS CLAUSES IN THE UNITED STATES CONSTITUTIONS*

BRENDAN SULLIVAN, O.P.

CHAPTER I

THE STATUS OF ESTABLISHMENT ON THE EVE OF THE REVOLUTION



ARTICLE SIX, section three, of the United States Constitution reads: "No religious tests shall ever be required as a qualification to any office or public trust under the United States." The first amendment is worded: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." These few words express a principle which is among the great contributions that the United States has made to political economy.

From the time of Constantine to that of Jefferson all nations accepted as an axiomatic truth the necessity of a vital relationship between the Church and State. The principle of declaring for a complete separation of these two societies is of American origin. It is impossible in this dissertation to trace the rise of religious liberty from the foundation of the first colony until the doctrine was crystallized into the fundamental law. It is, however, imperative to trace the growth of toleration in the colonies from the eve of the Revolution to 1787 in order to understand clearly the clauses in our Constitution guaranteeing religious liberty.

Religious liberty as it is set forth by the United States Constitution was not, with the exception of Roger Williams, a tenet of the founders of the Thirteen Colonies. Yet, by the dawn of the American Revolution the majority of the colonies was prepared to grant, if not true religious freedom, at least a toleration in a broad sense.

Varied causes contributed to the growth of toleration in the colonies. The objective truth of toleration as a principle cannot be

* Originally written as a thesis for a Master's degree at Catholic University, this article is republished be-

cause of its timeliness and because copies of the original publication are no longer available.

ascribed as the sole nor even as one of the principal causes that effected the rise of toleration. On the eve of the Revolution, a great many had become skeptical of the idea approving the right of one denomination to monopolize the religion of the State. This changed attitude for the most part must be considered as an effect rather than a cause of toleration.

After the great awakening of 1750 the old religious interests commenced to wane. The religious element remained deep and abiding in the vast majority of colonists, but it no longer dominated their actions. Political, economic and social questions had forced religious considerations into the background. Indifferentism to any particular sect of religion usually becomes the dogma of a large number when they place material affairs as their primary consideration. Such was the case on the eve of the Revolution.¹

Indifferentism may be divided into positive and negative. Under the latter group were enrolled that large number of "unreligious but not irreligious" people. This group, although not hostile to religion as long as it caused them no inconvenience, displayed no zeal in propagating the doctrines of Christianity, or any enthusiasm for institutionalized religion. New interests had caused this indifferent attitude in many of the colonists. In the coast towns shipping and trade had diminished to a great extent the force of religion. In the frontier settlements the struggle for economic security produced the same effect. Political changes illustrated by the rise of civil as opposed to the religious form of town government, and social changes indicated by the rise of individualism, had weakened the power that organized religion exercised over the people. The large number of indentured servants, paupers and criminals could not be counted as an asset to religion.²

The positive indifferentists, although small in number, possessed no small degree of influence. This group propagated deistic principles. For the most part their crusade was a reaction against the Calvinistic doctrine of determinism, a teaching of the Congregational and Presbyterian denominations. The literature of the positive indifferentists was represented on the conservative side by Cotton Mather and Bishop Berkely; on the radical side by Benjamin Franklin and Thomas Jefferson.³

¹ Ellwood Patterson Cubberly, *Public Education in the United States*. New York, 1934. p. 62.

² *Loc. cit.* pp. 59 ff.

³ Isaac Woodbridge Riley, *American Philosophy, The Early Schools*. New York, 1907, p. 191.

By the eve of the Revolution a deistic propaganda had planted the seed of skepticism in the strongholds of orthodoxy. Deism was undermining the doctrinal foundation of the Christian churches. The better educated classes of both the clergy and the laity either modified or completely rejected the doctrine teaching the total depravity of human nature.⁴

Ezra Stiles admitted that infidelity was making headway in New England. Writing in 1759 he said: "As we are in the midst of the struggle of infidelity I expect no great reformation until that (Revelation) is demonstratively established. . . . I imagine the American morals and religion were never in so much danger as from our concern with the Europeans in the present war. . . . I look upon it that our officers are in danger of being corrupted with vicious principles and many of them I doubt will in the end of the war come home minute philosophers initiated in the polite mysteries and vitiated morals of deism. And this will have an unhappy effect on a sudden to spread deism or at least skepticism through these colonies. . . . The Bellamys of New England will stand no chance with the corruption of deism which, I take it, are spreading apace in this country."⁵

A study of the higher educational institutions reveals that deistic philosophy was entertained as a welcome guest despite the barriers erected against it in the strongly sectarian colleges. Harvard and Yale, strongholds of orthodox Congregationalism, found it necessary to adopt measures prohibiting the infiltration of deism. At Harvard, notwithstanding the prohibitory statutes, the reading of "bad books" became fashionable, the deistic Fillaston and Clarke enjoying the preference over the pietistic Shepherd and Stoddard.⁶ At Yale the suppression prepared the way for the "explosion of the Franco-American deism of Citizen Paine and Thomas Jefferson."⁷

The College of New Jersey, now Princeton University, dedicated to defend the principles of Revelation, also saw deism gain a foothold within its walls. President John Witherspoon found it necessary to lecture against the deistic trio of Clarke, Collins and Wollaston.⁸ Deism received a more friendly reception in the other colleges. At King's College, now Columbia University, a moderate deism was taught.⁹ The College of Philadelphia, the present University of

⁴ *Ibid.*

⁵ Isaac Woodbridge Riley, *American Thought from Puritanism to Pragmatism*. New York, 1915. pp. 215-216, quoting *Stiles Ms.* pp. 469-471.

⁶ *American Philosophy*, p. 209.

⁷ *op. cit.*, p. 218.

⁸ *Ibid.*, p. 227.

⁹ *Ibid.*, p. 219.

Pennsylvania, officially sanctioned the teaching of deism.¹⁰ The College of William and Mary became a stronghold for the deists. The charter of the institution allowed for the liberty of philosophizing. The professors used this prerogative by going so far as to present and uphold the extreme deistic theory. To these instructors many of the nominal Anglicans of the South owed their deistic concept of religion.¹¹

Indifferentism is orthodoxy's most pernicious enemy. Indifferentism, whether it is positive or negative, infallibly creates the opinion that one religion is as good as another. From this point of view the conclusion is drawn that all religions, whatever be their claims, are worthy of the same treatment. In other words, tolerance is a necessary effect of indifferentism, until for economic or political motives, that tolerance becomes burdensome to the indifferentist. So on the eve of the Revolution the objective truth of the principle of toleration, though far from receiving general acceptance, enjoyed much favorable consideration from influential men.

As the colonial period drew to a close, nine colonies supported religious establishments. A religious establishment may be defined as a religious sect fortified, protected, aided and subsidized by the civil government as the official religion of the state. In the New England Colonies, with the exception of Rhode Island, the Congregational Church was established. In the Middle Colonies, New York alone recognized the Anglican Church as the state church. The other three colonies, Pennsylvania, Delaware and New Jersey, favored no particular sect. The Anglican was the official church of the Southern colonies.¹²

In Massachusetts, Connecticut and New Hampshire, the vast majority of the colonists were fervent communicants of the state church. So Congregationalism, besides being legally established, also had the approval of the public mind.¹³ The Anglican establishments were not so fortunate. The non-conformists held an overwhelming majority in every state where the Church of England ruled as the established order. This meant that most of the influence exerted by the Anglican Church was derived from her legal position. In three states, New York, South Carolina and Virginia, the laws had endowed her

¹⁰ *Ibid.*, p. 228.

¹¹ Riley, *American Thought*, p. 77.

¹² Claude Halstead Van Tyne, *The Causes of the War of Independence*, Vol. I of *History of the Founda-*

tion of the American Republic. Boston and New York, 1922. p. 347.

¹³ Alice Baldwin, *The New England Clergy and the American Revolution*. Durham, N. C., 1928. p. xii.

with extensive powers. Maryland granted considerably less. In North Carolina and Georgia the establishment received little support legally and still less from the people.¹⁴

Although on the eve of the Revolution "of all the denominations, the most powerful and influential were the Congregational and the Anglican,"¹⁵ both these establishments suffered from internal as well as external strife. In the final analysis, the great awakening of 1740 hindered more than helped the Standing Order of New England. This sentimental revival not only helped the emotional ministers of the Methodist and Baptist churches to convert to their folds many lax Congregationalists, but also caused the schism in the ranks of the state church. The great awakening inflicted an incurable injury on the established order by weakening its doctrinal foundations and by diminishing the power of the orthodox ministers over their parishioners.¹⁶

The Anglican communion, despised and attacked by dissenters, also suffered internal maladies. In the first place, it possessed practically no real organization. The authority of the Bishop of London could be classified as nominal. A provincial historian observed that in the Anglican organization no provincial church government existed.¹⁷ Lack of organization coupled with the laxity of the southern clergy both in discipline and doctrine produced a diseased institution. The clergy of South Carolina from the condemnation of loose living were universally reprobated. Unorthodoxy in doctrine, caused by the reading of the fashionable skeptical literature, blended with the immoral lives to create at best a class of tepid clergymen.¹⁸

The external attacks on the privileges of state churches came principally from the non-conforming sects. The payment of tithes to the establishments was a bitter pill for the dissenters to swallow. They objected so viciously to this injustice that the official churches had to compromise. The cry of the dissenters for the same fair treatment in religious matters as the colonies were demanding from England in political questions made good ammunition with which to attack the forts of the favored organizations.

The Congregational Churches, on account of their unqualified

¹⁴ Robert Baird, *Religion in America*. New York, 1944. p. 184.

¹⁵ Charles McLean Andrews, *Colonial Folk-ways, a Chronicle of American Life in the Reign of the Georges*. New Haven, 1919. p. 163.

¹⁶ Richard J. Purcell, *Connecticut in Transition*. London, 1918. p. 5.

¹⁷ Edward Frank Humphrey, *Nationalism and Religion in America (1774-1789)*. Boston, 1924. p. 195, quoting Douglas Summary, I. p. 230.

¹⁸ Riley, *American Thought*, p. 77.

support of the Revolutionary program, escaped from the abuse heaped upon the Anglican communion for its stand on this issue. At that time, the pulpit being the most direct and effectual means of reaching the people,¹⁹ its support was more than appreciated by the radical party. The sermons of the Congregationalist ministers contained much political philosophy,²⁰ portraying the injustice suffered by the colonies. The Congregational Church as a political organization spread revolutionary propaganda.²¹

The Anglican Church, on the other hand, being the favored of the mother country, was considered the enemy of the colonies. Although it included among its clergy and leading lay members outstanding patriots, the church, due to its official position, was looked upon as a hostile institution.²² On the eve of the Revolution, the controversy over the establishment of an Anglican episcopacy in the colonies caused practically all non-Anglicans to unite for the purpose of blocking the erection of the Anglican hierarchy.²³ The arguments condemning the appointments of bishops intensified the bitterness toward the Church of England.

By the eve of the Revolution, the non-conforming denominations found themselves in a favorable position to demand a broader toleration in religious as well as in civil matters.²⁴ The more influential of the non-established churches were the Presbyterian, Baptist and the Quakers. The lesser of these sects included the Lutheran, the Dutch Reform, the Moravian and the Roman Catholics.²⁵ The Methodists of this time formed an integral part of Anglicanism. They maintained a strict adherence to Anglican traditions.²⁶

Some dissenting sects counted congregations in nearly every colony; others in only two or three. The influence of these churches differed in diverse localities. The Presbyterians, who at this time professed the same theological doctrines as the Congregationalists, exercised their greatest power in the Middle States.²⁷ They also numbered many communicants in the frontier settlements of the Southern colonies.²⁸ Their unqualified support of the colonial program against the Mother country placed them in favor with the promoters of the

¹⁹ Van Tyne, *op. cit.*, p. 355.

²⁰ *Ibid.* p. 365.

²¹ Baldwin, *op. cit.*, pp. 5-6; 85-91.

²² Humphrey, *op. cit.*, p. 47; Baird, *op. cit.*, pp. 196-197.

²³ Van Tyne, *op. cit.*, pp. 349-352.

²⁴ Baird, *op. cit.*, p. 263.

²⁵ *Ibid.*, pp. 103-104.

²⁶ Humphrey, *op. cit.*, p. 169.

²⁷ Reuben Aldridge Guild, *Life, Time and Correspondence of James Manning and the Early History of Brown University*. New York, 1864, p. 186.

²⁸ Baird, *op. cit.* p. 486.

Revolution, who realized that the yearly synod of this sect constituted the strongest inter-colonial organization.²⁹

The Baptists, although small in numbers, counted churches in nearly all the colonies. Their strength lay in Rhode Island where they held much control in the legislature.³⁰ The Quakers also exercised effective influence in political and religious questions. The political power of this society in both Pennsylvania and Delaware was second to no other denomination.³¹

Before discussing the status of religious toleration in each colony on the eve of the Revolution, some observations applicable to the colonies in general will not be amiss. Religious toleration may be defined as the principle recognizing that all religious sects are not equal, and, while one or more forms of religion have a just right to be legally sanctioned, others, though not justly deserving of protection, may, when the common good demands, be allowed to worship as their constitution prescribe. At this period every colony granted some toleration. Yet the most liberal did not exceed an "equal toleration of Protestantism."³²

Catholics, Jews, and those liberals who could not accept doctrines regarded as the common dogmas of Christianity, were denied political equality. In Pennsylvania alone the Catholic Church possessed legal toleration.³³

Toleration considered not from its legal expression but from the viewpoint of the popular mind brings out the intolerant attitude generally prevailing in the colonies. To the colonial mind only Christians of Protestant persuasions were capable of qualifying for public offices or citizenship.³⁴ On account of the small number of Catholics the intolerance towards Catholicism amounted to little more than an academic bigotry. The traditional hatred of Catholics intensified by the wars with Spain and France, was exploited by politicians so that the Quebec Act, a section of which granted concessions to the Catholic Church in Canada, would be repealed.³⁵

Toleration granted to non-conforming denominations, even the equal rights enjoyed by the Protestants of both Rhode Island and

²⁹ Humphrey, *op. cit.*, p. 66.

³⁰ Guild, *op. cit.*, p. 42.

³¹ Humphrey, *op. cit.*, p. 131.

³² Evarts B. Greene, "Persistent Problems of Church and State" in *American Historical Review*, XXXVI, no. 2, Jan. 1931, p. 262.

³³ Peter Guilday, *The Life and Times of John Carroll*. New York, 1922, p. 60.

³⁴ Sanford H. Cobb, *The Rise of Religious Liberty in America*. New York, 1922, p. 60.

³⁵ Greene, *loc. cit.*, pp. 36-81; Humphrey, *op. cit.*, pp. 401-405.

Pennsylvania, resulted more from compromise than from the liberalism of the colonial mind. These compromises were brought about chiefly by the dissenting denominations who waged a bitter battle to obtain the same equality as the state churches.

The three religious organizations most influential in promoting the cause of toleration were the Presbyterians, Baptists and Quakers. The Presbyterians played a more selfish part, working energetically and effectively in demanding liberty for themselves alone; while the Baptists and Quakers fought for freedom for all Protestant denominations. The active labor in this crusade must in the main be credited to the Baptists.³⁶

The Baptist doctrine on religious freedom as printed in petitions, pamphlets, and articles, was stated clearly in an article by Isaac Backus in an essay entitled, "An Appeal to the Public for Religious Liberty against the Oppressors of the Present Day." In this appeal, published at Boston in 1773, Backus states: "The free exercise of private judgment, and the inalienable rights of conscience, are of too high a rank and dignity to be submitted to the decrees of the councils, or the imperfect laws of fallible legislators. The merciful Father of mankind alone is the Lord of conscience. Establishments may be enabled to confer worldly distinctions and secular importance. They may make hypocrites, but cannot create Christians. They have been reared by craft or power, but liberty never flourished perfectly under their control. . . . Happy in the enjoyment of these undoubted rights, and conscious of their high import, every lover of mankind, must be desirous, as far as opportunity offers, of extending and securing, the enjoyment of these inestimable blessings."³⁷

The minority usually fights for true toleration. Campaigning merely for their own selfish interests would avail them little. Had the Baptists struggled to gain equality for themselves alone, their protest would attract no sympathy from other denominations, as their influence socially and politically could be justly described as negligible.

In studying the status of the church and toleration in each individual colony, we will first consider the New England division; then the Middle, and finally the Southern.

In Massachusetts the Congregational church was the legally established religious society. Its great influence in religious as well as political affairs must be ascribed not only to its legal standing but also to the support given it by the vast majority of its population.

³⁶ Guild, *op. cit.*, pp. 36-81; Humphrey, *op. cit.*, p. 321.

³⁷ Humphrey, *op. cit.*, p. 331, quoting Backus: An Appeal. . . .

John Adams' description of the New England man as "a meeting going animal" applied especially to the Puritans of Massachusetts.³⁸ Adams also pictured the church as the fundamental institution of the colony when he observed, "they might as well turn the heavenly bodies out of their annual and diurnal courses, as the people of Massachusetts from their meeting houses and Sunday Laws."³⁹ On the eve of the Revolution the Congregational church was described "as the Standing Order which looked upon all others as dissenters. In the several communities the Congregationalist meeting-house was the town church, serving the whole town and supported by tax levied proportionally upon all citizens and denizens of the town."⁴⁰

Although the Anglicans, Baptists and Quakers received exemption from paying rates to the established church, the toleration granted was to a great extent theoretical, due to the restrictive clauses of these statutes which to say the least, were irksome.⁴¹

Puritan bigotry manifested itself against Catholicism, Anglicanism and all other dissenters, especially the Baptists. The bigotry towards Catholicism had to be academic, since no practical Catholics lived in the colony. The Suffolk County resolution, passed September the sixth, 1774, brings out the Puritan's dread of Catholicism. The resolution was worded: "that the late act of Parliament for establishing the Roman Catholic Religion and the French laws in that extensive country, now called Canada, is dangerous in an extreme degree to the Protestant religion and the civil rights and liberties of all Americans; and therefore, as men and Protestant Christians, we are indispensably obliged to take all proper measures for our security."⁴²

The Quakers and Baptists were despised by the Puritans as belonging to a lower social order and they stigmatized the Anglicans as traitors plotting to overthrow the Standing Order.⁴³ The Baptists, due to their active campaign to obtain religious equality, underwent more than a mild persecution. In 1769 the Warren Association of the Baptist Church petitioned the General Courts of Massachusetts and Connecticut protesting against the religious persecution being suffered by the Baptists of those states. Backus, a contemporary Baptist his-

³⁸ Van Tyne, *op. cit.*, p. 326, quoting the *Works of John Adams*, II, p. 65.

³⁹ Humphrey, *op. cit.*, p. 333, quoting *Works of John Adams*, II, pp. 387-399.

⁴⁰ Joseph Francis Thorning, S.J., *Religious Liberty in Transition*, Wash-

ington, D. C. 1931, p. 14.

⁴¹ *Ibid.*

⁴² Guilday, *op. cit.*, p. 76, quoting *Journals of the Continental Congress*, I, pp. 34-35.

⁴³ Humphrey, *op. cit.*, p. 47; Baird, *op. cit.*, pp. 196-197; Thorning, *op. cit.*, p. 14.

torian, said: "Many of the letters from the churches mentioned grievous oppressions and persecutions from the Standing Order, especially the one from Ashfield, where religious tyranny has been carried to the greatest lengths.⁴⁴ As the representative of the New England Baptists before the Continental Congress, he may have magnified the grievances inflicted on his co-religionists, but the statements of such leading colonial Baptists as John Manning, first president of Brown University, John Gano, Hezekiah Smith, as well as the reports received by the Committee of Grievances of the Warren Association of Baptists, prove conclusively that the Puritans gave vent to their hate for the Baptists by inflicting cruel punishments upon them.⁴⁵

The Baptists refused to take these persecutions passively. They published pamphlets and petitions denouncing the unjust treatment. In 1773 some refused to meet the requirements of the provincial laws in regard to tithes demanded for the support of the church.⁴⁶ Taken all in all, despite the seeping in of indifference, the weakening of orthodoxy, as well as the increase in dissenting ranks, it cannot be questioned that on the eve of the Revolution the Congregational church of Massachusetts held a domineering position.

CONNECTICUT

The Congregational Church, the established church of Connecticut, enjoyed a position similar, though a little less influential, to that of the Standing Order of Massachusetts. Not only were the majority of the people faithful communicants of the establishment, but dissenters, with the exception of those living in the vicinity of their own chapel, were by law Congregationalists.⁴⁷

The toleration laws of Connecticut were interpreted too strictly to allow a high degree of religious freedom. These laws granted to the Anglicans, Quakers, Baptists and Separatists exemption from the payment of tithes to the Standing Order, provided they were members of an organized society existing within reasonable limits. The money collected from non-conformists was used for the upkeep of their own ministers and churches. The prejudiced interpretation of the officials in making two miles a reasonable limit, took away any broadness of toleration that the form of the law seemed to intend.⁴⁸

⁴⁴ Guild, *op. cit.*, p. 80, quoting Backus' *History of New England*, with particular reference to the denomination called Baptist.

⁴⁵ *Ibid.*, pp. 81-82, 263; Humphrey, *op. cit.*, p. 117.

⁴⁶ Baldwin, *op. cit.*, p. 109.

⁴⁷ Purcell, *op. cit.*, pp. 48-49.

⁴⁸ *Ibid.*, pp. 48-49, 65-67.

Various symptoms indicating the commencement of an unhealthy condition may be noticed in the organism of the Congregational church. The great awakening had created a schism in the ranks of the Standing Order. Persecution both legal and social failed to break the schism, and the Old Lights had to witness the spectacle of seeing many of its own members becoming zealous New Lights.⁴⁹

Even the species of theology taught at Yale was not relished by all faithful Congregationalists. Charles Chuncy in a letter to Ezra Stiles in 1774 protested against the religious instruction given at Yale, claiming: "Connecticut, I expect, will be the first New England colony that will generally give in to Episcopacy. And, in truth, I had much rather be an Episcopalian, or that others should, than that I or they should be Hopkintonians. The new Divinity so prevalent in Connecticut will undo the colony. 'Tis as bad, if not worse than paganism. 'Tis a scandal to Yale College, and those who have the government of it, that they retain there and teach their students, the very quintessence of pagan fatality, with all its genuine consequences."⁵⁰

The bitterness with which the Standing Order viewed the growth of the Anglican communion indicated a weakness in the state church. The dissatisfaction with this increase received expression in the unfair political, social, and, in a few instances, legal treatment of the Anglicans.⁵¹

The Baptists waged their campaign especially against the taxation for the support of the established church. Despite their fewness in number, they inflicted no little damage on the Congregational organization, according to the opinion of the Reverend Thomas Robbins: "The disorganizing principles of the Baptists do considerable damage."⁵²

Despite its internal and external enemies, the established Congregational church of Connecticut, on the eve of the Revolution, wielded enormous influence, not only in religious but also in social and political affairs. To be a member of any but this communion designated one as an outcast.

NEW HAMPSHIRE

New Hampshire supported the Congregational church as the Standing Order. The laws regulating this institution as the official

⁴⁹ *Ibid.*, p. 66.

⁵⁰ Franklin Howditch Dexter (ED.) *Extract from the Itineraries and Other Miscellanies of Ezra Stiles*,

etc. New Haven, 1916. p. 451.

⁵¹ Purell, *op. cit.*, p. 50.

⁵² *Ibid.*, quoting Robbins' *Diary*, I, p. 90.

religion were enacted in 1692, 1702 and 1714; and were still enforced at the dawn of the Revolution.⁵³

These statutes obliged the town to choose a minister and arrange for his salary by assessing the inhabitants, "provided, that this act do not at all interfere with their Majesties' grace and favor in allowing their subjects liberty of conscience; nor shall any person under pretense of being a different persuasion, be excused from paying towards the support of the settled minister or ministers of the towne, but only such as are conscienciously so and constantly attend public worship of God on the Lord's day according to their own persuasion."⁵⁴

Dissenters found it most difficult to receive the benefit of the law exempting them from tithes. The authorities examined minutely and prejudicedly the testimony of one applying for exemption.⁵⁵ "At every point his evidence was contested by the state."⁵⁶ So New Hampshire, like its sister colony of Massachusetts offered little toleration to anyone outside the chosen fold.

RHODE ISLAND

Rhode Island recognized no legally established church. Her charter legislated that: "No person within the said colony, at any time hereafter shall be any wise molested, punished, disquieted, or called into question for any difference of opinion in matters of religion, who do not actually disturb the civil peace of our said colony; but that all and every person and persons may, from time to time, and at all times hereafter, freely and fully have and enjoy his own and their judgments and consciences, in matters of religious concerns, throughout the tract of land hereafter mentioned, they behaving themselves peacefully and quietly, and not receiving this liberty to licentiousness and profaneness, nor to the civil injury or outward disturbances of others; any law, statute, or clause therein contained, or to be contained, usage and custom of this realm, to the contrary hereof, in any wise notwithstanding."⁵⁷

A statute appearing for the first time in the digest of laws of 1716 but according to some historians purported to be cast "at some time after 1688,"⁵⁸ denied citizenship to Roman Catholics. In the later

⁵³ Thorning, *op. cit.*, p. 145.

⁵⁴ *Ibid.*, pp. 145-146, quoting *Provincial Papers*, III, p. 189.

⁵⁵ *Ibid.*, p. 146.

⁵⁶ Cobb, *op. cit.* p. 299.

⁵⁷ Benjamin Perley Poore, *The Federal and State Constitutions, Colonial and Other Organic Laws of the United States*, II, pp. 1596-97.

⁵⁸ Cobb, *op. cit.*, p. 437, quoting, Fisher, *History of the Church*, p. 479.

digests of 1730 and 1767 the same denial to Catholics reappeared. Arguments have been offered to prove the disenfranchisement of the Catholics was contrary to the broad tolerant view of the colonial Rhode Islanders. The insertion of such a narrow principle into the laws was ascribed to the work of some "time-serving official anxious to curry favor with the British court."⁵⁹

Yet the charter granted to Brown College in 1764 prohibited Catholics from holding any office in the college. That the toleration of Rhode Island extended only to Protestants can find another strong argument in the refusal of the Superior Court in 1762 to allow fifteen Jewish families to become naturalized. Ezra Stiles commenting on the Jewish petition for naturalization said: "Tho' the Naturalization Act passed the Parliament a few years ago, yet it produced such a national disgust towards the Hebrews, that the Jews themselves joined in petition to Parliament to repeal that act, and it was thereupon repealed for Britain. And tho' it was continued by way of permission in the Plantations upon the seven years' residence, yet the tumult at New York in the procuring the taking place of their naturalization there, the opposition it has met with in Rhode Island, forbodes that the Jews will never become incorporated with the people of America, any more than in Europe, Asia and Africa."⁶⁰ It seems to be a logical inference to suppose that legally disenfranchised Catholics would receive no better treatment than the Jews.

When considering the broad toleration granted in Rhode Island, it should be remembered that this colony was the stronghold of the Baptists,⁶¹ a sect fighting for religious freedom in colonies where an established church existed. So if the Baptists of Rhode Island tried to legislate in favor of their church their pleas for religious freedom would be as "sounding brass and tinkling cymbals."

The charter of Brown University offers an interesting example of toleration effected by compromise rather than by principle.⁶² Although controlled by the Baptists, the college was exceedingly liberal for the period. Its charter in the part regulating religion reads: "And furthermore, it is hereby enacted that into this liberal and catholic institution shall never be admitted any religious test, but on the contrary, all the members hereof shall forever enjoy full, free, absolute, and uninterrupted liberty of conscience; and the places of professors,

⁵⁹ Thorning, *op. cit.*, p. 140.

⁶⁰ Stiles, *op.*, p. 53.

⁶¹ Reuben Aldridge Guild, *The History of Brown University*, Provi-

dence, 1867.

⁶² Guild, *Manning, and Brown University*, pp. 49-51.

tutors, and all other officers, the president alone excepted, shall be free and open for all denominations of Protestants; and that the youth of all religious denominations shall and may be freely admitted to equal advantages, emoluments, and honors of the college or university, and shall receive a like fair, generous and equal treatment during their residence therein—they conducting themselves peaceably, and conforming to the laws and statutes thereof; and that the public teaching shall, in general, respect the sciences; and that the sectarian differences of opinion shall not make any part of the public and classical instruction; although all religious controversies may be studied freely, examined, and explained by the president, professors, and tutors, in a personal, separate, and distinct manner, to the youth of any and each denomination; and, above all, a constant regard shall be paid to and effectual care taken of, the morals of the college.”⁶³ Only by allowing such a generous toleration could the Baptists hope to secure the charter.⁶⁴

Some Baptists protested against such liberalism. They were answered by the leading Baptists, who, sympathizing with their views, showed them that only under such a guarantee of toleration could the charter be obtained and the college hope to exist. For it was the opinion of these ruling Baptists that no sectarian college could have succeeded under the exclusive patronage of a despised and oppressed denomination.⁶⁵

It must also be noted that a law of Brown University enacted in 1774, commanded all Christian students to profess those doctrines common to orthodox Christianity. The law proclaimed: “If any student of this college shall deny the Being of God, the existence of virtue and vice; or that the book of the Old and the New Testaments are of divine authority, or suggest any scruples of that nature, or circulate books of such pernicious tendency, or frequents the company of those who are known to favor such fatal errors, he shall for the second offense be absolutely and forever expelled from this college. Young gentlemen of the Hebrew nation are to be exempted from this new law as it relates to the New Testament and its authenticity.”⁶⁶

Such restrictions and prohibitions in the laws indicate the intolerance of even the liberal institutions. It is interesting to note that the exemption made in favor of the Hebrews came after the Jewish merchants of Charleston, South Carolina offered to donate generously

⁶³ *Ibid.*, p. 532.

⁶⁴ Guild, *History of Brown University*, p. 8.

⁶⁵ Guild, *Manning*. . . .

⁶⁶ *Ibid.* p. 306.

to the institution, if its toleration extended to Hebrews, proving that bigotry and intolerance could be more easily expelled by the power of the pocketbook than by the principle of enlightenment.

At the dawn of the Revolution the legal toleration of Rhode Island was much in advance of the other colonies. It is, however, difficult to see where the colonists considered as individuals possessed any greater enlightenment in regard to the objective truth of toleration than the inhabitants of other sections. Toleration of what we do not like almost always results from compromise. Certainly no more love existed between the sects in Rhode Island than elsewhere. Rhode Island did promote legal toleration. It did not propagate the doctrine of toleration as a valid principle.

MIDDLE COLONIES

NEW YORK

New England, on the eve of the Revolution, presented a greater solidarity than any other section of the country. Here, with the exception of Rhode Island, the Congregational church not only possessed the establishments but also counted the majority of the population as its communicants. Even in Rhode Island the strength of the Congregationalists had to be given more than a minor consideration. Such was not the case in the Middle Colonies. In this section one colony supported a state church, the Anglican being the official religious society of New York. New Jersey, Pennsylvania and Delaware favored no specific denomination.

In New York the legal privileges granted the Anglican communion made it a powerful institution. This influential position accorded to it solely by law, was directly opposed to the will of the people. For it is estimated that only one-fifteenth of the population were Anglicans.⁶⁷

The establishment continually sought to strengthen its position. Frequently it demanded favor from the civil government. The arrogance of such a small minority imbued the non-conforming sects with anger and fear.⁶⁸ The attitude of the other denominations toward the Anglicans was described by William Smith, a contemporary historian. Writing about 1770 Smith declared: "The Episcopalians are in proportion to one to fifteen (New York). . . . The body of people

⁶⁷ Cobb, *op cit.*, p. 361, quoting *Smith's History of New York*, I, p. 337.

⁶⁸ *Ibid.*, p. 361.

are for an equal universal toleration of Protestants, and utterly adverse to any kind of ecclesiastical establishment. The dissenters, though fearless of each other, are all jealous of the Episcopal party, being apprehensive that the countenance they may have from home will foment a lust of dominion and enable them in the process of time to subjugate and oppress their fellow subjects."⁶⁹

The non-conformists did not allow the domination of the Episcopalians to go unchallenged. The Lutherans in 1763 and the Presbyterians in 1775-76, petitioned the authorities for a charter legally incorporating them.⁷⁰ Their requests were denied; nevertheless, as the colonial period drew to a close, all non-conforming churches secured the same broad toleration granted to the Dutch Reform Church in years past. By this toleration each denomination obtained complete regulation of its own affairs and also freedom was granted from the interference of the magistrates.⁷¹

The fight to prevent Episcopal control was carried into the educational field. The non-conformists campaigned vigorously to block the Episcopalians in their design to secure exclusive control over King's College, now Columbia University.⁷² Success rewarded the efforts of the dissenters in this fight. For although the charter granted to the college in 1754, expressly stated that only an Episcopalian could qualify for the presidency, it admitted Protestants of any denomination to the professorship.⁷³

The announcement made on the opening of the college indicates that toleration could be gained when an institution required the cooperation of all sects. The announcement read: "That as to religion, there is no intention to impose upon the scholars the peculiar tenets of any particular sect of Christians. . . . As to any peculiar tenets everyone is left to judge freely for himself and to be required to attend only such places of worship on the Lord's Day as their parents or guardians shall think fit to order or permit."⁷⁴

The establishment in New York representing a small and despised minority by its loyalty to the mother country found itself in a most precarious condition when the colonies severed relations with England.

⁶⁹ Cobb, *op. cit.*, p. 473, quoting Smith's *History of New York*, I.

⁷⁰ Edmund Bailey O'Callaghan (Ed.) *Documentary History of New York*. Albany, 1849. III, pp. 295-299; 302, 307.

⁷¹ Cobb., *op. cit.*, p. 325.

⁷² Van Tyne, *op. cit.*, p. 366; Smith's *History of New York*, II. pp. 232-289.

⁷³ Ezra Stiles, *op. cit.*, p. 424.

⁷⁴ Cubberly, *op. cit.*, p. 61.

NEW JERSEY

In New Jersey the royal officials strove to have the Anglican church recognized as the state church, but met with little success.⁷⁵ Because of its negligible minority the Episcopal communion exerted practically no influence over the lives of the colonists. Of the many flourishing sects located in New Jersey, the Presbyterians, powerful both politically and socially, held the most influential position. In opposition to the Episcopal King's College in New York, the Presbyterians founded the College of New Jersey, now Princeton.⁷⁶

The charter of the latter institution proclaimed equal privileges and educational advantages to those of every religious profession. The administration of the school never attained such an ideal, but showed itself a staunch defender of Presbyterianism.⁷⁷

The college was also expected to serve as a bulwark against Episcopalianism. Doctor Allison wrote to Ezra Stiles in 1769: "Our Jersey college is now talking as if she was soon to be the bulwark against Episcopacy: I should rejoice to see her pistols like honest tagues, growing up into great guns."⁷⁸

The Anglican government officials resented the absolute Presbyterian control of the college. Governor Barnard planned to remedy this domination by proposing: "to alter the constitution and to introduce half the government of it to Episcopalians: when in the remonstrances and opposition of the trustees Reverend Alex. Cumming asserted that all the Episcopalians do not amount to a fortieth part of the white inhabitants."⁷⁹

The Dutch Reform church established Queen's College, now Rutgers, in opposition to Princeton. Commenting on the granting of a charter to the new college, a leading Presbyterian claimed that it was given by Governor Franklin "doubtless with the most unfriendly intentions against the present college and the interests with the Presbyterians in general, on account of their opposition to his father's politicks, and notwithstanding this as well as other alarming dangers should drive us into unity, seeing we cannot do it from a principle of respect to our Divine Master's command: I'm sorry to see a little prospect of it soon taking place."⁸⁰

These conflicts in the educational field prove that toleration in New Jersey as elsewhere was a matter of compromise.

⁷⁵ Cobb, *op. cit.*, p. 418.

⁷⁶ Riley, *American Philosophy*, p. 226.

⁷⁷ *Ibid.* p. 227.

⁷⁸ Stiles, *op. cit.* p. 424.

⁷⁹ *Ibid.* p. 25.

⁸⁰ *Ibid.* p. 559, quoting *Letter from Samuel Purviance, Jr.*

PENNSYLVANIA

Pennsylvania favored no particular sect. Its laws permitted freedom of worship to all Christian denominations, including the Roman Catholic.⁸¹ Intolerant statutes, however, disenfranchized Roman Catholics along with the Jews and Socinians.⁸² The Catholics, thankful for the omission of the customary laws branding them as undesirable inhabitants, uttered no protest against the curtailment of their civil rights. The legal toleration granted to the Protestants did not create a spirit of harmony among them. The Presbyterians disputed with the Quakers; both of them suspected the Anglicans. This condition is described by Reverend Doctor Francis Alison, a Presbyterian, and a leading professor of the College of Philadelphia, now the University of Pennsylvania. Alison, writing to Stiles in 1764, said: "You greatly alarm me by saying that there are attempts making at home to resume the New England provincial charters, some madness has taken possession of the assembly of this province, for they are doing all they can to persuade their constituents to petition for a King's government; if we do, we will unavoidably have a new charter and a very disagreeable abridgement of our privileges. The Episcopal party are very uneasy, that their power here is not equal to what it is in England. And the fears that our colonies will sometime hereafter shake off their dependence on the mother country, will, I fear, induce the English Parliament to introduce a test; or at least confine all officers of the army and revenue to members of the Episcopal church. Our debates run high in this province at this time, between the Presbyterians and Quakers, who of all others should unite most heartily in defence of liberty. I know not how the quarrel began, for there have been great complaints that our frontier counties have been neglected under the severities of an Indian War, and this arose from a want of an equal number of representatives; the three interior counties sending twenty-six, who are Quakers or under Quaker influence, and the five frontier counties being mostly of the other denominations, sending but ten, though the charter has allowed every county to send an equal number. One county mostly Presbyterian sent down a petition signed by about twelve hundred persons, praying for a redress of grievances, and among others for an equal share in legislation. This produced a most scurrilous piece called a looking glass for Presbyterians, in which it is roundly asserted that they should have no share in the government; I herewith send you a copy as he pays his respect

⁸¹ Guilday, *op. cit.* p. 60.

⁸² *Ibid.* p. 452.

to your New English men. But I fear the consequence of these squabbles; the mice and the frog may fight, till the Kite devours both."⁸³

In 1775 the College of Philadelphia was founded. Its charter, a most tolerant doctrine, required no religious test from the faculty, permitting them to profess doctrines ranging from radical deism to strict Presbyterianism.⁸⁴ Yet, according to Dr. Alison, writing to Ezra Stiles in 1776, the Episcopalians had gained control of the institution. What is more a great number of Presbyterians were opposed to the school. Dr. Alison's letter said: "The College is artfully got into the hands of Episcopalian trustees. Young men educated here get a taste for high life and many of them do not like to hear the poverty and dependence of our ministers. Those that pass trials for the ministry meet with hard treatment from the brethren that favor Jersey College, and can hardly find settlements, and under that discouragement they are flattered and enticed by their Episcopalian acquaintances to leave such bigots and go to London for Orders. Now two or three of our ablest young men are ready to sail for London for this purpose; this makes parents uneasy, and Jersey College is so unfit to make scholars, that we have no great pleasure to send them there; we would hope that they will now put the Seminary on a better foundation."⁸⁵

On the eve of the Revolution the same bigotry flourished in Pennsylvania as in the Colonies supporting established churches. Despite the toleration granted to all Christian religions, the oath for naturalization restricted religious liberty.⁸⁶ The oath demanded a belief in the Trinity and divine inspiration of the Scriptures. It also condemned the Catholic doctrine of the Sacrifice of the Mass, the veneration of Mary and of the Saints.⁸⁷

DELAWARE

Delaware separated from Pennsylvania in 1702. It adopted ecclesiastical legislation similar to that of the mother colony. Only Protestants believing "Jesus Christ, the Son of God, is the Saviour of the world" qualified for citizenship. Delaware's history records no case of religious persecution. It showed much less concern about religious matters than did Pennsylvania.⁸⁸

⁸³ Stiles, *op. cit.*, p. 426.

⁸⁴ Riley, *American Philosophy*, pp. 228-230.

⁸⁵ Stiles, *op. cit.*, p. 428.

⁸⁶ Cobb, *op. cit.*, p. 449.

⁸⁷ *Ibid.*, p. 445.

⁸⁸ *Ibid.* p. 453.

THE SOUTHERN COLONIES

The Anglican church exerted influence in only one of the middle colonies. In the five southern colonies the status of Anglicanism was more favorable. In this section the Church of England held a privileged position, not as a result of the popular will, but rather on account of its official position. In Virginia, South Carolina, and to a lesser degree in Maryland, the established order was a powerful factor, notwithstanding the fact that the overwhelming majority of the people were dissenters. In Georgia and North Carolina the Anglican church could be described as a negligible society.

VIRGINIA

In Virginia the Anglican church enjoyed its most influential position. Here because of political rather than religious motives, the establishment had obtained a strong grasp of the official mind.⁸⁹ Until the opening of the Revolution the state retained intolerant laws. Statutes demanding compulsory attendance at the Anglican church as well as requiring tithes from the dissenters were enforced.⁹⁰ The Presbyterians, Quakers and Baptists had obtained exemption from these laws in the years immediately preceding the Revolution.⁹¹

Non-Conformists were denied civil rights as citizenship was limited to Episcopalians.⁹² The dissenters, especially the Baptists, whose vehement attack upon the establishment brought harsh treatment upon them, suffered more in Virginia than in any other colony. In the counties of Orange, Spotsylvania and Cullpepper, Baptist preachers were beaten and imprisoned.⁹³ Although every denomination fought for freedom of worship, only the Presbyterians obtained the privileges by the Toleration Act passed by the English Parliament in 1689.⁹⁴

The Anglican church had to withstand not only the protests from the dissenters, but also from some of its own prominent members. Such leaders as James Madison, Thomas Jefferson and Lawrence Washington openly sympathized with the non-conformists.⁹⁵

The laxity of the clergy in matters of morals contributed greatly

⁸⁹ Cobb, *op. cit.* p. 483.

⁹⁰ W. W. Henning, *Statutes at Large—being a Collection of all the Laws of Virginia. . . . 1618-1792*, IX, p. 164.

⁹¹ *Ibid.*, VIII, p. 242.

⁹² Baird, *op. cit.*, p. 195.

⁹³ William Cabell Rives, *History of the Life and Times of James Madison*. Boston, 1859-1869, I, p. 44.

⁹⁴ Cobb, *op. cit.*, p. 106.

⁹⁵ Charles Campbell, *History of the Colony and Ancient Dominion of Virginia*. Philadelphia, 1860.

in causing the cancerous condition afflicting the Anglican church. Given to fox hunting and convivialities more than to matters pertaining to religion, the clergy rightly earned disrespect for themselves and, what necessarily follows, a hate for the church they represented.⁹⁶ The Anglican laity, constituting only one fourth of the total population, represented the planter aristocracy. Religion meant little in their lives, which accounts to a certain extent for the dormant conditions of their church.⁹⁷

On the eve of the Revolution, "the church in Virginia had grown almost obsolete; its methods, its claims, its arrogance alike hateful to the vast majority of the people. The causes of the issue are not far to seek. The unwillingness of the church to permit any other worship than its own, with the consequence that many of the scattered population were deprived of all religious services; its indifference to the spiritual good of the people; the corrupt character of so many of its clergy; its rancor in persecuting any dissent; the growing sense of injustice in taxing people for the support of a religion not their own; the ill-starred Parson's Cause, which left upon the clergy and laity a heavy, though unjust burden of ridicule and contempt; the persecution of the Baptists as the last throes of a dying tyrant; and finally the ill-judged effort to establish an American Episcopate"⁹⁸ left the Church of England, although strongly fortified by laws, in a most weakened condition morally.

MARYLAND

In Maryland the limited prerogatives of the legally established Church of England placed it almost in the same category as the non-conforming sects. The right of patronage possessed by the proprietor crippled the administration of the Church.⁹⁹ The vast majority of Maryland's population belonged to non-conforming congregations. The only real intolerance suffered by the dissenters was the tax levied upon them for the support of the Anglican church.¹⁰⁰ All, with the exception of Roman Catholics, enjoyed freedom of worship. The prohibition against Catholic worship was not enforced.¹⁰¹

The Church of England just at the time of the break with the mother country was experiencing no little difficulty with the civil

⁹⁶ Humphrey, *op. cit.* p. 199; Campbell, *op. cit.* p. 553.

⁹⁷ Van Tyne, *op. cit.* p. 363.

⁹⁸ Cobb, *op. cit.* p. 114.

⁹⁹ James S. M. Anderson, *History of the Church of England in the Colonies*. 3 Vols., London, 1845-1856.

¹⁰⁰ Cobb, *op. cit.* p. 398.

¹⁰¹ Guilday, *op. cit.* p. 61.

government. The stipend paid the Episcopal clergy became a source of much trouble. The legislature in 1763, "disgusted and wearied by the continued irregularities of the great mass of the clergy, passed an act reducing the ministerial stipend by one fourth."¹⁰²

The clergy protested vehemently against the reduction. These complaints only served to weaken their stand. According to Anderson, "the position of every clergyman in Maryland was far better than that of their brethren in any other colony. Their complaining alienated sympathy."¹⁰³ The reduction did not reduce the clergy to anything like bare poverty. Dr. Chandler, an Episcopalian minister, admitted that the livings generally paid three hundred pounds. Some paid as high as five hundred.¹⁰⁴ These figures, even granting the fact that they represented the salaries received before the reduction, placed the clergy among the very highly paid classes. In estimating their salaries the purchasing power of money as it was at that time must be taken into consideration.

The clergy, possibly not sensing the anti-clerical temper of the people, pushed every opportunity to win back their former stipends. Such actions only embroiled them in more legal and extra-legal difficulties. By appealing to the establishing act as supporting their claim, they brought this act itself into question; "The Proclamation and Vestry Act," as the controversy over the validity of the establishing act is known, caused both sides to attack viciously. The legislature insisted on having the validity of the act tested in court. The outbreak of the Revolution prevented the rendering of a decision.¹⁰⁵

The establishment showed the disastrous effects of a church controlled by a somewhat anti-clerical government and administered by a large percentage of immoral ministers.¹⁰⁶ In the words of Dr. Chandler: "The inhabitants looked upon themselves to be in a state of the most cruel oppression with regard to ecclesiastical matters. The churches are built and liberally endowed entirely at their expense; yet the proprietor claims the sole right of patronage, and causes induction to be made without regard to the opinion of the parishioners. Those who are inducted are frequently known to be bad men even at the very time, and others soon show themselves to be so. After the induction they cannot be removed, even by the highest exertion of proprietary power."¹⁰⁷

¹⁰² Anderson, *op. cit.* III, p. 308.

¹⁰³ *Ibid.* p. 307.

¹⁰⁴ Cobb, *op. cit.* p. 395.

¹⁰⁵ Cobb, *op. cit.* p. 396.

¹⁰⁶ Anderson, *op. cit.* III, pp. 308-311; Baird, *op. cit.* p. 198.

¹⁰⁷ Cobb, *op. cit.* p. 393, quoting Hawks, *Ecclesiastical Contributions*, II, p. 249.

SOUTH CAROLINA — NORTH CAROLINA — GEORGIA

South Carolina recognized the Anglican church as the state church. Although, three quarters of the colonists were communicants of non-conforming sects, the Anglicans favored by law as well as by an intellectual and good-living body of clergymen, wielded enormous power. Here as elsewhere the dissenters protested against being taxed for the support of the official religion.¹⁰⁸ By the time of the Revolution the church had organized and disciplined itself so strongly that it could accept the disestablishment without incurring any serious set-back.

In North Carolina the established Anglican church exerted little influence. The colonists, overwhelmingly dissenters, displayed little interest in religion. They did, however, register a protest against the payment of tithes to the Anglican church.¹⁰⁹

Religion was a minor force in Georgia. The Anglican, the official church, owned only two chapels in the whole colony.¹¹⁰

(To be continued)

¹⁰⁸ Baird, *op. cit.*, p. 184.

¹⁰⁹ Cobb, *op. cit.*, p. 132.

¹¹⁰ Anderson, *op. cit.*, III, p. 639.