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NEW WORLD, OLD LAWS

[11] The influential pen of Augustine, fifth-century church father, proclaimed, “It is, indeed, better that men should be brought to serve God by instruction than by fear of punishment, or by pain. But because the former means are better, the latter must not therefore be neglected.” He reasoned that many require “the rod of temporal suffering, before they attain to the highest grade of religious development.”¹

John Calvin added the arm of the state to his arsenal of weapons to be used in spiritual coercion, maintaining that “godly princes may lawfully issue edicts for compelling obstinate and rebellious persons to worship the true God and to maintain the unity of the faith.”²

America's Puritans inherited this paradox, vigorously enforcing a doctrine of “love” by civil laws, with their accompanying threats and punishments.

What George Washington was to the political future of his country, Roger Williams was to religious liberty in America – its father. One of the first dissenters to be heard, Williams came perilously close to being silenced. As a young man in England he had observed the atrocities of the Star Chamber. “He had been particularly shocked by the treatment given Alexander Leighton, a celebrated Scottish physician and clergyman, who had been tried for religious nonconformity. [12] Leighton had been sentenced to life imprisonment, fined 10,000 pounds, and facially disfigured, his ears being cut off, his nose slit, and his face branded with a hot iron.”³

Ordained in the Episcopal Church, Williams had espoused Separatist doctrines by the time of his arrival in Boston in 1631. He accepted an offer to serve as minister for the Salem congregation. Once in Salem, he boldly mounted the pulpit to condemn the “practice of punishing those who failed to attend Sunday church services. Civil magistrates, he declared, had no right to enforce church discipline.”⁴ This reckless talk was too much for the insecure Salemites to accept, so Williams took his heresies to Plymouth, where his ministry included the Indians.

Back in Salem in 1633, he launched a verbal assault against the theocratic government of Boston. He advocated absolute separation of church and state, attacked the civil use of the religious oath, and challenged the right of the British Crown to appropriate Indian lands without adequate compensation.

The General Court read “subversion” in the latter declaration and called him to account. In the fall of 1635, the court formally charged Williams with denying that individual conscience lies within the sphere of government.

Governor Winthrop, in the first volume of his 1631 journal, had observed:

“At a court holden at Boston . . . Mr. Williams . . . had declared his opinion that the magistrate might not punish a breach of the Sabbath, nor any other offense [that was religious], as it was a breach of the first table [of the law of God].”

Williams refused to abandon his views and was found guilty of disseminating “newe & dangerous opinions.” His sentence was banishment from the Bay Colony, effective the following spring. Now that the theocrats had made a martyr of the man, loyal hearts in Salem were bound closer to his cause, and Bay Colony leaders determined to arrest him and deport him to England. But when officers arrived from Boston, Williams had vanished.

[13] In midwinter he had escaped to the sheltering woods and the protection of friendly Indians. Here his dream of a colony where freedom of conscience would be protected by law blossomed into reality. Away from the Plymouth and Massachusetts colonies, he bought land from the Indians and founded “Providence,” the beginning of Rhode Island.

“In his colony, dissenters were welcome. No oaths regarding a person's religious beliefs were required. Citizens were not compelled by law to attend church, and there were no taxes for support of a state church.”⁶ Even the Jew, the Catholic, and the Quaker were openly accepted in Providence.

Rhode Island law beckoned to the colonists, “All men may walk as conscience persuade them, every one in the name of his God.”⁷ Historian George Bancroft has written:

At a time when Germany was the battle-field for all Europe in the implacable wars of religion; when even Holland was bleeding with the anger of vengeful factions; when France was still to go through the fearful struggle with bigotry; when England was gasping under the despotism of intolerance; almost half a century before William Penn became an American proprietary; and two full years before Descartes founded modern philosophy on the method of free reflection Roger Williams asserted the great doctrine of intellectual liberty. It became his glory to found a state upon that principle. . . . He was the first person in modern Christendom to assert in its plenitude the doctrine of liberty of conscience, the equality of opinions before law. . . . Williams would permit persecution of no opinion, of no religion, leaving heresy unharmed by law, and orthodoxy unprotected by terrors of penal statutes.⁸

Shortly before Williams's travel through the wilderness, Cecil Calvert founded the Maryland settlement. Although it was established primarily as a refuge for persecuted Catholics, Christians of all faiths were welcomed. This philosophy of toleration was codified by the Maryland Assembly in 1649. [14] It proclaimed that “noe person . . . within this Province. . . . professing to believe in Jesus Christ, shall from henceforth bee any waies troubled . . . for . . . his or her religion . . . soe as they be not unfaithfull to the Lord Proprietary or molest or conspire against the civill Government established.”⁹

While this *Toleration Act* of 1649 protected minority Christian persuasions, it offered little comfort to the non-Christian and fell miserably short of the Williams philosophy. In the same breath, the legislature curtailed Sunday activity by decreeing that anyone who would profane “the Sabbath or Lords day called Sunday by frequent swearing, drunkenness or by any uncivill or disorderly recreation, or by working on that day when absolute necessity doth not require it”¹⁰ would be subject to fine, imprisonment, and public whipping.

These early pioneers were followed by William Penn and the Pennsylvania Quaker colony. Advised to “tremble at the Word of the Lord,”



the dissenting religionists in England who relied on the “inner light” rather than exterior sacrament, were first nicknamed “Quakers” in 1650. William Penn, son of an English admiral, joined the group, and in 1670, at the age of twenty-six, he made religious and legal history.

In 1664 Parliament outlawed all religious meetings but those sanctioned by the Church of England. Roman Catholics and other dissenters suffered from the vengeance of this and similar rigid regulations established by a hostile government. Quakers went to jail by the thousands, and scores died in prison.

Young Penn himself was no stranger to the prison cell. Thus the threat of imprisonment

held no real terror for him when he found soldiers barring the entrance to the

Quaker meeting hall on Gracechurch Street, London, on August 14, 1670. Penn simply preached to the believers in the street and was haled into court for “disturbance of the peace.” [15] (picture moved).

[16] The indictment which came on September 1 was filled with double-talk and such gibberish as “contempt of the said Lord the King, and of his Law” as well as terror and disturbance to his people and subjects and “against the Peace of the said Lord the King, his Crown and Dignity.”¹¹

To protect the “dignity” of the Crown, the inept Lord Mayor, Sir Samuel Starling, was summoned. Sitting with him was “the Recorder, John Howe, the chief criminal judge of the City of London, equally unlearned in the law which he was supposed to administer, a stupid man with little to sustain him except a few worn-thin Latin proverbs which he took delight in misapplying. He was a dull, heavy man, who was soon angry when the trial came alive, and kept his hot temper simmering; he suspected that Penn was making fun of him – which indeed Penn was.”¹² These giants of jurisprudence were joined by aldermen and sheriffs. The twelve-man jury was expected to do its duty and find a guilty verdict.

With his codefendant, William Meade, Penn erected a stout and vigorous defense, punctuated with spicy exchanges, with the court. At one point Penn demanded to know upon what law his indictment was based.

“Upon the Common-Law,” the Recorder snapped.

“Where is that Common-Law?” persisted Penn.

The Recorder retorted, “You must not think that I am able to run up so many Years, and over so many adjudged Cases, which we call Common-Law, to answer your Curiosity.”

“This Answer I am sure is very short of my Question, for if it be Common, it should not be so hard to produce,” Penn taunted.¹³

The Recorder called Penn “impertinent” and invoked *les non scripta*.¹ In turn, Penn accused the court of “sinister and arbitrary designs.”

Meade, the codefendant, spoke of the Quaker tenet of peace to which he subscribed, in contrast to an “unlawful assembly” as defined by Lord Coke. The Lord Mayor bristled, “You deserve to have your tongue cut out.”¹⁴

[17] Penn and Meade held their ground through the acid exchanges, and the jury of twelve ordinary men was impressed. To the dismay of the court, it returned a verdict of “not guilty” to the unlawful-assembly charge.

“Members of the court threatened the jury with fines and hinted at torture if they did not bring in a verdict to the judge's taste – but they would not yield: 'NOR WILL WE EVER DO IT!' their foreman shouted in answer to Penn's impassioned appeal, 'Give not away your right!'”¹⁵

¹ *lex non scripta*, “law that has not been written”.

Repeatedly the jury was sent out for a revised verdict. Repeatedly it returned with an unaltered opinion despite the court's threat to keep the jury "lock'd up, without Meat, Drink, Fire, and Tobacco."

When a defiant jury returned for the fifth time with the same verdict, Penn challenged the court.

"What hope is there of ever having Justice done, when juries are threatened, and their Verdicts rejected?" he exclaimed.

"Stop his Mouth; Jaylor, bring Fetters and stake him to the Ground," Lord Mayor shouted.

Penn clung to his aplomb, "Do your Pleasure, I matter not your Fetters."

"And the recorder in his exasperation disclosed the real basis of the prosecution and fitted the proceeding expressly into the history of religious intolerance in Europe: 'Till now,' he said, 'I never understood the Reason of the Policy and Prudence of the *Spaniards*, in suffering the Inquisition among them: And certainly it will never be well with us, till something like unto the *Spanish* Inquisition be in *England*!'"¹⁶

For their obstinancy (sic), each juryman was fined forty marks and imprisoned, along with the defendants, until the fine had been paid. Thus ended the trial of William Penn and William Meade. And thus was born the soul of a leader whose principles of toleration would find expression in the new world. Although short of absolute religious freedom, the Pennsylvania colony took a giant step forward and offered liberty to all who believed in God.

[18] Even here, however, all who deserved liberty of conscience had to profess faith in Jesus Christ.¹⁷ And, inspired by the Sunday law of the twenty-ninth year of Charles II, honest labor and business on Sunday were declared to be criminal acts. To protect against "looseness, irreligion, and atheism," people were ordered by law to "devote themselves to religious and pious exercises" which included the reading and hearing of the Holy Scriptures and the attendance at worship services.

Baptists and Quakers found rough going in New England. "Connecticut Baptists converted from Congregationalism moved into northern North Carolina. . . . They spread with astonishing rapidity both toward the south and the north into Virginia. . . . The Episcopal Church was the established church in that colony. Other churches were denied official permission to conduct the rites of their faith. The Baptists; Quakers, and Presbyterians became active in their opposition."¹⁸

By the time of the Revolution, the Anglican Church's position in the South was also "weakened by the fact that theirs was the official church of England in a period when independence from the mother country was about to become the paramount fact of current history. For, whatever their doctrinal differences in religion, all of the Founding Fathers were political revolution-

aries, determined to enact a new formulation of the idea of government by consent of the governed.”¹⁹

By the mid-eighteenth century, the ground had been broken for a noble experiment in self-government built on a foundation of complete separation of church and state. The most influential skirmish in the political battle for disestablishment would be fought on the soil of Virginia.

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[20] (picture moved)