Was There a Separation between Church and State in Mid-17th-Century England and Colonial Maryland?

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This essay concerns the labors of Catholics in the mid-seventeenth-century English settlement at St. Mary’s in Maryland and their ideas concerning the establishment of religious freedom. To a certain degree it also concerns the Catholics in England. The essay raises the possibility that the Catholics in Maryland narrowed the separation between church and state to advance what they believed was their religious freedom. At the same time in England, the laboring people may have widened the separation between church and state to achieve the same goal. Part of the discussion centers on why laboring Catholics took one path to religious freedom in Maryland and another in England.

The traditional historical interpretation of the Maryland community during the period emphasizes the role of the 1649 Act of Religious Toleration, which in a sense widened the separation between church and state to protect the Catholics’ freedom. However, the focus of this essay is on a series of laws enacted soon after settlement which narrowed the separation between church and state. These laws preceded the 1649 Act by a decade. The earlier laws addressed a threat to the

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Catholics’ religious freedom that was different from but in their view no less serious than that dealt with in the 1649 Act.

St. Mary’s was the only seventeenth-century settlement in British North America with a relatively strong Catholic presence. During the period under study the Catholics numbered about four hundred, which was one-quarter of the total population. They were influential in the Maryland legislative assembly and in the economic and religious life of the community. In their correspondence, pamphlets, legislation, and court documents they left a record of their ideas about religious freedom.

The difficulty that the Maryland Catholics faced concerning religious freedom, like the St. Mary’s community itself, had its origins in England. St. Mary’s was in some measure an English village transplanted three thousand miles west. Most of the Maryland Catholics were born and raised in England. They had been living with limitations on their religious freedom there before coming to America. The limitations on their religious freedom in England and Maryland derived from at least two factors. One factor, the one which historians traditionally cite, centers on the Reformation and the English penal laws. The monasteries and Catholic hierarchy lost their real estate and legality. It was unlawful for Catholic priests to be trained in England or for foreign-trained priests to minister in England. While the Catholic clergy functioned in England despite the penal laws, their ministry was limited.

Part of the traditional interpretation for the limitation on the Catholics’ religious freedom is the idea that Maryland and English Catholics were mainly from the gentry class. As one writer


put it, “For all intents and purposes seventeenth-century Catholicism was a quietest sect of aristocratic and upper-gentry families.”

The gentry’s wealth and ability to pay fines or bribes made them attractive targets for prosecution under the penal laws. Their vulnerability limited their ability to work for religious freedom in England and Maryland. Those historians who follow this line of interpretation rely mainly on the contemporary pamphlets published by the gentry and their clergy on the continent. These pamphlets, especially those subsidized by Rome and Spain, stressed the hardships brought by the penal laws, which included martyrdom, imprisonment, and fines.

Until the advent of the local English county studies and similar research in Maryland starting in the 1960s, historians almost exclusively attributed the limitation on the Catholics’ religious freedom to the Reformation and penal laws. However, the picture that has emerged from the local studies has brought a general revision in how the post-Reformation Catholic community is viewed. The revision extends to the limitation on religious freedom and the causes for it. The local studies picture the bulk of the Catholic community as laboring people, not gentry.

Catholics were less than 10 percent of the total English population and, as noted earlier, less than 25 percent of the Maryland population. But of this number, more than 80 percent of the Catholics in England and 90 percent in Maryland made their living from their own manual labor. They were not gentry.


8. St. Mary’s City Commission, “Career Files of Seventeenth-Century Lower
The evidence on which the laboring attribution is based includes court, probate, and tax records and the Catholics' unpublished diaries, commonplace books, and letters.

The local county studies picture the bulk of the Catholic population as laboring people and the penal laws as generally having no significant influence in their lives. It might be thought that the general non-enforcement of the penal laws was a case of administrative inefficiency. However, the local studies indicate it was rather a policy of efficiency. Exaction of the statutory 12d weekly fine on non-attendance at Anglican services was disregarded by parochial officers because it would have meant pauperdom for the Catholics, Puritans, and others who did not conform. Paupers became a charge on the parish. The interest of the church warden was to collect parish revenue, not needlessly to expand obligations.

It is true that convicted, recusant Catholics were denied many civil rights, most significantly the franchise. But Protestants were also denied such rights in a society where the gentry and nobility were constituted a separate class by law. The franchise was limited to "40-shillings freeholders," which was

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Western Shore Residents" (Annapolis: Hall of Records, 1989). The "Career Files" are an alphabetically arranged data base for each of the five thousand seventeenth-century (1,955 up until 1660) Maryland residents known by name. In constructing the "Career Files," the public records in Maryland were "stripped." Each individual's "Career File" contains a copy of every document in which the individual's name is mentioned. Many files are one hundred pages or longer. Forty items from each of the "Career Files" have been entered into a personal computer (D-Base IV) program, A Biographical Dictionary of St. Mary's County Residents, 1634-1705 (1991). It is available from Historic St. Mary's City, C/O Lois Green Carr, 350 Rowe Boulevard, Hall of Records, Annapolis, Md. 21401. I am indebted to Dr. Carr for making the "Career Files" and D-Base IV disks available for this essay. For the laboring nature of the English Catholic population, see David Mosler, "Warwickshire Catholics in the Civil War," Recusant History 15 (1980), 261; Hilton, "The Recusant Commons in the Northeast," 7; Leslie A. Clarkson, The Pre-Industrial Economy in England, 1500-1750 (New York: Schocken, 1972), 66.

less than one-third the adult male population. The nobility had their own house in the legislature. Catholic laboring people were denied rights because of their class. But about 20 of the 120 English peers were Catholic. Those who were church Catholics held office and possessed full civil rights.

Those who have been accustomed to the traditional interpretation of post-Reformation Catholicism have complained about the work of historians such as Peter Newman, John T. Cliffe, and Hugh Aveling who, it is charged, “have quite failed to provide a grass-roots background for the national policies of no-popery.” The most important work about the period, John Bossy’s *English Catholic Community* is said to be “decidedly odd” for “scarcely mentioning anti-Catholicism, a persistent feature of English politics for nearly 300 years.” The local studies are also found wanting because they do not say much about the other traditional themes: martyrrology, apology, or debates on the hierarchy.

What one sees in the local studies is that it was not so much the penal laws that limited religious freedom in mid-seventeenth-century Maryland and England, as it was the class system. What is meant by the class system being an obstacle to religious freedom is that the gentry monopolized the clergy, just as they did real estate, educational services, political power, and the courts. The Catholic community, like the Protestant community, was a class-divided society. Christopher Hill and Peter Burke maintain that both before and after the Reformation up to half the English population rarely received pastoral services or attended church. This was because of the people’s poverty and the negative views of the gentry and clergy about serving the laboring people. Laborers, servants, the young, and the old, whether Protestant or Catholic, were not prosecuted for non-attendance at Anglican services. They did not have the money

to make them worth prosecuting for non-attendance, and as noted, the church wardens did not wish to create paupers who would be a charge on the parish.15 In some cases, the authorities prevented or attempted to prevent laboring people from attending services because they did not have proper clothes for church.16

The neglect of pastoral service by the established church was one of the issues during the English Civil War of the 1640s. Gerrard Winstanley was among those who articulated the views of the laboring people. His point was that God did not give a monopoly on religious freedom to the gentry; the right to pastoral services was the "birthright freedom" of everyone. The people should not have to pay a tithe to those who did not serve them: "Therefore no marvel, that the national clergy of England and Scotland who are the tithing priests and lords of blinded men's spirits, held so close to their master the king, for, say they, 'if the people must not work for us and give us tithes, but we must work for ourselves as they do, our freedom is lost.' Yes, but this is but the cry of an Egyptian task-master, who counts other men's freedom his bondage."17

It was a "bondage" for the people to be denied the freedom of pastoral service. Their bondage was the basis for the established clergy's freedom to allow the gentry to monopolize the ministry. During the Civil War, laboring people among the Independents and Presbyterians in England expanded their religious freedom by helping to establish a relative separation between church and state. The system of Anglican bishops and their church courts, which had served as an appendage to the crown, were abolished by parliamentary legislation in 1643 and 1646.18 In the process the hierarchy's estates were confiscated.

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15. Aveling, Catholic Recusancy in the City of York, 87.
At the local level the congregations in some two thousand of England's ten thousand parishes ejected their non-resident or pluralist pastors.\(^9\) Pluralists were those who held income and responsibility for two or more parishes. In place of the dismissed clergy, the congregations hired clergy willing to serve as residents.

The abolition of the hierarchy, the dismissal of the parish clergy, and the general widening of the separation between church and state in England was not generally anti-clerical. It was just the reverse: it was testimony to the desire for a more responsive ministry.\(^20\) Religious freedom, so many people believed, could be increased by widening the separation between church and state; that is, by limiting the state's ability to guarantee clerical tenure. An even greater widening of the church-state tie occurred for a short period in 1653 when Parliament abolished the tithe.\(^21\) The tithe was a foundation of the established church. Cromwell overturned Parliament's decision on the issue, but he was unable to prevent the people on their own from eliminating or substantially reducing the tithe during the period.

The class system was as much an obstacle for the laboring Catholics' pastoral service as it was for the Protestants'. To get a picture of how the class system contributed to the limitation on the Catholics' religious freedom in England and Maryland, the number, geographical, and class distribution of the Catholic clergy can be considered. There were between 750 and 1,000 Catholic priests serving in England in the 1640s.\(^22\) John Bossy, assuming the lower figure, estimates that about 450 were secular priests and 300 were regular priests, that is, Jesuits, Benedictines, and those of several other orders. Of the seculars, 70 served in the North, 60 in Wales, 40 in London, and 270 in the South and Midlands. The regular clergy were similarly distributed. More than half, especially among those serving in the


\(^{22}\) Bossy, *English Catholic Community*, 211, 217, 227.
South and Midlands, were domestic chaplains and tutors for the gentry, with little service to the laboring Catholics.23

That more than half the English Catholic clergy should have ended up serving at best 20 percent of the Catholic population was in the nature of the class system. Also in its nature was that two-thirds of both the secular and regular clergy were from gentry families. It was generally the gentry who could afford to send their children to the continent for the education received by the clergy.24 Service to the gentry as domestic chaplains meant earning £20 to £25 per year, twice what laboring Catholics who supported families were able to make.25 Leander Jones noted in 1634 that being a priest was a way for the gentry to gain a comfortable living.26 Most of the clergy, on their return to England after being educated abroad, served in the same district and for the same families among which they had been raised.

It might appear that the ordered clergy, such as the Jesuits and Benedictines, would be less constrained by the class system because of the corporate ties of their orders abroad. But, if anything, the beliefs, constitutions, and customs of the ordered clergy restricted them even more than the secular clergy from the pastoral congregational-parish ministry to laboring people.27 The Jesuits’ constitution stated in part, “The more universal the good is, the more is it divine. . . . For that reason, the spiritual aid given to important and public persons ought to be regarded as more important, since it is a more universal good.”28 By “important” the Jesuits meant gentry.29 Thomas Aquinas, himself a

23. Ibid., 227-28, 237.
26. Ibid., 220.
29. This was not far different from the argument of Gregory the Great and the landlords’ clergy for a millennium. It was, as Paul Meyvaert, “Gregory the Great and the Theme of Authority,” Spode House Review (1966), pointed out, the age-old justification, in a Christian version of Roman imperialism, the natural subordination of barbarians to Romans, as slaves to freemen. It turned up “dismayingly often” in the heroes of the gentry (23-24).
member of the ordered clergy, had likewise interpreted the gospel to accommodate the class system. He called the congregational ministry "a lower grade of perfection."\textsuperscript{30} For the congregational ministry to the laboring people, the practical result of the class system embodied in the ordered clergy's customs and constitutions can be seen in the ministry and thought of Robert Southwell. S.J. Southwell was one of the early ordered priests in England after the Reformation. He was a domestic chaplain to the countess of Arundel. He was critical of another priest who served laboring people through an itinerant ministry: "I am much grieved to hear of your unsettled way of life, visiting many people, at home with none. We are all, I acknowledge, pilgrims, but not vagrants; our life is uncertain, but not our road."\textsuperscript{31} It was the exception rather than the rule when laboring Catholics were able to obtain the services of the ordered clergy for their congregations.

John Bossy has found that among the Catholic gentry, the penal laws led to no limitations on clerical services. Rather, there was an oversupply of domestic chaplains.\textsuperscript{32} For this reason the local county histories have been critical of the earlier version of Catholic history that attributed the limitation on the Catholics' religious freedom exclusively to the penal laws: "The Catholic gentry, the second group of heroes of the Persons' version of English Catholic history, arrogated to themselves an inappropriate share of the clerical resources of the post-Reformation mission. The gentlemen have been credited with ensuring 'the survival of the faith' and so they did, but their faith, at the expense of everyone else's."\textsuperscript{33}


\textsuperscript{32} Bossy, \textit{English Catholic Community}, 252-53, 261, 422.

\textsuperscript{33} Christopher Haigh, "From Monopoly to Minority: Catholicism in Early Modern England," \textit{Transactions of the Royal Historical Society} 31 (1981): 138, 145. Reformers at the Council of Trent had sought legislation that would have forced the clergy to reside in parishes and be pastors. The reformers were on many points
Similarly in Maryland, the class system, not so much the penal laws, was at the root of the limitation on the Catholics' freedom of pastoral service. For the clergy who migrated to Maryland, the congregational ministry to laboring people was not a priority. The Maryland clergy were members of the Jesuit order. As in other mission territories, their interest was in converting the Indians, in serving as domestic chaplains to the gentry, and in the administration of their own farms. They assumed secular clergy would come out to minister to the laboring people. This did happen in Maryland for a short period in the early 1640s when two secular priests came out. Another secular, John Lewger, served in the latter half of the 1640s.

In the traditional interpretation the Maryland clergy were depicted as heroic. But this mainly involved service to the In-
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dians rather than service to the laboring migrants. The attraction to the clergy in Maryland, besides service to the gentry, was the opportunity for service among the Indians. In England, this “heroic” psychology was manifested by those who endured a “glorious” martyrdom at the hands of the Protestants. For Jesuit saints like Aloysius Gonzaga, the missionary ideal was an expression of their “contempt” for the world. Gonzaga joined the order so that he could “sacrifice” his life in converting the Indians to Christ in the American missions. Nathaniel Southwell, S.J., asked that his superior in 1634 be sent to North America because it was “the most perfect oblation of all and the greatest sacrifice of myself which I can offer in this life to the lord. . . . It is likewise a most complete act of self-abnegation, since it is a separation in fact from all things that are dear to me in this life, without any hope of ever seeing them again; and so it is morally a kind of death suffered for Christ.” For such clergy in Maryland and their counterparts in England, the real martyrdom may have been in serving laboring people.

THE SOLUTION TO THE LIMITATION ON RELIGIOUS FREEDOM

The local studies of Maryland and England point to the class system, that is, the unequal distribution of the clergy as being as much an obstacle to the religious freedom of laboring people as the penal laws. This essay focuses on the solution that the Maryland Catholics devised for removing the limitations on their religious freedom. Their solution was largely legislative in nature. It involved narrowing the separation between church and state, which in a sense was the opposite of the solution followed by the laboring people in England. However, the results obtained were the same. During most of the mid-century period, the Catholics had a dominant influence in the Maryland assembly. They constituted a majority of those whose religion is known.

which created a demand for domestic chaplains, and the patterns of intense family religiosity, was followed in manor-houses across the country” (pp. 139-39). 38. The clergy complained of having no servants, of the “factious” working men who dominated the Maryland assembly, and of having to live in a “mean” and “vile hut.” See Thomas Copley, S.J., “Letter to Lord Baltimore,” 3 April 1638, in “Calvert Papers,” Fund Publications 23 (Baltimore: Historical Society, 1889), 162, 164, 166, 169; Hughes, History of the Society of Jesus, documents, vol. 1, no. 8, T (1655-1656); ibid., text, 2: 59.
40. Hughes, History of the Society of Jesus, 1: 5.
41. Edward Papenfuse, ed., A Biographical Dictionary of the Maryland Legisla-
John Krugler found that the Protestants did not exert "any profound influence on the colony as Protestants." 42

Four of the Catholics' legislative enactments addressed the religious freedom limitation. One of the first measures which they enacted upon settlement in Maryland was aimed at protecting their "birthright freedom" of clerical service. This measure required that the clergy undertake the office of "pastors." 43

Being a pastor meant ministering to the congregations of laboring people, performing baptisms, marriages, burials, conducting regular services, and giving catechetical lectures. 44 That the assembly found it necessary to enact such a law suggests the difficulties on the subject which they had lately experienced in England and were then experiencing in Maryland. The reaction of the clergy to the enactment seems to confirm this suggestion. The Maryland clergy protested against the pastoral law, calling it "inconvenient." 45

In England the Parliament widened the separation between church and state by abolishing the system of bishops and church courts that were part of the national government. This permitted the local parishes to gain greater control concerning the appointment and tenure of the clergy. Congregations were able to eject the pluralist and non-resident clergy who had been protected by the hierarchy. In Maryland the same object, the right to pastoral service, was obtained by narrowing the separation between church and state with the pastoral law. Unlike in the established parishes in England, the Maryland congregations had no alternative supply of clergy to replace those who were unwilling to provide pastoral services. The logical way for them...

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42. John Krugler, "Puritan and Papist: Politics and Religion in Massachusetts and Maryland before the Restoration of Charles II" (Ph.D. diss., University of Illinois at Urbana-Champaign, 1971), 171. Both Krugler and Russell Menard, in "Maryland's Time of Troubles: Sources of Political Disorder in Early Maryland," *Maryland Historical Magazine* 76 (1981), 126, have examined the matter and conclude that there was no feud between Protestants and Catholics out of which legislation hostile to the Catholics might have arisen.


to obtain their birthright involved narrowing the separation of church and state in order to encourage the clergy who were in Maryland to serve as pastors.

The pattern of narrowing the separation between church and state in defense of the Catholics' religious freedom was also followed in a second assembly enactment. This was a praemunire law that made it a capital offense for the clergy to appeal to the authority of canon law, church courts, the Jesuits' constitutions, or Rome's authority. As one priest put it, the praemunire law gave the Catholics the right to "hang" any clergyman who invoked excommunication against them for, among other things, the pastoral law. The praemunire enactment was a penal law, but in England it had predated the Reformation by several hundred years and reflected what was probably the traditional fraternal rather than paternal or inferior relation between the English and Roman church. The praemunire law in

46. Ibid., 165; Alfred Dennis, "Lord Baltimore's Struggle with the Jesuits, 1634-1649," *Annual Report of the American Historical Association* 1 (1900): 114. The Roman establishment itself often taught that it was wrong but in its canon law accepted the accumulation or multiple holding of benefices, that is, parish income, and acknowledged that the receiver of the benefices did not have to fill their conditions, that is, serve as pastor. The suspension of such canon law contributed to the pastoral service of the laboring people. See R.H. Helmholz, *Roman Canon Law in Reformation England* (New York: Cambridge University Press, 1990), 4. Lyndwood's pre-Reformation collection of canon laws stated that plural holding was valid when apostolic (Roman) dispensation was granted. See J.V. Bullard and H. Chalmer Bell, eds., *Lyndwood's Provinciale: The Text of the Canons Therein contained, reprinted from the translation made in 1534* (London: Faith Press, 1929), 53-54. The English translation of the *Provinciale* left out Lyndwood's gloss concerning benefices. The gloss can be found in Arthur Ugle, *The Canon Law in Medieval England: An Examination of William Lyndwood's "Provinciale"* (London: J. Murray, 1912), who wrote, "The constitutions of Bonifice are penal and concern the liberties of the church and the violation of it. But these constitutions are little observed [in England]"; 56. See also Corpus Juris Canonici, vol. 2, *Decretales D. Gregorii IX suae integritati una cum glossis, etc.*, 3 vols. (Rome: Populi Romani, 1582), 2: 1036 (c. 18, X, III, 5 [Decretales of Gregory IX, book 3, title, 5, ch. 18]); 2: 1040 (c. 21, X, III, 5 [ibid., ch. 21]); Charles H. Lefebvre, "Canon Law," *New Catholic Encyclopedia* (New York: McGraw-Hill, 1967), 3: 51.

47. The First Statute of Praemunire (27 Edward III, Stat. 1) was enacted in 1353. It is reproduced in Gee, *Documents Illustrative of English Church History*, 103-04. It outlawed legal appeals to Rome and the extension of Roman law to England. Penalties included outlawry, forfeiture, imprisonment, and banishment. Pope Martin V (ruled 1417-1431), as quoted in Ogle, *Canon Law in Medieval England*, 165, protested that the laws against the Jews and Saracens did not have such dire consequences as these. The same purpose had been served prior to praemunire by common law writs of prohibition, of quare impedit, of quare non admisit, of quare non-permittit, and by the long-established right, reaffirmed by an ordinance in 1343, of forbidding the introduction into England of papal bulls prejudicial to the church. See W.T. Waugh, "The Great Statute of Praemunire," *English Historical
Maryland was useful to the community because the Jesuits' constitution, as noted earlier, directed them to give a priority to the conversion of the Indians and to the service of the magnates. The praemunire law made it a criminal offense for the clergy to avoid the congregational ministry to the laboring people by citing their constitutions or orders from Rome or by threatening to excommunicate the Catholics for interfering with the clergy's priorities.

There was an additional positive aspect of the praemunire law besides putting a limitation on the ability of the hierarchy and Roman establishment to interfere with the Catholics' religious freedom—the praemunire law also prevented the establishment of local church courts. Despite the clergy's protests, the Maryland assembly assigned to the provincial (common law) court matters that traditionally came under the jurisdiction of church courts in England and on the continent. Where church courts existed in both Catholic and Protestant countries, they seem to have been used by the gentry against the pastoral interests of the working people. For example, in Mexico during the mid-century period, church courts were an appendage to the Spanish colonial order. The Mexican gentry employed corporal punishment to coerce obedience from the laboring people. When slaves and servants rebelled during such punishment by blasphemying, they were turned over to church courts. The church courts then applied torture, which was legal, to gain an admission of guilt concerning the blasphemy. Then they were

Review 37 (1922): 193-94, 204. Beginning in the 1480s praemunire began to be applied not only to Roman courts but to litigation in the English church courts. Litigants used common law courts to punish those who sued them in church courts. R.H. Helmholz, Roman Canon Law in Reformation England, concluded that by the time of the Reformation, a jurisdictional reformation had already occurred because of the expanded use of praemunire; 33.


49. O'Malley, "Was Ignatius Loyola a Church Reformer?", 181-82.

50. The clergy were not able to avoid the congregational ministry, but the Maryland "chief men" and "noble matrons" still seem to have received a disproportionate amount of their services. See Anonymous, "Annual Letter of the Society of Jesus to Europe" (1638), in Foley, Records, 3: 371.

further punished by the church courts to gain obedience.\textsuperscript{52} Torture and punishment of laboring people for the profit of the gentry was detrimental to the religious freedom of the laboring people.\textsuperscript{53} Even without the courts, the Maryland clergy waged at least one anti-blasphemy campaign among their own servants.\textsuperscript{54}

In the 1630s the Catholics in England had pressured the government there to invoke the praemunire law against their own bishop, Richard Smith, and force him into permanent exile in France. The reason for the Catholics' antipathy against Smith had been his attempt to establish church courts with jurisdiction over testaments, legacies, and marriages.\textsuperscript{55} These courts would turn the ministry into a "leach" on the people, as one contemporary put it. The English Catholics claimed that the "fearmongering" doctrine of purgatory, the refusal to administer the sacraments, and the church courts were all part of a system to gain undeserved legacies for the hierarchy.\textsuperscript{56} In Maryland, even without church courts, the clergy attempted to interfere in civil

\textsuperscript{52} Colin A. Palmer, \textit{Slaves of the White God: Blacks in Mexico, 1570-1650} (Cambridge, Mass.: Harvard University Press, 1976), 148-50, described the process: "The accused person who balked at confessing could be tortured into making an admission of guilt... The most common offenses were blasphemy, sorcery, and witchcraft... In its efforts to foster religious orthodoxy, the inquisition relentlessly pursued blasphemers among the Mexican population, slave and free."

\textsuperscript{53} The gentry's manipulation of the clergy resulted in the laboring people's renunciation of the master's God to whose established order the laborer was to be obedient; ibid., 152; Palmer, a scholar who has studied the Mexican courts, wrote, "Blasphemy appeared to be the instinctive reaction by a slave to an unbearable situation. In this sense they were no different from the ordinary Spaniard, who used blasphemous words as a matter of course. Blasphemous expressions seem to have been in the mouth of everyone, ineradicable by the most severe legislation"; ibid., 152.


\textsuperscript{56} Thomas White, \textit{The Middle State of Souls from the hour of death to the day of judgment} (London: n.p., 1659), 205-06; Allison, "A Question of Jurisdiction," 136; John Milton, "A Reformation of England," \textit{The Prose Works of John Milton}, 5 vols. (London: H.G. Bohn, 1881), 2: 402-04. Only one purgatory bequest to "pray for the souls of me and my wife" was upheld by the Maryland provincial court during the mid-seventeenth-century period. This occurred in 1656, at a point when the provincial court had just recently come under the exclusive control of the Presbyterians. The Presbyterians may not have recognized the purgatory nature of the bequest or they may have been more liberal on the subject than the Catholics. See "William Johnson," "Career Files," 7 June 1656; Graham, "Lord Baltimore's Pious Enterprise," 97.
marriages between Catholics and Protestants. Had canon law been permitted, Catholics would have even been denied the right to marry Protestants.\textsuperscript{57}

Besides the pastoral and praemunire laws, the Maryland Catholics took several other steps which narrowed the separation between church and state in order to promote their religious freedom. As in Wales and in other mission countries, the clergy took up the ownership of farms in Maryland.\textsuperscript{58} This required one of the clergy to be occupied full-time in estate management.\textsuperscript{59} The tendency of the clergy to slip into the role of gentleman farmers became an obstacle to the pastoral ministry in eighteenth-century Maryland.\textsuperscript{60} Generally, the farming enterprises and profit-making of missionaries was enough of a problem that Pope Urban VIII in 1633 issued legislation outlawing these activities. However, this legislation was directed mainly at Latin America and Africa, where most of the missions were located. The prohibitions, like all canon law, only had an effect when the local government was willing to enforce it.\textsuperscript{61} The Maryland Catholics devised their own legislative solution which limited the farm management activity of their clergy. This legislative solution consisted of the enactment of an anti-mortmain law, which in effect outlawed the ownership of property by the clergy.\textsuperscript{62} The clergy's protests, which were echoed by their superiors in London and Rome, were strong and seem to indicate the Catholics were touching on a fundamental issue.\textsuperscript{63}

\textsuperscript{57} Beitzell, \textit{Jesuit Missions}, 28.

\textsuperscript{58} The waste of clerical resources in estate administration was common in the Latin American missions; see Cushner, \textit{Farm and Factory}, 11-16, 59, 134.

\textsuperscript{59} Anonymous, “Annual Letter of the Jesuits” (1639), in Hall, \textit{Narratives of Early Maryland}, 124, stated that Fernando Poulton (John Brock, d. April 1641), was assigned to the Mattapany plantation. The clergy were among the largest Maryland landowners and at some points had twenty or more indentured servants under their command.


\textsuperscript{63} “Letter to Edward Knott, S.J.,” 3 September 1639, in Hughes, \textit{History of the
The anti-mortmain law inhibited the tendency toward the clergy's involvement in estate management and it made possible the establishment of St. Mary's chapel. The chapel was built by a joint subscription of the Protestants and Catholics in 1638. Measuring 18 x 30 feet of brick construction, it was used by both Catholics and Protestants.\(^6\) Building it jointly with Protestants cut down on the cost to the Catholics. Such collaboration where the clergy owned the church would have been impossible. The clergy could have been excommunicated by Rome for permitting Protestant services.

Also in the category of promoting the Catholics' religious freedom despite the preferences of the clergy for a wider separation between church and state was a fourth assembly measure. It put limitations upon the clergy's freedom to proselytize among the Indians. This in effect increased their availability for service to the laboring Catholics.\(^6\) An indication that the mission had not lived up to the preferences of the Jesuit hierarchy is that in the 1650s the superior in England, Edward Knott, S.J., sought to abolish the Jesuit presence in Maryland. But by the 1650s the clergy had been serving in a pastoral role for twenty years and apparently had been won over to it. It was the clergy who successfully petitioned to the superior for the continuation of their presence.\(^6\)

This essay emphasizes the role played by Maryland Catholics in solving the limitation on their religious freedom. But the Maryland Protestants also contributed to the solution. It was not only the Catholics but also the Protestants who experienced limitations on their right to the pastoral ministry. For much of the period, the Maryland Protestants had no clergy. Their solution was often to join the Catholic congregations. For example, in 1638 nearly all the Protestants who migrated to Maryland became Catholics.\(^6\) This may have been as many as one hundred


\(^{64}\) Nelson Rightmyer, Maryland's Established Church (Baltimore: Diocese of Maryland, 1956), 14.


\(^{66}\) Hughes, History of the Society of Jesus, 2: 47.

\(^{67}\) Catholic Clergy, "Annual Letter of the English Province of the Society of Jesus" (1638), in Hall, Narratives, 119, 122-23.
people. They joined because Catholic clergy were present to minister. There were generally one to three priests serving in Maryland at any particular time. A total of twelve priests served the community during the mid-seventeenth century for periods ranging from six months to fifteen years. The Catholic growth was great enough that within the first decade of settlement three Catholic congregations were established. The legislative solution to the limitations on the Catholics' freedom could not have been achieved without the help of the Protestants, many of whom directly benefited from the legislation.

The Maryland Catholic growth was similar to the pattern of growth in northern and western England and in Ireland. The English Catholic convicted recusant population increased from 40,000 to 60,000 between 1603 and 1641. As noted, a majority of the clergy lived in the south of England, served the gentry, and had no relation to the bulk of the Catholic community. The Catholic population even declined in this area in the seventeenth century. This was in part because there was sufficient Anglican clergy but also because the Catholic gentry did not wish to share the services of the Catholic clergy with the laboring people. But the minority of the Catholic clergy who chose (or were forced to choose because of an oversupply of domestic chaplains) to exercise an itinerant and congregational ministry in the North and West gained substantial results. Illustrative of the congregational priests was Nicholas Postgate. He reported on the fruitful nature of his ministry, "At this moment I have quite 600 penitents, and could have more if I wished; or rather, what I lack is not will, but help; I am working to the limits of my strength."

68. Beitzell, Jesuit Missions, 11, 15-16.
70. The confiscated monastic lands had gone to the Catholic and Protestant landlords. On the other hand, there were one thousand continental-educated Catholic clergy in Ireland by the 1610s; Hugh O'Grady, Strafford and Ireland: The History of his Vice-Royalty with an Account of his Trial, 2 vols. (Dublin: Hodges, Figgis, and Co., 1923), 1: 409, 433-34, wrote that the established church in Ireland had little wealth such as parish benefices to attract clergy.
74. The circuits of some clergy, such as that of the Jesuit, Thomas Gascoigne, S.J., extended for two hundred miles and took a month to complete. At his home base, Gascoigne lived in a cottage and chopped his own wood for fire. In some places the
As in Maryland, the growth of Catholicism in England was linked to the absence of Anglican clergy and the presence of Catholic clergy. Areas such as Lancashire, Yorkshire, the Northern High Peake district, and Monmouthshire on the South Wales border had Anglican parishes which were large and poor. They offered little income for the established clergy, and consequently the needs of laboring people tended to be ignored. Those Anglican clergy who did serve were sometimes non-residents or pluralists. In Yorkshire, for example, there were 314 parishes, but there were 470 settled places of worship. In effect this meant there were more than one hundred potential Yorkshire parishes without regular clergy. In these areas, as one writer put it, Catholicism had "an ability to attract and hold people as diverse as Cleveland jetters, fisherman, tailors, small gentry, farmers, ambitious new peers, and declining old ones. It had an extraordinary tenacity of attraction for the most marginal."

The conditions were similar in Lancashire. While in some counties there was one Anglican priest per 400 people, in Lancashire's 56 Anglican parishes, it was sometimes closer to 1,700 people per priest. Catholic priests willing to serve without pay or rather to serve a circuit in exchange for a meal with a family and a night's rest under their roof had unlimited congregations. Just as in Maryland, in England the Protestants some-congregations of mainly tenants and yeomen owned their own chapel or held services in barns and farmyards. A few congregations numbered up to two hundred people. See Bossy, English Catholic Community, 161, 234, 252-53, 261; Challoner, Memoirs of Missionary Priests, 232, 339; and Foley, Records, 3: 91, 101; 7: pt. 2, 1111-12.


6. Christopher Haigh writes that "there are few hints of a substantial anglican presence in Lancashire, except in the sense of a mere passive conformity, until after the Civil War"; Reformation and Resistance in Tudor Lancashire (Cambridge: Cambridge University Press, 1975), 332.

7. Aveling, Northern Catholics, 252.


9. Ibid., 286.


times solved their priest shortage by joining Catholic congregations.

For some Catholic recusants in England the penal laws created difficulties. But for others, such laws may have helped expand religious freedom; that is, from the perspective of those Maryland and English Protestant laboring people whose pastoral needs were neglected by the established clergy, the penal laws created a dual clergy system that encouraged or forced at least some of the Catholic clergy to look for employment among the neglected. It seems that these laws at times had pastoral results for religious freedom not anticipated by their authors in the Anglican hierarchy.

**CONCLUSION**

The local county studies in England and similar studies of Maryland since the 1960s have revised the way historians view post-Reformation Catholicism. Catholicism is now seen to have been mainly a religion of laboring people, not gentry. The Catholic community had limitations on its freedom, but at least concerning pastoral service, the limitation was on the laboring people, not the gentry. The limitation was related to the class system, not only to penal laws.

This essay has suggested that the revision in the picture of post-reformation Catholicism may extend not only to the reasons for the limitation on Catholic religious freedom, but to the way the Maryland Catholics solved it. The early Maryland Catholics have traditionally been celebrated for their 1649 law on religious toleration, which broadened the separation between church and state. In the context of the seventeenth century, however, the legislation narrowing the separation between church and state may have also been significant. For laboring

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82. It is of interest that in New England the General Court took measures not unlike those in Maryland: the common law court, not the clergy, was given jurisdiction over disputes concerning church land. See John Winthrop, *Winthrop's Journal: History of New England*, 2 vols., ed. James K. Hosmer (New York: Barnes and Noble, [1853] 1966), 2: 19-21 (October 1640). The General Court, not the clergy, controlled the frequency of church assemblies; see ibid., 1: 390-92, 3 December 1639. The clergy were forbidden from punishing (excommunicating) those who wrongfully discharged the duties of public office; see ibid., 1: 299-300 (November 1639). No cleric or even church elder could be a civil official; see ibid., 1: 97 (July 1632). Richard Hoskins classifies such acts as examples of “extreme” separation of church and state: “This is a degree of separation which, today, would probably be held an unlawful infringement of the religious freedom of the church guaranteed by the First Amendment” in “The Original Separation of Church and
Catholics, the obstacle to their freedom was as much from the gentry Catholics and clergy as it was from the intolerance of Protestants. This may be the reason the pastoral legislation preceded the toleration law by a decade. Perhaps pastoral service, not Protestantism, was the main thing on their mind.

The Maryland Catholics’ achievements and the religious-biblical tradition that it represents seemingly has relevance to the continuing debate about the nature of religious freedom and the separation of church and state. Contemporary American structural-functional sociology emphasizes the freedom, as one French writer put it, of both the rich and the poor to sleep under bridges rather than the freedom of all to housing. The structural-functionalists, none of whom sleep under bridges, minimize class in discussing freedom. The experience of the post-Reformation Catholics seems to have been that religious freedom involved not only the church-state issue, but the class issue. For them, the contradiction was not only between church and state, but between gentry and laboring people. Their experience in looking at religious freedom was that one had to ask, “freedom for whom and for what?”

During the mid-seventeenth century the leveler movement in England embodied many of the laboring people’s desires for “class” freedom. The Maryland community actually achieved some of these aspirations: taxes were small and non-existent on food and other necessities, they had an annual parliament, a wide franchise, equal constituencies, no tithes or bishops, a simplified legal system, no imprisonment for debt, and no enclosures. The “birthright freedom” of pastoral service was not least among the levelers’ aspirations that were realized in Maryland. What A.I. Morton wrote about the levelers might also be said of the seventeenth-century Maryland Catholics’ church-state relations: “A party that held the center of the stage for three of the most crucial years in our nation’s history, voiced the aspiration of the unprivileged masses, and was able to express with such force ideas that have been behind every great social advance

State in America,” Journal of Law and Religion 2 (1984): 231. Hoskins seems to see the separation of church and state only from the perspective of the crown and the Act of Supremacy (26 Henry VIII, c. I [1534]). The crown (civil government) was supreme over the church and there was no separation. However, in New England and Maryland, the legislative assemblies exercised an even stricter supremacy than the crown over the church. The crown allowed among other things, church courts, clerical jurisdiction over church land and church services, and the clerical right to excommunicate civil officials. Under Hoskin’s definition, the Maryland Catholics would be extreme separationists.
since their time, cannot be regarded as wholly a failure or deserve to be wholly forgotten."\textsuperscript{83}

\textsuperscript{83} Morton, \textit{Freedom in Arms}, 73.