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Religion in the Virginia statutes

Earnest T. Gearheart Jr
University of Richmond

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By

Earnest T. Gearheart, Jr.

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PREFACE

This work began as a listing of abstracts of laws pertaining to religion and an investigation of those institutions revealed therein; but its scope has enlarged to consist of a listing of those laws, an index to that list, and a fairly extended history of the evolution of real religious freedom in Virginia. Mr. P. A. Bruce and others have covered the field of describing those institutions far better than I could, so that there was no use attempting to duplicate their work. My efforts have been directed to studying the source and effect of those laws which were most important in the evolution of complete religious freedom in Virginia.

The paper is divided into a chronological compilation of abstracts of the laws; a modified topical index to those abstracts; and a somewhat more extensive investigation of the period which has not, so far as I am aware, heretofore been treated fully. In compiling the laws, it was extremely difficult to determine which laws pertained to religion and which did not. In those border-line cases, such as those dealing with marriage and divorce, I have included them.

In treating a subject from the viewpoint of what legislation reveals, one has to recognize the limitations of the revealing powers of laws. Besides the fact that legislation notoriously lags far behind actual developments, it obscures its causative forces by legalistic terminology and more or less specious preambles; but one may be assured that it sooner or later reflects landmarks in developments, and that is what this study aims to treat. It has been impossible to treat all phases fully, of course. Therefore the footnotes indicate references for more minute investigation, and the index may also be of some aid in that direction.

I should like especially to recognize publicly my indebtedness to Rev. G. MacLaren Brydon, Treasurer of the Episcopal Diocese of Virginia, and an authority on Virginia church history, for his aid to me.

E.T.G.

RELIGION IN THE VIRGINIA STATUTES

It has generally been recognized by historians of the relations of Church to State in Virginia that the history divides itself into three general periods: the period of the unquestioned supremacy of the Church of England in Virginia, the period of struggle by dissenters from that church for religious toleration, and the period of struggle for complete religious freedom.[1] However, it appears that most of these historians have accepted the Act for Religious Freedom as a definitive separation of Church and State, whereas it really only marked the point of departure for a struggle for actual religious freedom.

It appears to the writer, therefore, that in addition to the three aforementioned phases there are two other more of less definite phases in the relationships of Church and State before there could be said to be absolute and undiscriminating religious freedom in Virginia. The fourth phase will be termed, for lack of a more expressive term, the period of liquidation; that is, the period in which the property and special privileges of the former Extablished Church were gradually restored to the State and divided equally among all denominations. The fifth phase, at first an almost imperceptible continuation of the preceding one, is the period in which the State manifested the extreme policy of entirely ignoring, or at least avoiding any overt relations with religious institutions until apparently it finally became aware of the inexpediency of such a policy and took a more liberal view. It seems that this period might well be named the leaning-over-backward period. It is best manifested in the refusal of the State Legislature to incorporate a theological seminary until the year 1854.

The period of the unquestioned supremacy of the Established Church extends from the first years of the Virginia colony's existence to about 1649.[2] Even the early charters of the colonies bound the colonists

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1. H. R. McIlwaine, The Struggle of Protestant Dissenters For Religious Toleration in Virginia (Johns Hopkins University Studies in Historical and Political Science, Twelfth Series, 1894), p.175 (Hereafter cited as McIlwaine, p.175).

to guard against the papal religion[3] and asserted the power of the council in England both as to civil and religious matters, vesting in the royal Governor and the local council certain powers with regard to the came.[4] At the first meeting of the legislature, and at practically all of those in that early period, a large part of the law-making consisted in providing for the Church of England. They provided that there should be a house of worship in every plantation, that the worship was to be strictly in accordance with the canons of the Church of England, that persons who absented themselves from divine services, including the ministers, were to be severely fined, that (in order to protect the very few available ministers), anyone disparaging a minister should be heavily fined, and that the ministers' salaries were to be deducted before any of their parishioners could otherwise dispose of their tobacco.[5] Laws subsequent to these were along the same lines, providing minutely for the salaries and duties of the ministers, church-wardens, the administration of the oath of supremacy, the marriage ceremony, punishment of offenses against morality, disabling from office-holding "popish recusants" and other refusing to take the oaths of allegiance and supremacy, and so on.[6]

The first evidence of an intention on the part of the Government to suppress or oppress the Puritan group which had grown up in one section of the colony was the act of Assembly of February, 1631,[7] although there had previously been enactments mildly to the same effect.[8] It is not known to what extent the Puritans were persecuted in the enforcement of this act, if at all. It is known, however, that with the accession of "bigoted Governor Berkeley" the persecution of Puritans began in earnest.[9] Two acts passed by the General Assembly in 1642 were aimed at

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2. Cf. Ibid.,p.175 3. William Waller Hening, The Statutes At Large, ..., 1, 97-98, 1819-Ibid., p.95

4. Ibid.,pp. 122-124 5. Ibid.,pp. 144-269, passim 6. D.R.Randall, A Puritan Colony in Maryland (Johns Hopkins University Studies in Historical and Political Science, Fourth Series, 1886),p.8; Hening, I, 155

the Puritans, one prescribing that the Book of Common Prayer should be the foundation of all religious services in the colony,[10] and the other providing that all nonconformists were to be compelled to depart from the colony.[11] In 1647 the Assembly, at Governor Berkeley's instigation, passed a more specific act of intolerance, providing that those ministers who refused to read common prayer were not entitled to any tithes or duties from their parishioners.[12]

In spite of an act of Parliament, during the period when England was a Commonwealth under Cromwell, which prohibited the use of the Book of Common Prayer, Berkeley continued his persecution of the settlement of Puritans in Nansemond County until they emigrated almost en masse to Maryland.[13]

During this whole period the laws had been unrelenting toward the papists, partly because it was thought that a papist could not be "at heart, a loyal Englishman"[14] and the "claims of Catholic Spain upon the territory of Virginia were not to be lost sight of."[15] The act of the Assembly in 1643 seems to be the first Virginia law expressly providing for the deportation of "popish priests" and disabling "popish recusants" from holding office in the civil government.[16] There surely was no tolerance in that direction.

In theory, the Church of Virginia was simply a branch of the Church of England,[17] but in respect to forms of worship, and more especially in respect to church government,[18] it developed such important differences that in its actual workings it fell far short of true Episcopacy."[19] An Act of 1643[20] had the effect of making the Governor the head of the Church of Virginia, insofar as he is empowered to induct those ministers who have received ordination by a bishop in England. But by the same act the vestries are conferred the right of presentation of ministers of

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8. Hening, I, 123, 149.
9. Randall, p. 10.
10. Hening, I, 241.
11. Hening, I, 277; Robert B. Semple, A History of the Rise and Progress of the Baptists in Virginia, (Beale Edition), p. 47.
12. Ibid., p. 341.
13. Randall, pp. 13-14, 19.

their choice to be inducted, which reduced the power of the Governor substantially.[21] This is the law upon which the vestries henceforth based their claim to the right of presentation.[22] It was re-enacted, in effect, in 1662.[23]

The vestries were placed upon their final legal basis by the act of the session 1661-2, providing that "twelve of the most able men of each parish be by the major part of said parish chosen to be the vestrymen," and each of these vestries were empowered to choose from their number, in coöperation with the minister, two church-wardens (who were the "guardians of the morals of the people" and the executive agents of the vestry[24]). A provision which proved very important was that the remaining members of the vestry should in their own right fill vacancies in the vestry as a result of death or removal.[25]

This legislation was the basis of church government until the Revolution. Although at first the vestries consisted of the leading men of the community,[26] by virtue of their election by the people,[27] the bestowal of this power to fill its own vacancies tended to make it henceforth entirely irresponsible to the people, in spite of the almost unlimited power it possessed over parochial matters. One writer has stated:

> "Vestries fixed the amount of the assessment for the ministers' salary, church expenses, poor relief, and the individual apportionment. They transacted the parochial business and presented the minister. As a consequence a few leading gentlemen in each neighborhood administered religious matters to suit themselves, and the great mass of parishioners could make no protest. In many cases, however, the vestries doubtless acted in accordance with public sentiment, especially in keeping ministers' salaries as low as possible"[28]

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14. Witness the quite general requirement that immigrants take the oaths of allegiance and supremacy (Hening, I, 97 et seq.).

15. McIlwaine, p. 184.

16. Hening, I, 269.

17. Ibid., 123, 144, 149.

18. Ibid., 155, 180, 240, 268-269, 433, 532 et seq.

19. McIlwaine, p. 176.

20. Not fully given in Hening, I, 277 (McIlwaine, p. 178).

21. McIlwaine, p. 178.

22. Ibid., p. 180.

23. Ibid., p. 178.

24. Especially by virtue of Act XIII, 1661-2, Hening, II, 52 (McIlwaine, p. 180).

The Puritans having emigrated in large numbers to Maryland, the Established Church for a time apparently saw no special threat to its domination, except by the "poposh recusants", against whom harsh laws continued to be invoked. But along about the time of the overthrow of the Commonwealth of England, Quakers began to emmigrate into the colony.[29] In view of the natural proclivity of those in control of the civil government to resent and oppose any tendencies which do not meet with their approval,[30] and in view of the fact that most of the officers of the civil government were also leaders in the Established Church, it is not strange that the Assembly should have passed, in the session of 1659-60, an act which allowed the Quakers no tolerance whatsoever. This act was "for suppressing the Quakers", and provided for the expulsion of Quakers already in the colony and for the prevention of the importation of any more Quakers.[31] This act reflected the policy inaugurated in London to rigidly suppress dissenters.[32] There is no evidence that any Quaker suffered the extreme penalty of the act ("to be proceeded against as felons."[33]), which may be a reflection of Charles II's declaration of Breda.[34]

These restrictions on the Quakers were quite probably a reflection not so much of an attitude of religious intolerance on the part of the governing authorities as of political necessity. During this period of the colony's existence it was constantly in danger of attack by Indians, which made it necessary that every man be prepared to defend

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25. Hening, II, 44.

26. McIlwaine, p. 181.

27. Semple, p. 47.

28. H. J. Eckenrode, Separation of Church and State in Virginia, p.119; cf. Semple, p.498. In this session of 1661-2 the supremacy of the Church of England was again established, and the first nine acts were devoted to prescribing minutely the government of the church. (Semple, p. 49; Hening, II, 25-30).

29. Semple, p. 48

30. Ibid.

31. Hening, I, 532.

32. William E. Dodd, "The Emergence of the First Social Order in the United States", American Historical Review, XL, pp. 221, 223. (Jan.1935). Evidently the practise with regard to those Quakers who came over before 1860 was the general English practise-imprisonment (McIlwaine, p.188).

33. Hening, loc. cit.

34. McIlwaine, p. 189

35. Mr. MacLaren Brydon's oral statement. It is interesting to note, in this connection, the

his colony on a momoent's notice. The nature of the settlement - far-apart plantations and little community life - was such that it w as absolutely necessary that all persons have arms on hand and be ready to muster at a given spot on quick notice. The Quakers' tenets forbids them to have arms for the purpose of fighting or to engage in war-like actions, and it was therefore quite beyond the intentions of the legislators that such recalcitrants[35.] be allowed to dwell in the colony.

Indeed, to a certain extent a large part of the so-called persecution of non-conformists was in reality merely the efforts of the legislature to prevent " dangerous "[36.] assembling of a " disturbing social element".[37.] There were other acts in persecution of Quakers from time to time[38.], but they were noticeably less harsh.[39.] Furthermore, there were certain incentives for the government to be rather lax in the enforcement of such laws, and gradually, as Quakers in certain districts became better known, toleration reached such a state that by 1672 the act of 1663 became practically inoperative in its extreme provisions.[40.]

Chief among these incentives was the desire of the colonists for an increased population, which was overtly manifested subsequently in the act of 1705, which encouraged Huguenots (who had been persecuted in their native country after the revocation of the Edict of Nantes[41.]) to settle at Manakin Town , by exempting them from the payment of public and county levies,[42.] In 1713 German Protestants in Germanna were likewise exempted,[43.] and other exemptions followed.

35.(cont.)
incident in 1711 when Quakers defied Governor Spotswood in refusing military service and affirmed that if the French should come to their gates they would feel constrained to " feed their enemies ", in obedience to the Biblical injunction (McIlwaine, p.200).

36.
Preamble to act against Quakers, 1663 (Hening, II, 180).

37.
Eckenrode, p.37, speaking especially of Baptists.

38. 39.
See Index to Chronology of Abstracts. McIlwaine, p.189 .

40. 41. 42.
Ibid.,pp.191-195. Ibid,,p.203. Hening,III, 478. The friends

Such was the state of affairs when in 1699 the Toleration Act, which was enacted by Parliament in 1688, was incorporated into the Virginia laws by reference.[44] Mr. Hening (of whose religious affiliations, I am unaware) notes that " It is surely an abuse of terms to call a law a toleration act, which imposes a religious test on the conscience, in order to avoid the penalties of another law equally violating every principle of religious freedom". And Mr. Semple, and ardent Baptist, heartily agrees therewith.[45]

While this provision for exempting from the penalties of not attending the Established Church at least once in two months those who should qualify according to the Toleration Act of 1 William and Mary was a long step forward, much depended upon the manner in which it should be administered.[46] For one thing, it might not offer leniency to dissenters who had no means of finding out how to qualify themselves "according to one act of parliament."[47] Mr. Hening points out that there was probably not one person in a thousand in the colony who was at all aquainted with the exact provisions of this Toleration Act,[48] and it is doubtful that there was any immediately available method whereby any great number of dissenters might be able to find out those provisions. This position finds good support in an admission of the legislature, as late as 1789, that "...(whereas) the good people of this Commonwealth may be ensnared by an ignorance of acts of Parliament, which have been published in any collection of the laws...".[49]

It seems on first glance that the only means that such dissenters had of finding out whether they were so qualified was to absent themselves from the parish church over a period of two months and see how quickly they would be called before a justice of the peace and obliged

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42.(cont.).
of the Established Church did not fear that this would endanger its position of supremacy, because, although the church services were to be in French, they were practically the same as those of the Church of England (McIlwaine, p. 204).

43. Ibid., p. 234; Hening, IV, 306

44. Ibid., III, 171; McIlwaine, p.197.

45. Semple, p. 50.

46. Dr. McIlwaine is in error in citing the Virginia law

to pay their five shillings fine. And, even assuming that such dissenters intended to qualify themselves according to the provision of the law, one could not be sure that there would be a justice of the peace who would offer to administer the required oaths and declarations. In order to become qualified, the dissenters were, upon their own initiative, to offer to take these oaths;[50] and, in the absence of other means of finding out that they were supposed to present themselves to the justices of the peace, to take these oaths, it would seem that they would become aware of that fact only by having been convicted of the offence once. Henceforth such persons who embraced the required oaths and declarations would be qualified.[51]

But such a difficulty is more apparent than real. Although the Toleration Act "is not believed to have been strictly obligatory in Virginia" before its incorporation into the laws of Virginia in 1699, it had already been acted under in several instances before that time.[52] In view of the fact that Reverend Josias Mackie, a Quaker preacher, secured a license to preach at certain registered places from the Norfolk County court as early as June 22, 1692,[53] it would seem that there were some dissenting ministers, at least, who in some way had secured a knowledge of the provision of the law be which they might be qualified to preach. Other county courts issued preaching licenses at about the same time.[54] We may be assured that such a vocal element of the population were actively engaged in apprising their flocks how they might be excused from attendance at the parish church without penalty.

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46.(cont.)
as requiring attendance at the parish church at least once a month (p.224); the act says at least once every two months (Hening, III, 171). It was not until the act of 1705 that attendance was required once a month. (Hening, III, 358).

47. Hening, loc. cit. 48. Ibid. 49. Preamble to Act of Nov. 25, 1789.

50. 1 William and Mary, Sess. 1, Ch. 18 (The Statutes At Large of England and of Great Britain, John Raithby, ed., Vol. 3, p. 263).

51. Ibid., Article III. 52. Semple, p.50. 53. McIlwaine, p. 199.

54. Ibid., p. 220.

Those dissenters so exempted were to be deprived of the benefit of the exemption if they attended an assembly of dissenters behind locked doors.[55] The toleration certainly stopped short of exempting those dissenters from supporting the Established Church by parish levies[56], a dispensation which was not realised until after the passage of the Act for Religious Freedom.

Thus ended the period of struggle for nominal religious toleration. The struggle for real toleration is particularly well typified by - and largely hinged on - the case of the Rev. Samuel Davies. There had been a great deal of disturbance among loyal churchmen over the fact that " itinerant" preachers, unlicensed and preaching to Presbyterians in unlicensed houses, were violently attacking the Established Church. Governor Gooch, although very much incensed by the matter, was not disposed to persecute these "New Lights but suppressed only those who had not complied with the Toleration Act, and in doing so he abode within the letter of what he was required by law to do.[57]

The Davies case concerned the construction of the Toleration Act with respect to the number of congregations a minister might preach to, or the number of the houses which might be licensed for him to preach in.[58] Mr. Davies, succeeding Rev. John Rodgers, had built up such a reputation and following that he found himself in great demand as a preacher. By 1748 he had secured from the General Court[59] a license to preach in seven meeting houses. The General Court considered that "under the most liberal construction of the law possible, seven meeting-houses were certainly enough for a man who

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55. Raithby, loc. cit., Art. V.

56. Ibid., Art. VI.

57. McIlwaine, pp. 214-215.

58. Bishop William Meade, Old Churches, Ministers and Families of Virginia, I, 429 et seq.

59. The General Court had usurped the right of licensing dissenting ministers and places of worship from the county courts (McIlwaine, p. 220).

of the dissenters coöperation in resisting the threat of the French and Indians.[64] The effect of the controversy over the ministers' salaries was slightly more positive, in that it alienated the people still more strongly from the Established Church, and dissension in the Established Church meant strengthening the dissenters in numbers and influence.[65]

During the period of the French and Indian War, the two most significant acts were the one of March 1756 for "disarming Papists and reputed Papists refusing to take oaths to the government"[66] and the act of April 1757, "to explain appointment and resignation of vestrymen."[67] Both of them reflected the prevailing distrust in America and in England of all things popish or in any way traceable to the French. The first required that a person suspected of being a papist should be administered the oaths which had been substituted by Parliament for the oaths of allegiance and supremacy.[68] The second continued in effect the practice of filling a vacancy in the vestry by election by the remaining vestrymen, but the elected vestrymen were required to take the same oaths as in the above act and in addition an oath of allegiance to the doctrine of Catholic exclusion from the English throne.[69]

Those oaths which were substituted for the former oaths of allegiance and supremacy are as follows:

> (a) "I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to his Majesty King George: So Help Me God."
> (b) "I, A. B., do swear that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position that Princes excommunicated or deprived by the Pope, or any Authority of the See of Rome, may be deposed or murdered by their subjects, or any whatsoever. And I do declare that no foreign Prince, Person, Prelate, State, or Potentate hath or ought to have any Power, Superiority, Preeminence, or Authority, Ecclesiastical or Spiritual, within this Realm: So Help Me God."[70]

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64. McIlwaine, p.231.
65. Ibid., p.233.
66. Hening, VII, 35-39.
67. Ibid., p.132.
68. Infra
69. Hening, loc. cit.
70. I George I, Stat.2, Ch. 13, Art. I (1714) (Raithby, Vol. 4, p.280)

Although the additional oath referred to by the act of Assembly concerning vestrymen, contained in an act of parliament in 1714, is much too lengthy to be quoted in full here, the substance of it is that the vestryman taking the oath pledges perpetual allegiance to King George and to his successors who inherit the crown legally, according to the act of parliament passed in 1700 (by which only the Protestant heirs of Princess Sophia might succeed to the throne), and declares himself opposed to any thereby illegal attempts to usurp the throne.[71.]

The total obvious effect of a vestryman's subscribing to these oaths would be that he would, if conscientious in his vows, be loyal to the lawful King, and that a papist would be barred from becoming a vestryman, since the second oath almost certainly involves the renunciation of one of the cardinal principles of papism, and the third oath binds him to recognise that only Protestants have the right of succession to the English throne.

The Parson's Cause concerned whether or not the ministers of the Established Church might be deprived of their salaries in the form which had been provided for by act of the Assembly with the assent of the King, by a superseding act of the Assembly without the assent of the King.[72.] The case hinged so intimately upon the status of the clergy before the civil government that a short review of the statutory provisions with respect to the clergy's salary may be in order. Semple has outlined it thus :

> " The first allowance made to the ministers was ten pounds of tobacco and a bushel of corn for each tithable; and every laboring person, of what quality or condition soever, was bound to contribute.(73) In the year 1631 the Assembly granted to the ministers besides the former allowance of ten pounds of tobacco and a bushel of corn, the twentieth calf, the twentieth kid and the twentieth pig.(74) This was the first introduction of tithes, properly so called, in Virginia. But it did not continue long for in 1733 [1633 ?] the law was repealed..."(75).
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> " A levy of fifteen pounds of tobacco per the poll was laid, in the year 1655, upon all tithables, the surplus of which, after paying the minister's salary, was to be laid out in purchasing a glebe and stock for the minister.(76) This law was re-enacted in the revisal of 1657.(77)

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71. Raithby, loc, cit.

72. "The Parson's Cause", unpublished manuscript (term paper) by the present writer; cf. also Eckenrode, op.cit., pp. 20-30.

73. Hening, I, 124.

74. Ibid., 159.

75. Ibid., 207

76. Ibid.,400

After the restoration of Charles II, which happened on the 29th of May, 1660, a temporary provision was again made for the Established Church." [78]

In the acts of 1661-62, devoted to the restoration of the Church of England, "Glebes were directed to be procured for the ministers, and convenient houses built thereon; in addition to which their salaries were fixed at £ 80 per annum, at least, besides their perquisites(79) .... The salary of the ministers was first settled at 16000 pounds of tobacco, in the year 1696, to be levied by the vestry on the tithables of their parish (80), and so continued to the Revolution (81). Any ministers admitted into a parish was entitled to all the spiritual and temporal rights thereof; and might maintain an action against any person who attempted to disturb him in his possession." (82)

In 1755, due to the failure of the tobacco crop and its consequent increase in value, the Assembly, in order to relieve the people of having to pay the normal 15000 pounds of tobacco at the prevailing exorbitant price, passed an act enabling the people to discharge their tobacco debts "... either in tobacco or in money, at the rate of sixteen shillings and eight pence [the ordinary market price] for every hundred pounds..." [83], and it had re-enacted it in 1758, without a suspending clause. [84] The series of litigations among the clergy, on the one hand, for their "lawful" salaries, and the representatives of the government -"the people" - on the other, found their focal point in the famed Parson's Cause, which, incidentally, constituted Patrick Henry's debut on the political stage of the colony. Popular sentiment swung almost unanimously to the side which Henry represented , and when the case was tried before the Henrice court Henry's oratory was so compelling that the court violated the ancient and accepted judicial rules and capitulated , sustaining the defendant in his refusal to pay the minister's just salary. So obvious was the popular sentiment on the question that all but two of the pending cases were immediately dropped, and the other two subsequently defeated on trivial technicalities. [85]

77. Ibid., p. 433.
78. Semple, pp.46,48.
79. Hening, II, 29.
80. Ibid., III, L51-153,
81. Re-enacted in 1727 (Ibid., IV, 204) and 1748(VI).
82. Semple, p.50.
83. Hening, VI, 401.
84. Ibid., VII, 241.
85. "The Parson's Cause", passim.

Just as in theperiod of absolute supremacy of the Established Church the Puritans were the predominant dissenting group, and in the period of the struggle for toleration the Presbyterians and Quakers were the reform agitators, so, in the period of the struggle for religious freedom, the Baptists were the most conspicuous and irreconcilable reformists.[86] They became an important element in the political and social life of Virginia in the period immediately following the French and Indian War.[87] Their somewhat radical likes and dislikes respecting religious, political, social and economic ideas appealed to the plain people of Virginia enough for them to be the fastest growing religious group[88] in that period of growing restlessness preceding the Revolution.

The history of the struggle for nominal religious freedom has already been treated better than I could hope to do.[89] Therefore my efforts should be directed towards merely outlining that legislation which forms a background for the ensuing period - that of securing real religious freedom.

The Baptists presented a problem to the authori ties. Their ministers seldom attempted to conform to the law by applying for licenses, because they thought that the occasional refusal of licenses to them by the authorities - ostensibly because of their itinerant nature - was unjustifiable.[90] The authorities, on the other hand, were very suspicious of them because their radical zeal almost invariably agitated whole communities, and rendered them, in the eyes of the government, a " disturbing social element".[91] Suppression of this evil frequently amounted to persecution of the Baptists, whose tender sensibilities were easily offended because of their inherent attachment to the idea of absolute toleration, and many were arrested.[92] The

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86. C.F.JAMES, Documentary History of the Struggle for Religious Liberty in Virginia, p.182.

87. William T.Thom, The Struggle For Religious Freedom in Virginia : The Baptists (Johns Hopkins University Studies in Historical and Political Science, Eighteenth Series,1900), p. 21.

88. Ibid., p.37. 89. Mr. Thom's monograph,op.cit. 90. Eckenrode, pp.37-38

attitude of the deputy-governor, John Blair, toward this was one of watchful tolerance, as is shown in his letter to the attorney for Spotsylvania county in July, 1768, where he says:

> "The act of toleration...has given them a right to apply, in a proper manner for licensed houses, for the worship of God, according to their consciences; and I persuade myself, the gentlemen will quietly overlook their meeting till the Court..."(93)

In spite of the General Assembly's rejection of the first Baptist petition in 1770,[94] the Baptists had so increased in numbers and strength by 1774 that "they began to entertain serious hopes, not only of obtaining liberty of conscience, but of actually overturning the church establishment, from whence all their oppressions had arisen". Petitions to that effect gained wide circulation and ready subscription.[95] It is even likely that the more radical non-conformists held out for special considerations before they would join heartily into the Revolution,[96] but it is hardly likely that the democratic Baptists were opposed to throwing off the yoke. Whether as a capitulation to their conditions or not, the Assembly passed acts putting dissenting ministers on an approximately equal footing with others in preaching to the armies,[97] and Baptists and Methodists were induced to serve by allowing them to raise their own companies and elect subordinate officers of their own religious denominations.[98]

The first Virginia Constitutional Convention met on May 6, 1776 and drew up the Declaration of Rights, the sixteenth article of which declares "That all men are equally entitled to the free exercise of religion, according to the dictates of conscience".[99] In the second act of the first

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91. Ibid. 92. Thom, p. 21. 93. Ibid., p.22. 94. Ibid., p.29. 95. Semple, p.25.

96. Mr. Brydon's suspicions in that direction find considerable support in the impression one receives in reading a petition presented by the Baptists on June 20, 1776 (Semple, pp.494-495); but cf. also James, op. cit., p. 183.

97. Hening, IX, 9, et seq. 98. Ibid.,348. 99. Ibid., 111; Mr. James's comment that James Madison "rendered his name immortal by his famous amendment...striking out toleration and inserting liberty in its stead" does not fit into the picture, in my opinion, because I have been unable to find the word liberty in this article.

session of the General Assembly of the Commonwealth, the principle embodied in the Declaration of Rights was given some effect in the "Act for exempting the different societies of Dissenters from the support and maintenance of the church as by law established, and its ministers", Furthermore, all acts of Parliament of the nature of religious intolerance were invalidated. The act merely declared that dissenters should be exempt from levies for the Established Church, and deferred the question of whether all denominations ought to be supported by a compulsory general assessment or a voluntary contribution until a later Assembly[100], which left the clergy of the Established Church without any assurance that their salaries would be paid. They were left in a difficult position, and the difficulty in which they found themselves as the result of the State's action in cutting off their only source of financial support - taxation - caused a very sharp reduction in their number in the years immediately following the Revolution.

The most significant steps in the process of "liquidation" of the property and privileges which previously belonged exclusively to the Established Church were : the Act of the Assembly (session of 1779) which rather definitively severed the most important economic bond between Church and State in Virginia[102], after a series of acts had merely remitted temporarily the payment of the ministers' salaries by parish levies[103]; the act of 1780 which transferred from the vestries and church-wardens certain public powers and duties[104]; another act of 1780 which conferred on a certain number of licensed dissenting ministers the authority to perform a lawful marriage

100. Ibid., pp.164-167. 101. G. MacLaren Brydon, "Early Days of the Diocese of Virginia", Historical Magazine of the Protestant Episcopal Church, March, 1935.

102. Hening, X, 197. This may well be considered a sequel to the Parson's Cause, in that it was a revolt against the economic aspect of the power of the Established Church over the people (Thom, pp.35, 67).

103. Hening, IX, 389 et seq. 104. Ibid., X, 288-290; cf. Ibid., XII, 27-30.

ceremony, thus breaking up the Episcopal clergy's monopoly of the marriage ceremonies and fees;[105] the act of 1784 incorporating the Protestant Episcopal Church, dissolving all the vestries, and empowering the church to regulate its own religious concerns;[106] Jefferson's masterpiece, the Act Establishing Religious Freedom, passed in the session of 1786;[107] the act of 1786, inspired by a storm of protesting petitions from the other religious denominations,[108] repealing the act incorporating the Protestant Episcopal Church and putting it on an equal basis with all other denominations by providing for regulation of all its affairs by appointed trustees;[109] and supplemented by a subsequent act providing that the trustees of The Protestant Episcopal Church should hold and manage all property which had been vested in the former vestries;[110] the act of the session of 1798 which recognizes the incompatibility of certain former acts of the Assembly with the Declaration of Rights and repeals all of those in any way touching upon religious subjects, leaving the subject of religion to be referred entirely to the people's conscience-the so-called reconstruction act;[111] and, finally, the act of 1801 providing for the sale of vacant glebe lands and those whose incumbents should subsequently decease or remove, upon the principle that the act for the reconstruction of the Bill of Rights tacitly recognized - that all the property which had been granted the late Established Church by the public reverted to the State upon its demise.[112]

Thus can we trace the wavering policy of a legislature with respect to a vague fundamental idea, with militant organizations diametrically opposed

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105. Ibid., pp.361-363; cf. XI, 281,503-505

106. Ibid., pp. 532-537.

107. Ibid., XII, 84-86.

108. Brydon, loc. cit., p. 29; Eckenrode, p.119.

109. Hening, XII, 266.

110. Ibid., p.705.

111. Statutes At Large (Shepherd's New Series), II, 149.

112. Ibid., pp. 314-316; cf. Brydon, p.29.

In their construction of the fundamental idea. It is not strange that this period of legislative liquidation of rights and privileges vested in one body under the influence of monarchy should have been so apparently vaccillating. For one thing, the idea was so new and ill-defined in the minds of people in terms of practicable specific policies that it had to be experimented with, (just as a novice at any new process of performance must experiment in many directions before he hits upon the best) and just as the national government was at that very time engaged in the same process of making an idealistic idea practicable. For another thing, the vast amount of vested interests involved made it necessary that a process of liquidation be gradual rather than precipitate - so that the slow formulation of the idea in the thinking of many legislators was well calculated to avoid precipitate interference with vested interests. And, finally, the nature of the subject, religious, made it necessary to handle it carefully (- with rubber gloves, if you please-) especially in view of the strength of both the opposing factions.

At any rate, by 1802 the law was enacted which completed the separation of Church and State in Virginia. In the administration of the law for the overseers' of the poor taking possession of all real estate owned by the Episcopal Church which had been raised through taxation, three classes of property were supposed to be exempted from seizure: church buildings, property which was then being used by the lawful incumbent, and real estate which had been devised to the church by wills of donors.[113] Although the Churches had been erected with public money for the most part,[114] it seems that it would have been unfair to deprive the Episcopal Church of that property. As to the second class of property exempted, it was seized gradually as the lawful incumbents gradually died or moved away during the

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113. Shepherd (New Series), II, 314-316; cf. also E. W. Peet, "God's Mercy and Man's Ministry"; Historical Magazine of the Protestant Eqiscopal Church, Vol. II, No. 3 (September, 1933), p. 32.

114. Brydon, p. 42.

succeeding few years.[115] With respect to the third class of property exempted, however, there is fairly good evidence to show that the exemptions were not overly respected in the administration of the law.[116] Even considering the natural Episcopalian proclivities of Mr. Brydon, it cannot reasonably be supposed that he fabricated the story of two conspicuous cases in which the overseers of the poor in one parish sold tracts of glebe-land for the benefit of the county, expressly indicating the tracts sold by the names of their original donors to the Church ("Allen's lands", etc.) in the deeds of transfer, which apparently constitutes an explicit admission of the high-handedness of such a procedure.[117]

At this point in the development of the relations between the State and religious societies began the imperceptible transition from the fourth to the fifth phase of those relations. The advance thus far consisted in putting all religious societies on an absolutely equal basis with respect to provileges they were to enjoy. No one church was patronized by the State and no church was burdened especially by the laws of the State. In fact, the State having attained that state of religious freedom in which its primary duty with respect to religion seemed to be to leave it strictly alone, the legislators apparently determined to "stand pat" on that accomplishment and to manfully refuse to yield to any petitions for the State's entering into any relationships with religious institutions. And that was the attitude which characterized the legislatures and constitutional conventions from about 1804 until 1854,[118] while the attitude was typically manifested in the vain efforts of various religious denominations to secure charters of incorporation for some of their agencies or even for themselves as churches.

It has been suggested, and very plausibly, I think, that one of the

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115. Ibid., p. 43.

116. Brydon, p.43.

117. Ibid.; personal discussion with Mr. Brydon.

118. When the Virginia Court of Appeals upheld the constitutionality of the act of resumption of the glebe-lands, in the case of Turpin vs, Lockett (6 Call 113).

principal reasons why some of the younger denominations were more irreconcilably opposed to incorporation of churches than the older one was that some had less property than the others to protect, and - the general object of incorporation being to make the property of the corporation more secure - those who had least property were the ones who most violently opposed the incorporation.[119] Ignoring for the moment other factors which will be considered later, we may tally the scores thus : In 1784, when the Assembly had under consideration the resolution providing that :

> "... it is the opinion of this committee (of the whole house), that acts ought to pass for the incorporation of all societies of the Christian religion, which may apply for the same", (120)

it is perfectly obvious that the Protestant Episcopal Church was by far the wealthiest church in the State and, by the same token, had the most interest in protecting its property. That the Episcopal Church was the sole petitioner for such an act[121], and that, although the resolution provided that " acts ought to pass for the incorporation of all societies ... which may apply", the Episcopal Church was the only one to apply for incorporation, seems ample evidence that the other religious congregations did not possess enough property at that time to move them to secure their property by applying for incorporation, as they were entitled to do.[122]

Furthermore, the Presbyterian Church was next in age to the former Established Church[123], having grown up in the period of struggle for nominal religious toleration, and consequently probably owned more property than the younger Baptist Church. The wording of a recommendation of a House Committee on Religion on June 8, 1784, that so much of the Episcopal and Presbyterian petitions " as relates to an incorporation of their societies is reasonable" seems on the surface to confirm this thesis, but there were certain factors which qualified and partially contradicted the committee's report.[125] The Pres-

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119. Suggestion of Mr. Brydon. 120. Eckenrode, p.92. 121. Ibid., p.78.
122. William Wirt, Sketches of the Life and Character of Patrick Henry, p.260.

byterians were quite opposed to the bill incorporating the Episcopal Church[126] and did not apply for incorporation of their society[127]; the act of incorporation aroused the Presbyterian opposition and was in large part responsible for their strong stand, in company with the Baptists, for complete separation of Church and State.[128]

The Baptists seem to have been so occupied with their fight for equal privileges with respect to the performance of the marriage ceremony, the inequality of the vestry law provisions[129], and the opposition to the proposed general assessment bill[130], that they seem not to have seriously opposed the incorporation bill at the time it was being considered[131]; but they awoke when the bill was passed, and, the general assessment bill - against which most Baptists seem to have been convinced that they were the only organised opponents[132] - having been defeated on the third reading[133], complained of the favoritism of the Government towards one society in strong terms.[134]

At that time the Baptist Church was a young but lusty and growing infant and consequently had very little property to protect and secure by incorporation. But as it grew in size and wealth during the first half of the nineteenth century, the need for securing its property began to pinch more and more[135] and evidently facilitated a growth of a more conservative attitude with respect to State incorporation of religious societies, among some of its members. In 1790 the Episcopal Church, though wealthier, was on the decline in its conservative influence on the governmental policy, and the Baptist and Presbyterian Churches had comparatively little property and were

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123. Neglecting for the moment the question of whether the Society of Friends (Quakers) might be older.

124. Journal of the House of Delegates, May, 1784; cited by Eckenrode, p.79.

125. Ibid., p.79. 126. Ibid., p.81. 127. Ibid., p.79. 128. Ibid., p.107. 129. Ibid., pp. 77, 85. 130. Semple, p.97. 131. Eckenrode, p. 85. 132. Semple, p.98.

133. December 24, 1784 (Eckenrode, pp. 102,113). 134. Ibid., p.119.

in the ascendant in their progressive influence for more complete separation of Church and State; but by the middle of the nienteenth century, the former dissenting group was dominant both in numbers and in wealth, and - apparently in substantiation of the aphorism that ownership of wealth ever exerts a conservative influence - the general sentiment in the direction of limited security of property of religious agencies was reflected in the attitude of a large number of the legislators.[136.]

After the repeal of the act of incorporation of the Protestant Episcopal Church and the resumption of the glebe lands, there ensued a period in which many educational societies, usually of a denominational character, applied for charters of incorporation for their institutions of learning.[137.]

The philosophy of Thomas Jefferson, whole-heartedly endorsed by the Baptists, was that the "state was in no wise to concern itself with religion"[138.] and the adherence of the legislature to that principle was quite clearly apparent in their refusal to incorporate any religious sects,

> "To enable them to hold and administer more conveniently for the religious objects of the petitioning sect, property to a limited amount, voluntarily contributed for those purposes." (139).

The same attitude was no less apparent in the policy of the legislature towards incorporating educational institutions. It refused to to incorporate theological seminaries, as a matter of course, and undertook to insure that the State should not be an unknowing accomplice in the matter of denominational theological instruction by inserting in the charters of those institutions which it did incorporate a provision prohibiting the establishment of any theological professorships therein, or else ex-

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135. Semple indicates an instance as early as 1807 where the Baptists felt the need of more security for their property (op. cit., p. 135).

136. The substance of the opinion of Mr. Brydon, as expressed in conversation. The fact that the legislators were perfectly willing to encourage the growth of Christian principles whenever they considered it safe to do so is attested by their grant of a charter of incorporation to the Bible Society of Virginia in 1813 (Acts of Assembly, 1808-1815, p. 120).

pressly reserving to the State the right to revise, modify or revoke the charter at will.[140] It was the Jeffersonian philosophy being reflected in the legislature's refusing to allow the Government to support colleges with schools of divinity. Such, they held, was contrary to the Declaration of Rights.[141] This influence on the followers of Jefferson, and especially upon the Baptists, whose principal temporal pride lay in the fact that they were historically the chief protagonists of the complete avoidance of any semblance of State intervention in religious affairs,[142] was no doubt a quite considerable factor in the prolongation of the leaning-over-backward period of legislative inactivity.

The principal difficulty in the way of securing any favorable commitment of the legislature on these questions concerning religious institutions was that the tide of public opinion had swung so far from the conservative reaction of 1784-85[143] and toward the Jeffersonian principles, that the legislators were " church-shy ". Whenever any questions concerning the Church arose, the Act for Religious Freedom (which was reverenced by them as much as the fundamental law, although it was not incorporated into the Constitution until 1830) presented itself to their minds and apparently inhibited any action.[144] Any applications of religious societies for legislative

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137. See Index to Chronology of Abstracts, "Incorporation of Theological Seminaries".

138. Sadie Bell, The Church, The State, And Education in Virginia, p.209.

139. Virginia Reports, 11 Leigh 133.

140. Revised Code of 1819, I, 38, et seq.

141. Bell, p. 189.

142. Ibid., p.209.

143. Eckenrode, p. 108 et seq.

144. An illuminating instance is given by an Episcopalian minister, which may, of course, be slightly exaggerated ; " Before we [the Episcopalians] could repair the building we had to get possession of it.... I went to Richmond one year with our petition. It was instantly scouted. We had permitted the word Church to get in. We learned wisdom for the next year. We simply begged the repeal of the act respecting the schoolhouse. I stayed away myself. It passed in silence ...". (Peet, loc. cit., p.32).

relief, according to Judge Stanard,

"encountered in the Legislature the two fold objection of their incompatibility with the principles of religious freedom, declared by the act of 1785, and of the inexpediency of exercising the power to create such corporations, though it were constitutional to do so; and that under the influence of one or other of these objections, or of both combined, those applications were rejected by large majorities." (145).

During this period the question was somewhat confused by the failure of the legislators and the public generally to distinguish between two generally divergent purposes of the applicants. The Episcopal Church represented generally the applicant with the first purpose - that of securing incorporation of the Church, rather than of merely securing incorporation of agents of the Church. Even granting that in the early part of the struggle the problem was not susceptible of being thus divided into two such aspects, the Episcopal Church remains in this first category, because even as late as 1845 its petition included a request "for a law authorizing the Religious Congregations of the State to hold property to a limited amount."[146]

The Presbyterian Church best represented the second purpose of applications

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145.
Virginia Reports, 11 Leigh 133 (1840).

146.
Journal of the House of Delegates of Virginia Session 1845-46, Document 8. This in spite of an Act of Assembly of February 3, 1842 (Acts of Assembly, 1841, p.60) purporting to secure any property in real estate, within certain stated limits, to the trustees of any religious congregation, and providing that a majority of those trustees may sue or be sued for such property or its use, one member of the congregation being authorized to institute such suit against the trustees to compel them to use that property for the benefit of the congregation. Where the law cramped the Episcopal Church most was in that it protected only real estate, and even then it limited the amount of real estate the church might own.

With respect to inheritances of money and so forth, the laws still gave the church no relief. The fact that the courts would not entertain any suit by a member of such a congregation to compel a trustee to use any such devises for the benefit of the congregation, and that if the trustee should decease his legal personal heirs might contest any devises he might make - with a fair assurance of securing the inheritance - made the gathering of a large endowment almost an impossible task. "Every penny left by will (or given directly) to the Seminary had to be left or given to an individual by name (cf. Gallego's Executors v. The Attorney-General, 3 Leigh 450), and he was not legally bound to account for it or to use it for the purpose desired." (Goodwin, op. cit., I, 327).

to the legislature. Its interest ostensibly - and even apparently - lay solely in better securing the property of educational institutions under religious auspices. The most conspicuous manifestation of this is the Presbyterian application for a charter for the " Theological Seminary of Virginia " in 1815.[147.]

This introduces an element which figured only slightly in previous applications for incorporation - that of education. The Established Church had been vitally interested in education and had established the College of William and Mary as an aid to ministerial students[148.] and had looked with favor upon the establishment of private schools such as Eaton's.[149.] The Presbyterian Church became interested in education and was actively in favor of incorporation of their theological seminary as one intended for all denominations (and "for the furtherance of Christianity"), and so stated in their petition for a charter. But the legislature was dubious and consequently refused.[150.] The Baptists were rather slow in undertaking educational activities.[151.]

The fact, the question of incorporation became more and more, towards the middle of the century, a question of whether the State would continue to suffer the traditional domination of religious motives in educational activities[152.]. It was during the forties and fifties of the nineteenth century that the State began to awaken to its responsibility in the matter of education.[153.] When the State began to enter that field more extensively in the decades prior to the Civil War, there was need for some sort of compromise which would be suitable to the State's undertaking public education at the same time that it reserved some little religious influence therein.

In order to circumvent the difficulty that the devise to a trustee was frequently contested by the devisee's lawful heirs, the Diocesan Convention secured the services of some of the best lawyers to draw up a " Form of a Bequest ", taking note of that difficulty by providing that "... this legacy is to be paid (to the Treasurer of the Semimary)... whether [he]... shall be under any legal obligation to apply it as above described or not; it being my intention , that no kindred or other legatee of mine shall take, or be entitled to ... any interest or trust in the said legacy", whether the legatee should carry out the wishes of the devisee or not.(Journal of the Convention of the Protestant Episco-

the Jeffersonian principle of strict construction of the Act for Religious Freedom was incompatible with the State's coöperation with religious institutions in the field of education. Indeed it appeared that education was "the base of a triangle which had its apex in the meeting of the lines of church and state".[154] When that fact dawned on the legislators in 1854, they abandoned the old Jeffersonian principle of complete and absolute abstinence of the State from intervention in matters of religious interest, and unconsciously adopted the interpretation of the principle of separation which meant merely a policy of coöperation with the Church without legal alliance.[155] The incorporation of the Protestant Episcopal Seminary of Virginia in 1854 was apparently an evidence of that change of attitude.

It has already been seen that the legislature was very much against the incorporation of any religious society from 1804 to 1830. When the Constitutional Convention of 1830 met it was faced with this question. It was moved that there be expressly reserved to the legislature the power

> "of incorporating by law the trustees or directors of any theological seminary, or other religious society or body of men created for charitable purposes or for the advancement of piety and learning, so as to protect them in the enjoyment of their property and immunities, in such case and under such regulations as the legislature might deem expedient and proper."

The motion was opposed, and when the author of the motion suggested that, in the absence of any constitutional prohibition, the legislature might have that power without express authorization, it was overruled by a large majority who were of the opinion that such power ought neither to be conferred nor exercised.[156] Furthermore, the representatives were convinced that

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pal Church (of)...Virginia, 1849, p. 70. Cf., though, Acts of Assembly, 1846-47, p. 66.

147. Bell, p.302.

148. Hening, II, 25, 56, etseq.

149. Hening, passim.

150. Bell, p. 302.

151. Ibid., pp. 205-208.

152. Bell, pp. 649-650.

153. Acts of Assembly during that period, passim.

154. Bell, p. 649.

155. Ibid., p.647.

156. Judge Stanard, in Selden et al. V. Overseers of the Poor, 11 Leigh 133.

the Act for Religious Freedom implicitly prohibited the legislature from incorporating religious societies, so that, instead of expressly prohibiting the same, thay incorporated the Act for Religious Freedom into the Constitution.[157]

The Presbyterians were denied their request for incorporation of a theological seminary in 1815. The Baptists formed the Virginia Baptist Education Society in 1830 and established the Virginia Baptist Seminary at Richmond in 1832. Having done so, the property of the Seminary began to assume a considerable value, and there was felt the necessity of securing the property to the Seminary by incorporating the trustees of the institution. Overcoming their previous scruples with respect to incorporation of religious societies[158], they joined with the Alexandria Episcopal Theological School in applying for a charter. Of course the applications were rejected because of the theological nature of the institution. The Baptists Education Society was faced with the alternative either of abandoning the class in theology and applying for a charter as a liberal arts college or of not being incorporated at all. The Baptists had been slow to adopt the idea of sponsoring educational enterprises for their ministers[159], and they were not averse to receding a little in that respect. The change in nature of the institution met with the approval of most of those concerned, and when the officers of the institution asked to be incorporated as a purely literary institution, the legislature acceded to the request and incorporated the Trustees of Richmond College on March 4, 1840[160], including in the charter a prohibition against the establishment of any theological professorship therein.[161]

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157. Report of the Proceedings and Debates of the Constitutional Convention State of Virginia [1901], I, 745.

158. Cf. Semple, p.193.

159. Bell, pp.205-208.

160. Robert Ryland, The Virginia Baptist Education Society The Society- The Seminary - The College (Address by same, published by Richmond College Library, 1891), pp.16,17; R.E.Gaines, "The Beginnings", The First Hundred Years, p.24.

The Episcopal Church took note of the efforts of the Presbyterians toward the establishment of a theological seminary, and began, in 1815, to consider providing a theological chair at William and Mary College, [162.] whose chief mission, in its inception, had been the education of young men for the ministry.[163.] [164.] In spite of some little agitation against it, a professorship in theology was established at William and Mary College in 1821. But the undertaking fell through for various reasons. During the slightly over a year[165.] of its existence there, only one student presented himself for theological instruction, and it was rumored that the "irreligious atmosphere"[166.] of that place was not conductive to such study. In October 1823, Rev. R. Keith established himself at Alexandria and began teaching in theology.[167.] For a period of thirty years after that the friends of the Seminary, particularly Bishop Meade, made repeated efforts to secure a charter of incorporation for the Seminary, but in vain.[168.] In 1845 the Episcopal ministers again besought the legislature to pass a law "authorizing the Religious Congregations of the State to hold property to a limited amount."[169.]

By this time, however, the Episcopalians apparently had seen that the likelihood of the legislature's incorporating a church as such was very slight, but that the growing interest of the State in matters pertaining to education[170.] offered encouragement that their seminary might receive favorable consideration. Therefore they devoted a good portion of their petition to the enumeration of reasons why the seminary should be incorporated as a unit in itself,[171.] thus changing their position from that of the first aspect to include a little of both aspects mentioned above.[172.] As was to be

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161. Acts of Assembly, 1839, p.94. 162. Bell, p.285. 163. T. J. Wertenbaker, The Planters of Colonial Virginia, p. 136.

164. Bell, pp. 286-292. 165. Cf. Ibid., pp. 286-287. 166. John Johns, A Memoir of the Life of the Right Rev. William Meade, D.D., p. 128

167. Bell, p. 293. 168. Goodwin,p. 211. 169. Journal of the House of Delegates

expected, the fact that the Episcopal Church had petitioned for the incorporation of their denomination evoked counter-petitions from Methodists and Presbyterians.[173] The most important opposition came from a Presbyterian preacher, Rev. William S. Plumer, who appeared before the Committee of the Courts of Justice and delivered a lengthy argument against the polity of granting "... corporate privileges for every congregation and society which has been or may be formed...".[174] As a result of the opposition, the Committee unanimously resolved " That the policy of the laws of this Commonwealth by which the power to take and hold property is witheld from religious corporations is founded in the highest wisdom, as well for the safety of the State as for the purity of the churches!"[175]

But the seeds of concession were sown. The Episcopalians had at length come to the point where they laid the emphasis on the incorporation of the Seminary rather than the church. On that point they reached agreement with the aims of the Presbyterians and with what the Baptists had desired before they had secured incorporation of their various institutions of learning without theological curricula.[176] In fact, Mr. Plumer expressly declared that his address was not to be construed as contesting the granting a charter to the Episcopal Seminary[177], but that he sought rather to see that the legislature should not, by a general law, " create as many religious corporations as there are congregations and religious societies in the State."[178] At any rate, those petitions, replies and counter-replies marked the beginning of the general movement in the State for incorporation of agencies of the churches[179] which culminated in 1854 in the granting of a charter to the Episcopal Seminary, and in 1855 to the Presbyterian (Union) Seminary.[180]

of Virginia, Session 1845-46, Document No. 8.

170. Bell, pp.649-650.

171. A portion of this petition well reflects the traditional attitude of the Episcopal Church - and the growing attitude of the other churches - concerning the place of religion in education :

"Religious education lies at the bottom of all true social melioration. Private donations to that object, as well for the motives from which they proceed, as their value to the community, deserve a thank-

Meanwhile the Constitutional Convention of 1851 met and adopted a provision that " The general assembly shall not grant a charter of incorporation to any church or religious denomination, but may secure the title to church property to an extent to be limited by law ".[181.] Finally Rev. John Cole secured the reluctant consent of Bishop Meade to make another effort to obtain a charter for the Episcopal Seminary from the legislature. He spent all his time and efforts in the undertaking.[182.] The Presbyterians and Baptists, fearing that an incorporation of the Seminary would secure the Episcopalians " some unusual advantages ", again opposed his efforts. But Mr. Cole was personally acquainted with the Speaker of the House, and - having secured his good will towards the endeavor - he engaged many other members of the legislature in tactful interviews and brought persuasive arguments to bear on them.[183.] Furthermore, Bishop Meade was acquainted with a number of influential men in the legislature, which no doubt helped their cause along.[184.]

> " Mr. Cole's steady and placid perseverance gained him a hearing from many who had influence; the manifest justice and propriety of the application were at last appreciated, and the act of incorporation was granted in a most liberal form [February 28,1854](185.). Every one was surprised at Mr. Cole's success, so unexpected and so contrary to the predictions of many and to the experiences of the past." (186.)

The legislature construed the constitutional provision so as to permit the

> ful reception; and any government must be disposed rather to encourage than to discountenance them, Religious Seminaries are not the less useful in encouraging sound learning, because they derive their motives and sanctions from higher than human sources, and the polisy which creates a distinction between these and other literary institutions, may be questioned as both unjust and impolitic, The latter have been recognized as legal entities, and made capable to take donations, and it can hardly be objected that religious schools are not equally worthy of the state's regard." (Journal, 1845-46, Document 8).

172. Supra, p. 24.

173. Bell, p.365.

174. William S.Plumer, The Substance of an Argument Against the Indiscriminate Incorporation of Churches and Religious Societies, p. 77.

175. Quoted in Report of the Proceedings and Debates of the Constitutional Convention State of Virginia (1901), I, 746. The resolution embraces Mr. Plumer's argument quite generally (cf. Plumer, passim).

176. Bell, pp. 313-318.

177. In fact, he did not apologize for the Presbyterians' application for a charter for their seminary in 1815, but considered it favorably (p. 77).

incorporation of agencies of churches, which was later held constitutional by the courts.[187] The Presbyterians looked, and saw that it was good, and secured for their Seminary a charter the following year.[188]

Thus it is that the legislature effected the separation of Church and State and in doing so went to an extreme in its zeal; and after tenaciously clinging to that extreme for almost a half-century, it finally became aware of the impolicy of that position and relaxed its over-vigilant antagonism to a point where not only did religious freedom exist, but it was aided by a species of coöperation between Church and State without any legal alliances. And the fact that such was accomplished by 1854 ought to be ample reason why this discussion should end at that point, in spite of the fact that the question has arisen in various ways since then.[189]

Miss Bell summarizes it thus :

" The present attitude of Virginia toward the problem of religion in education, which seeks to pervade education with a strong religious tone, while barring any recognition of that fact in law, is comprehensible enough in light of the review of certain factors in her more than three centuries of history, The interacting relationships of church, state , and education during this period have been controlled by three political philosophies - that of union, that of separation, and that of co-operation without legal alliance between church and state." (190.)

178. Ibid., p.8. 179. Bell, p. 365. 180. Debates in Const. Conv. of 1901, I, 748. 181. Art. IV, Sec. 32. (F.N. Thorpe, The Federal and State Constitutions ... , VII, 3842); 182. Goodwin , I, 211. 183. Joseph Packard, Recollections of a Long Life, p.149.

184. Letter from Dean Rollins, Protestant Episcopal Theological Seminary in Virginia, April 22, 1935.

185. Acts of Assembly, 1853-54, p. 65. 186. Packard, loc. cit.

187. Bell, p.477. 188. Bell, p. 365. 189. In the Constitutional Convention of 1901 the question arose as to whether the legislature ought to be empowered to incorporate churches as well as agencies of the churche but it was finally decided to incorporate the same provision as had been in the Constitution of 1851 (supra) (Debates in Const. Conv. of 1901, I p. 745 et seq.), in spite of the fact that it was pointed out that at that time there were 43 States in the Union which granted charters of incorporation to churches (R.C.McDanel, The Virginia Constitutional Convention of 1901-1902, (Johns Hopkins University Studies in Historical and Political Science, Vol.46,1928), p.95.

And James Madison spoke perhaps even truer than he thought when he said that :

> " Torrents of blood have been spilt in the old world by vain attempts of the secular arm to extinguish religious discord by proscribing all differences in religious opinion. Time has at length revealed the true remedy. Every relaxation of narrow and rigorous policy, wherever it has been tried, has been found to assuage the disease. The American theatre has exhibited proofs that equal and complete liberty, if it does not wholly eradicate it, sufficiently destroys its malignant influence on the health and prosperity of the State." (191.)

That " relaxation of narrow and rigorous policy " was accomplished in successive degrees during the history of Virginia , and it reached its climax in 1854.

* * * *

190.
Op.cit., p. 647.

191.
Quoted by Semple, p.506.

CHRONOLOGICAL COMPILATION

OF

ABSTRACTS OF LAWS

WITH

TOPICAL INDEX

TOPICAL INDEX

The following index had to be adapted to the peculiarities of this paper; consequently, it is not an index directly to the laws pertaining to Religion in their primary sources, but rather it is an index to the laws as they are listed in the chronologically arranged abstracts. Its purpose is to enable the reader to trace specific aspects of the laws chronologically through the abstracts. By referring to the location in the lists of abstracts, the investigator may find the specific page of the statute book on which the full text of the law may be found.

The first number indicated refers to the number of the page of the Compilation of Abstracts where the law in question is referred to; the second number indicates the date of the particular session of the Assembly which enacted the law; the third number refers to the number of the act in question, as it is listed in the statute books. Thus, 19, 1738,II would be interpreted to read : On page 19 of the Compilation of Abstracts, in the laws of the session of 1738, Act number II, concerning the particular topic in question, will be found.

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CH. II- An act for exempting the different societies of Dissenters from contributing to the support and maintenance of the church as by law established, and its ministers : Acts of parliament punishing the holding of religious opinions, not attending church, or exercising any mode of worship, held invalid henceforth; all dissenters exempt from levies for support of the established church and its ministers; except, that vestries are empowered to levy for arrears of salary, prior contracts, and provision for the poor; glebes, churches, ornaments, donations, perpetually reserved to the use of the parishes; solution of dispute as to whether general assessment or voluntary contributions for the support of the several denominations deferred tolater assembly; act providing a fixed salary for the clergy temporarily suspended, leaving support of the clergy voluntary; lists of tithables, how taken, and penalties

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26. G. A., Dec. 7, 1801

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27. G. A., Dec. 6, 1802

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28. G. A., Dec. 5, 1803

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29. G. A., Dec. 2, 1805

CH. 4-Quakers and menonists excepted in cases of exacting fines for refusing to receive arms or equipment of militia, or to give receipt therefor. 208

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30. G. A., Dec. 2, 1811

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33. G. A., Dec. 1, 1817

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34. G. A., Dec. 6, 1819

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36. G. A., Dec. 6, 1830

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