

but as two sovereignties;³² the instructions for self-government aboard the *Ark* and the *Dove* and in the new land itself were enforced in a spirit of complete fairness from 1634 to 1649.³³

Several religious disputes of a relatively minor nature occurred during the early years of the settlement. In 1638 William Lewis, a Catholic, was found guilty of proselyting by force of his authority over his Protestant servants. In 1641 Thomas Gerard, also a Catholic, was charged and convicted of interfering with Protestant church services. Both Lewis and Gerard were fined 500 pounds of tobacco. There was a prolonged dispute during the late 1630's and after between Lord Baltimore (II) and the Jesuit Order.³⁴ Thomas Copley, a Jesuit, instituted in 1637 a deliberate attempt to rid the colony of numerous "heretics" with which it was "infested," and backed a rigid program to exclude Anglicans from political office.³⁵

A few historians have pointed to an obscure ordinance enacted in 1639 as the first piece of religious tolerance legislation in Maryland and possibly in the United States. Known variously as the "Ordinance of 1639" or the "Act for Church Liberties,"³⁶ it was passed by the annual assembly, and acted to distinguish church from state. Both the church and the colonists were to have

religious "rights and privileges."³⁷ There is ample evidence that the tradition which underlay the 1639 ordinance persisted, at least among Maryland Catholics, up to the time of the constitutional conventions of the 1780's.³⁸

Much has been written and a great deal said about the famous "Toleration Act of 1649," more correctly entitled "An Act Concerning Religion." It has been alternately labeled as "one of the proudest memorials of our colonial history"³⁹ and "really a most disgraceful piece of intolerance."⁴⁰ The divergence of opinion may be readily understood when one examines the construction and content of the Act. It contained five sections. The first provided for punishment by death and confiscation of property of any person who should deny the divine nature of the Trinity or utter reproachful words concerning it. Under the second and third sections those who blasphemed Catholics were subject to fine, whipping and imprisonment. The same punishment was decreed by the fourth clause against profaners of the Sabbath Day. However, the fifth section was of an entirely different tone, providing in part:

"Whereas, the enforcing of the conscience in matters of religion hath frequently fallen out to be of dangerous consequences in those commonwealths where it hath been practised, and for the more quiet and peaceable government of this Province and the better to preserve mutual love and amity amongst the Inhabitants thereof: Be it

³² T. HANLEY, *THEIR RIGHTS AND LIBERTIES* 121 (1959).

³³ Johnson, *supra* note 15 at 6. For a decidedly anti-Catholic view of Roman Catholic enforcement, see B. BROWN, *EARLY RELIGIOUS HISTORY OF MARYLAND* (1876).

³⁴ Johnson, *supra* note 15 at 2.

³⁵ C. SMITH, *RELIGION UNDER THE BARONS OF BALTIMORE* 204-12 (1899). Mr. Smith calls Mr. Copley "Maryland's evil genius."

³⁶ ALLEN, *supra* note 17 at 42.

³⁷ 1 ARCHIVES OF MARYLAND 82-83 (1883).

³⁸ HANLEY, *supra* note 32 at 123. See also C. HALL, *THE LORDS BALTIMORE AND THE MARYLAND PALATINATE* 67 (1902).

³⁹ HALL, *id.* at 66.

⁴⁰ SMITH, *supra* note 35 at 319.