

## 52. THE TOLERATION ACT, 1689 (1 WILLIAM III AND MARY II, c.18)

### HISTORY

The ecclesiastical settlement of 1662 was intended to be comprehensive and permanent, but it soon became apparent that a substantial minority of the population was not prepared to conform to its requirements. The departure of about a fifth of the Church's ministers was a heavy blow, felt all the more because there was still considerable sympathy for Puritan theology within the Establishment. There were also a number of Dissenters, like Richard Baxter, who were not separatists, and who continued to hope that the Church of England might be reunited on a more Reformed basis.

Before long the king was trying to effect a compromise, which would allow Dissenters to practise their form of Protestantism within the bounds of the law. Unfortunately, it was well known that the libertine Charles II (1660-1685) was not motivated by the religious fervour which had driven the Dissenters out of the Establishment, and it was widely suspected that his desire for toleration was really an attempt to legalize Roman Catholicism. His brother James II (1685-1688), who was a practising Catholic, tried to advocate toleration for all, but met with the same objection. Most Englishmen were prepared to accept Protestant Dissent, but not legalized Roman Catholicism, which was obviously James' main concern.

Political and religious events soon combined to force the issue to a head. In France, the Huguenots (Protestants) were finally expelled in 1685, and many took refuge in England, where they were welcomed with open arms. Protestant solidarity suddenly seemed more important than the issues which divided the Establishment from Dissent. James' Catholicism was a legal anomaly which stirred memories of persecution under the last Catholic sovereign, Mary I. A situation in which the king practised a proscribed religion, whilst he was at the same time the Supreme Governor of a Church which he was supposed to regard as heretical, was clearly untenable. It was resolved by the flight of James in 1688 and Parliament's invitation to his daughter, Mary II (1689-1694), and her husband, William III of Orange (1689-1702), to come to England as joint sovereigns. This "Glorious Revolution" created a state in which Protestantism was the accepted religion, although the new king, a Dutch Calvinist, was not a

member of the Church of England. Seven bishops, including the Archbishop of Canterbury, refused to recognize this revolution, and remained loyal to James II, even though they were unsympathetic to his Roman Catholicism. These legitimists, who were known as “non-jurors” because of their refusal to swear the oath of allegiance to William and Mary, left the Church of England and continued an independent episcopal succession which lasted until 1805.

William and Mary consolidated their triumph by confirming the establishment of the Church of England, by allowing the Church of Scotland to return to a Presbyterian form of government, and by granting toleration to the English Dissenters. The Toleration Act which was passed during their first Parliament remained in force until 1828, when it was superseded by an Act of Emancipation, giving Dissenters full civil and ecclesiastical rights. (Roman Catholics were similarly emancipated in 1829).

## THEOLOGY

The Toleration Act established the principle that England was henceforth to be a Protestant state with an established Anglican Church, but with toleration for those Protestants who could not accept the worship and discipline of the Establishment. It did not introduce freedom of religion in the modern sense, but was an important contribution to it, because it recognized that one could be loyal to the state without belonging to the king’s Church. A certain degree of pluralism within the overall umbrella of Protestantism was also recognized, and the exclusivist claims of High Church Anglicans were rejected.

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### An Act for exempting their Majesties’ Protestant Subjects dissenting from the Church of England from the Penalties of certain Laws

**01.** Forasmuch as some ease to scrupulous consciences in the exercise of religion may be an effectual means to unite their Majesties’ Protestant subjects in interest and affection, be it enacted by the King and Queen’s most excellent Majesties, by and with the advice and consent of the Lords spiritual and temporal, and the Commons in this present Parliament assembled, and by the authority of the same, that neither the statute made in the three and twentieth year of the reign of the late Queen Elizabeth (1581), intituled *An Act to retain the Queen’s Majesty’s Subjects in their due Obedience*, nor the statute made in the twenty-ninth year of the said Queen (1587), intituled *An Act for the more speedy and due Execution of certain Branches of the Statute made in the three and twentieth year of the Queen’s Majesty’s reign, viz. the aforesaid Act*, nor that branch or clause of a statute made in the first year of the reign of the said Queen (1559), intituled *An Act for the Uniformity of Common Prayer and Service in the Church and Administration of the Sacraments*, whereby all persons having no lawful or reasonable excuse to be absent are required to resort to their parish church

or chapel, or some usual place where the Common Prayer shall be used, upon pain of punishment by the censures of the Church; and also upon pain that every person so offending shall forfeit for every such offence twelve pence; not the statute made in the third year of the late King James the First (1605), entitled *An Act for the better Discovering and Repressing Popish Recusants*; nor that other statute made in the same year, intitled *An Act to prevent and avoid Dangers which may grow by Popish Recusants*; nor any other law or statute of this realm made against Papists or Popish Recusants, except the statute made in the five and twentieth year of King Charles the Second (1673), intitled *An Act for preventing Dangers which may happen from Popish Recusants*, and except also the statute made in the thirtieth year of the said King Charles the Second (1678), intitled *An Act for the more effectual preserving the King's Person and Government by disabling Papists from sitting in either House of Parliament*, shall be construed to extend to any person or persons dissenting from the Church of England that shall take the oaths mentioned in a statute made in this present Parliament, intitled *An Act for removing and preventing all Questions and Disputes concerning the Assembling and Sitting of this present Parliament*; and shall make and subscribe the declaration mentioned in a statute made in the thirtieth year of the reign of King Charles the Second (1678), intitled *An Act to prevent Papists from sitting in either House of Parliament*, which oaths and declaration the justices of peace at the general sessions of the peace to be held for the county or place where such persons shall live, are hereby required to tender and administer to such persons as shall offer themselves to take, make and subscribe the same, and thereof to keep a register; and likewise none of the persons aforesaid shall give or pay as any fee or reward to any officer or officers belonging to the Court aforesaid, above the sum of sixpence, nor that more than once for his or her entry of his taking the said oaths and making and subscribing the said declaration, nor above the further sum of sixpence for any certificate of the same to be made out and signed by the officer or officers of the said court.

**02.** And be it further enacted by the authority aforesaid, that all and every person or persons already convicted or prosecuted in order to conviction of recusancy by indictment, information, action of debt or otherwise grounded upon the aforesaid statutes or any of them that shall take the said oaths mentioned in the said statute made in this present Parliament, and make and subscribe the declaration aforesaid in the Court of Exchequer or assizes or General or Quarter Sessions to be held for the county where such person lives, and to be thence respectively certified into the Exchequer, shall be thenceforth exempted and discharged from all the penalties, seizures, forfeitures, judgements and executions incurred by force of any of the aforesaid statutes, without any composition fee or further charge whatsoever.

**03.** And be it further enacted by the authority aforesaid that all and every person and persons that shall, as aforesaid, take the said oaths and make and subscribe the declaration aforesaid, shall not be liable to any pains, penalties or forfeitures mentioned in an Act made in the five and thirtieth year of the reign of the late Queen Elizabeth (1593), intitled *An Act to retain the Queen's Majesty's Subjects in their due Obedience*, nor in an Act made in the two and twentieth year of the reign of the late

King Charles the Second (1670), intituled *An Act to prevent and suppress seditious Conventicles*, nor shall any of the said persons be prosecuted in any ecclesiastical court for or by reason of their nonconforming to the Church of England.

**04.** Provided always and be it enacted by the authority aforesaid, that if any assembly of persons dissenting from the Church of England shall be had in any place for religious worship with the doors locked, barred or bolted during the time of such meeting, together all and every person or persons that shall come to and be at such meeting shall not receive any benefit from this law, but be liable to all the pains and penalties of all the aforesaid laws recited in this Act for such their meeting, notwithstanding his taking the oaths and his making and subscribing the declaration aforesaid, provided always that nothing herein contained shall be construed to exempt any of the persons aforesaid from paying of tithes or other parochial duties, or any other duties to the Church or minister, nor for any prosecution in any ecclesiastical court or elsewhere for the same.

**05.** And be it further enacted by the authority aforesaid, that if any person dissenting from the Church of England as aforesaid, shall hereafter be chosen or otherwise appointed to bear the office of High Constable or Petty Constable, churchwarden, overseer of the poor, or any other parochial or ward office, and such person shall scruple to take upon him any of the said offices, in regard of the oaths or any other matter or thing required by the law to be taken or done in respect of such office, every such person shall and may execute such office or employment by a sufficient deputy by him to be provided, that shall comply with the laws on this behalf, provided always the said deputy be allowed and approved by such person and/or persons in such manner as such officer or officers respectively should by law have been allowed and approved.

**06.** And be it further enacted by the authority aforesaid, that no person dissenting from the Church of England in Holy Orders, or pretending to Holy Orders, nor any preacher or teacher of any congregation of dissenting Protestants that shall make and subscribe the declaration aforesaid, and take the said oaths at the General or Quarter Sessions of the peace to be held for the county town, parts or division where such person lives, which court is hereby empowered to administer the same and shall also declare his approbation of and subscribe the Articles of Religion mentioned in the statute made in the thirteenth year of the reign of the late Queen Elizabeth (1571), except the thirty-fourth, thirty-fifth and thirty-sixth, and these words of the twentieth Article, viz.: “the Church hath power to decree rites or ceremonies, and authority in controversies of faith and yet” shall be liable to any of the pains and penalties mentioned in an Act made in the seventeenth year of the reign of King Charles the Second (1665), intituled, *An Act for restraining Non-Conformists from inhabiting in Corporations*, nor the penalties mentioned in the aforesaid Act made in the two and twentieth year of his said late Majesty’s reign (1670), for or by reason of such persons preaching at any meeting for the exercise of religion, nor to the penalty of one hundred pounds mentioned in an Act made in the thirteenth and fourteenth of King Charles the Second (1662), intituled *An Act for the Uniformity of Public Prayers and Administration of Sacraments and other Rites and Ceremonies, and for establishing the Form of Making, Ordaining and Consecrating of Bishops, Priests and Deacons*

*in the Church of England* for officiating in any congregation for the exercise of religion permitted and allowed by this Act (provided always that the making and subscribing the said declaration and the taking the said oaths and making the declaration of approbation and subscription to the said Articles in manner as aforesaid by every respective person or persons herein before mentioned at such General or Quarter Sessions of the peace as aforesaid, shall be then and there entered of record in the said court, for which sixpence shall be paid to the clerk of the peace and no more), provided that such person shall not at any time preach in any place but with the doors not locked, barred or bolted as aforesaid.

**07.** And whereas some dissenting Protestants scruple the baptizing of infants, be it enacted by the authority aforesaid, that every person in pretended Holy Orders, or pretending to Holy Orders, or preacher or teacher that shall subscribe the aforesaid Articles of Religion, except before excepted, and also except part of the seven and twentieth Article touching infant baptism, and shall take the said oaths and make and subscribe the declaration aforesaid in manner aforesaid, every such person shall enjoy all the privileges, benefits and advantages which any other dissenting minister as aforesaid might have or enjoy by virtue of this Act.

**08.** And be it further enacted by the authority aforesaid, that every teacher or preacher in Holy Orders or pretended Holy Orders, that is a minister, preacher or teacher of a congregation that shall take the oaths herein required, and make and subscribe the declaration aforesaid, and also subscribe such of the aforesaid Articles of the Church of England as are required by this Act in manner aforesaid, shall be thenceforth exempted from serving upon any jury or from being chosen or appointed to bear the office of churchwarden, overseer of the poor, or any other parochial or ward office, or other office in any hundred of any shire, city, town, parish, division or wapentake.

**09.** And be it further enacted by the authority aforesaid, that every justice of the peace may at any time hereafter require any person that goes to any meeting for exercise of religion, to make and subscribe the declaration aforesaid, and also to take the said oaths or declaration of fidelity after mentioned, in case such person scruples the taking of an oath, and upon refusal thereof, such justice of the peace is hereby required to commit such person to prison without bail or mainprize, and to certify the name of such person to the next General or Quarter Sessions of the peace to be held for that county, town, part or division where such person then resides, and if such person so committed shall upon a second tender at the General or Quarter Sessions refuse to make and subscribe the declaration aforesaid, such person refusing shall be then and there recorded, and he shall be taken thenceforth to all intents and purposes for a Popish Recusant convict, and suffer accordingly, and incur all the penalties and forfeitures of all the aforesaid laws.

**10.** And whereas there are certain other persons, dissenters from the Church of England, who scruple the taking of any oath, be it enacted by the authority aforesaid that every such person shall make and subscribe the aforesaid declaration and also this declaration of fidelity following, viz.:

I, A.B., do sincerely promise and solemnly declare before God and the world that I will be true and faithful to King William and Queen Mary, and I do solemnly profess and declare that I do from my heart abhor, detest and renounce 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 other whatsoever, and I do declare that no foreign (prince, person), prelate, state or potentate hath or ought to have any power, jurisdiction, superiority, pre-eminence or authority ecclesiastical or spiritual within this realm.

(And shall subscribe a profession of their Christian belief in these words:

I, A. B., profess faith in God the Father and in Jesus Christ his eternal Son, the true God, and in the Holy Spirit, one God blessed for evermore, and do acknowledge the Holy Scriptures of the Old and New Testament to be given by divine inspiration.

Which declarations and subscription shall be made and entered of record at the general Quarter Sessions of the peace of the county, city or place where every such person shall then reside)<sup>1</sup>, and every such person that shall make and subscribe the two declarations and profession aforesaid being thereunto required, shall be exempted from all the pains and penalties of all and every the aforementioned statutes made against Popish Recusants or Protestant Nonconformists, and also from the penalties of an Act made in the fifth year of the reign of the late Queen Elizabeth (1563), intitled *An Act for the Assurance of the Queen's Royal Power over all Estates and Subjects within her Dominions*, for or by reason of such persons not taking, or refusing to take the oath mentioned in the said Act, and also from the penalties of an Act made in the thirteenth and fourteenth years of the reign of King Charles the Second (1662), intitled *An Act for preventing Mischiefs that may arise by certain Persons called Quakers refusing to take the lawful Oaths*, and enjoy all other the benefits, privileges and advantages under the like limitations, provisos and conditions which any other dissenters shall or ought to enjoy by virtue of this Act.

**11.** Provided always, and be it enacted by the authority aforesaid, that in case any person shall refuse to take the said oaths when tendered to them, which every justice of the peace is hereby empowered to do, such person shall not be admitted to make and subscribe the two declarations aforesaid, though required thereunto either before any justice of the peace, or at the General and Quarter Sessions, before or after any conviction of Popish Recusancy as aforesaid, unless such person can within thirty-one days after such tender of the declarations to him, produce two sufficient Protestant witnesses to testify upon oath that they believe him to be a Protestant Dissenter, or a certificate under the hands of four Protestants who are conformable to the Church of England, or have taken the oaths and subscribed the declaration above mentioned, and shall also produce a certificate under the hands and seals of six or more sufficient men of the congregation to which he belongs, owning him for one of them.

**12.** Provided also, and be it enacted by the authority aforesaid, that until such certificate under the hands of six of his congregation as aforesaid be produced, and two Protestant witnesses come to attest his being a Protestant Dissenter or a certificate under the hands of four Protestants as aforesaid be produced, the justice of the peace shall, and hereby is required to take a recognizance with two sureties in the penal sum of fifty pounds (to be levied of his goods and chattels,

lands and tenements, to the use of the King and Queen's Majesties, their heirs and successors) for his producing the same, and if he cannot give such security, to commit him to prison, there to remain until he has produced such certificates, or two witnesses as aforesaid.

**13.** Provided always, and it is the true intent and meaning of this Act, that all the laws made and provided for the frequenting of divine service on the Lord's Day, commonly called Sunday, shall be still in force and executed against all persons that offend against the said laws, except such persons come to some congregation or assembly of religious worship allowed or permitted by this Act.

**14.** Provided always and be it further enacted by the authority aforesaid, that neither this Act nor any clause, article or thing herein contained, shall extend or be construed to extend to give any ease, benefit or advantage to any Papist or Popish Recusant whatsoever, or any person that shall deny in his preaching or writing the doctrine of the Blessed Trinity, as it is declared in the aforesaid Articles of Religion.

**15.** Provided always, and be it enacted by the authority aforesaid, that if any person or persons at any time or times after the tenth day of June (10 June 1689) do, and shall willingly and of purpose maliciously or contemptuously come into any cathedral or parish church, chapel or other congregation permitted by this Act, and disquiet or disturb the same, or misuse any preacher or teacher; such person or persons upon proof thereof before any justice of peace, by two or more sufficient witnesses, shall find two sureties to be bound by recognizance in the penal sum of fifty pounds, and in default of such sureties shall be committed to prison, there to remain till the next General or Quarter Sessions, and upon conviction of the said offence at the said General or Quarter Sessions shall suffer the pain and penalty of twenty pounds (to the use of the King and Queen's Majesties, their heirs and successors).

**16.** Provided always that no congregation or assembly for religious worship shall be permitted or allowed by this Act, until the place of such meeting shall be certified to the Bishop of the Diocese or to the archdeacon of the archdeaconry (or to the justices of the peace at the General or Quarter Sessions of the peace for the county, city or place) in which such meeting shall be held, and registered in the said bishop's or archdeacon's court respectively, or recorded at the said General or Quarter Sessions. The Register or Clerk of the peace whereof respectively is hereby required to register the same, and to give certificate thereof to such person as shall demand the same, for which there shall be none greater fee nor reward taken than the sum of sixpence.

<sup>1</sup> In the original Act, this section was annexed in a separate schedule.