

# Jesuit and gentleman planter: Ingle's rebellion and the litigation of Thomas Copley S.J.

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Father Thomas Copley S.J. (d. 1652) was born in Madrid in 1595/6 to an exiled English Catholic family. He joined the Maryland mission in 1637 under the alias Philip Fisher. In 1645 in the midst of the English Civil War, Richard Ingle, captain of the *Reformation* and under the authority of a Parliamentary Letter of Marque, plundered Maryland. Ingle, who mostly pursued wealthy Catholics, brought to England under arrest the Jesuit priests Thomas Copley and Andrew White on charges related to the legislation, An Act Against Jesuits, Seminary Priests and Other Such Disobedient Persons (1585). This article examines the proceedings of the High Court of Admiralty and the High Court of Chancery that relate to Ingle's Rebellion (1645-1646). In particular, it examines the methods employed by Fr. Copley not only to escape execution but also to pursue Richard Ingle for damages to property and person. It therefore delineates the intersections between national allegiance, civil rights, and confessional adherence in Catholic and non-Catholic imaginations in both England and her empire. Importantly, this case study illustrates how English Jesuits navigated and used an immature English imperial jurisprudence to their advantage.

Keywords: Jesuits, Maryland, Empire, Treason, Law

In 1645, the colony of Maryland was invaded by a band of privateers who, with the support of a number of Protestant settlers, overthrew the Catholic proprietary government of the second Lord Baltimore, Cecil Calvert (1605-1675) and subsequently plundered many Catholic estates including the Jesuits' plantation of St. Inigoes.<sup>1</sup>

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<sup>1</sup> Cecil Calvert (1605-1675) and his siblings were raised in the Church of England until his father's conversion to Catholicism in 1625. The former was educated at Trinity College at Oxford University before marrying the daughter of Sir Thomas Arundel of Wardour, Anne

The rebellion, later described as the 'Plundering Time' by contemporary Catholic Marylanders, was led by the staunch Protestant and Parliamentarian Richard Ingle, captain of the ship the *Reformation*.<sup>2</sup> The Lord Baltimore was a Royalist and Ingle attempted to justify his efforts with the authority of a Parliamentary Letter of Marque which was issued to him on 1 December 1643 for the purpose of seizing vessels trading to ports hostile to Parliament.<sup>3</sup> In 1646, Governor Leonard Calvert (c. 1606-1647), brother to Lord Baltimore, Cecil Calvert, returned with a force of exiled Marylanders and Virginian mercenaries and restored the proprietary government.<sup>4</sup> Ingle's motivations in plundering Maryland were a combination of vengeance for his arrest in the colony a year earlier, personal anti-Catholicism, and an opportunistic attempt to exploit pre-existing religious conflict in the colony in order to increase his wealth through seizure of goods.<sup>5</sup> Upon his return to London, Ingle made an unsuccessful attempt to legitimize his assault on Catholic estates in Maryland by claiming that those inhabitants who adhered to the Roman Catholic faith were rendered traitors and their estates forfeit. As evidence for his case, Ingle captured and returned to England prominent Catholic planters Giles Brent (c. 1600-1671/72), John Lewgar (1602-1665), and Cuthbert Fenwick (1614-1655).<sup>6</sup> Ingle also

Arundel (d. 1649) in 1629. Calvert never travelled to Maryland and governed by proxy from England. See: 'Calvert, Cecilius, 2nd Lord Baltimore (1605-1675),' *A Biographical Dictionary of the Maryland Legislature 1635-1789*, in Edward C. Papenfuse, Alan F. Day, David W. Jordan, and Gregory A. Stiverson, eds. *Archives of Maryland Online* (hereafter *AOMOL*), 426: 186-87.

<sup>2</sup> Little is known of Richard Ingle (c. 1609-1653). He lived in Stepney, Middlesex and in 1642 claimed that he had been trading tobacco for ten years although he is first recorded as a master of ship in 1639. See, Timothy B. Riordan, *The Plundering Time: Maryland and the English Civil War 1645-1646* (Baltimore, MD: The Maryland Historical Society, 2004), 28-29.

<sup>3</sup> Riordan, *The Plundering Time*, 163, 199-200, 201-202, 291-292, 329-330.

<sup>4</sup> Leonard Calvert (c. 1606-1647) led the expedition to Maryland in 1633 as the colony's first governor. In March 1634 he and a small number of colonists made landfall at St. Clements Island on Maryland's lower western shore. He returned to England in 1641/1642 and again in 1643/1644 during which time he fathered two children by Anne Brent (?-?). 'Calvert, Leonard (c. 1606-1647),' *A Biographical Dictionary of the Maryland Legislature 1635-1789*, Papenfuse et. al., in *AOMOL*, 426: 190.

<sup>5</sup> Riordan, *The Plundering Time*, 133-135.

<sup>6</sup> Giles Brent (c.1600-1671/72) arrived in Maryland in 1638 as a free emigrant with his siblings Margaret (1601-1671), Mary (?-1658), and Fulke (?-1656). He married Mary Kittamaquund the daughter of the Piscataway Tayac (Chief) following her family's conversion to Roman Catholicism. The Brents migrated to Virginia c. 1649. Brent held the position of acting governor during Leonard Calvert's absence in England in 1641/1642 and 1643/44. See: 'Brent, Giles, (c.1600-1671/72)', *A Biographical Dictionary of the Maryland Legislature 1635-1789*, Papenfuse et. al., in *AOMOL*, 426: 161-162. John Lewgar (1602-1665) was a Catholic convert and former Church of England minister. He immigrated to Maryland with his family in 1634. Between 1637 and 1648 he was Secretary of the colony. Alongside Jerome Hawley (1590-1638), Lewgar co-authored *A Brief Relation of Maryland* (1634/5) to attract colonists to Maryland. After the death of his wife, Lewgar took Holy Orders and died as Lord Baltimore's chaplain in London in 1665. See: 'Lewgar, John (1602-1665),' *A Biographical Dictionary of the Maryland Legislature 1635-1789*, Papenfuse et. al., in *AOMOL*, 426: 533. Cuthbert Fenwick (1614-1655) arrived in Maryland from Virginia as

captured two Jesuits, Thomas Copley (c.1596-1652) and Andrew White (c. 1579-1656).<sup>7</sup> Copley and White's confreres were also captured but, as they were less valuable captives, are thought to have suffered more gruesome fates. Henry Stockton informed the High Court of Admiralty in August 1645 that Ingle's men had been ordered to '...put them ashore upon some place or other among the heathens and there to leave them.'<sup>8</sup> The 'heathens' to whom Stockton referred were probably the Susquehannock tribe who had seized the effects of the English Civil War in the Chesapeake as an opportunity to assert their autonomy. On 17 April 1643 the acting governor, Giles Brent, commissioned Captain Thomas Cornwaleys (c. 1605-1675/6) to repel the Susquehannock tribe near their village on the Susquehanna River.<sup>9</sup> By the summer of 1643, the Susquehannock were still raiding along the Patuxent River on the eastern frontier where they looted the Jesuit plantation of Mattapan.<sup>10</sup> Whether the Jesuits abandoned in 1645 were killed by the Susquehannock tribe or whether they died of exposure is unknown, but they were never heard of again.

an indentured servant of Thomas Cornwaleys, most likely as his attorney. By 1637/1638 he was free and by 1650 an independent planter engaged in local politics, and a supporter of the Cornwaleys and Jesuit faction who unsuccessfully challenged Lord Baltimore to provide for the Roman Catholic Church in Maryland. See: 'Fenwick, Cuthbert, (1614-1675),' *A Biographical Dictionary of the Maryland Legislature 1635-1789*, Papenfuse et. al., in *AOMOL*, 426: 319.

<sup>7</sup> Thomas Copley (1596-1652) [alias Philip Fisher] was the eldest son of William Copley of Gaton and born in exile in Madrid. He trained at Liège, Louvain and Ghent and gained experience on the English mission at the House of Probation of St. Ignatius in Clerkenwell, London. He arrived as superior of the Maryland mission in 1637. See: Edward Spillane (ed.), 'Philip Fisher,' *The Catholic Encyclopedia* (New York: Robert Appleton Company, 1909), 6: 83-84; Thomas McCoog, ed., 'Philip Fisher,' *English and Welsh Jesuits 1555-1650*, Part 1: A-F, Catholic Record Society Series, 74 (1995), 169-170. Andrew White (c. 1579-1656) was born in London in 1579, educated at the English College of Saint Albans in Valladolid, Spain, and later at the English College of Seville. He continued his studies at Douai, France, where he was ordained about 1605. He joined the English mission intended to reinstitute Catholicism in England, but was apprehended and exiled in 1606, following the Gunpowder Plot. White then joined the Society of Jesus and took up professorships of scriptural studies and theology in Louvain, Liège and Lisbon. On 25th March 1634, he landed at St. Clement's Island in Maryland. White died in England in 1656, having been refused by the English Provincial, Edward Knott, to return to Maryland due to ill health. See: Thomas McCoog, ed., 'Andrew White,' *English and Welsh Jesuits 1555-1650*, Part 2: G-Z, Catholic Record Society Series, 75 (1995), 329-330.

<sup>8</sup> 'Examination of Henry Stockton,' Answer 17, [5 August 1645], section K, in Cornwaleys vs. Ingle, Examinations, High Court of Admiralty, HCA 13/60, The National Archives (TNA), Kew, London.

<sup>9</sup> Thomas Cornwaleys (c. 1605-1675/1676) was a member of the English Catholic gentry who immigrated to Maryland in 1633/1634. He was the most important investor in the colony outside of the Lord Baltimore's immediate family. Cornwaleys was an active merchant in tobacco and 'Indian trade' and often returned to England. His estate in Maryland was vast and he transported at least seventy-one indentured servants between 1643 and 1651. See: 'Cornwaleys (Cornwallis), Thomas (ca. 1605-1675/6)', *A Biographical Dictionary of the Maryland Legislature 1635-1789*, Papenfuse et. al, in *AOMOL*, 426: 234-235.

<sup>10</sup> Riordan, *The Plundering Time*, 111-115.

Ingle's Rebellion is in and of itself a fascinating period in Maryland's history and exemplifies that the uneasy and fragile prosperity of Catholics ultimately rested on Protestant acceptance of religious toleration in the colony. This article focuses on Thomas Copley's subsequent efforts in London to escape prosecution and recover goods seized by Ingle. It seeks to restore the history of the Maryland mission within British Catholic studies, and, specifically, the position of Catholics in the legal and political landscape of post-Reformation Britain. I argue that English Catholics who migrated to Europe and America in this period exploited the legal ambiguities produced by English expansionism in order to resist the anti-Catholic legislation used to discriminate against them. By contrast, Ingle not only overestimated the power of that legislation but he also assumed that its jurisdiction extended unchanged to the high seas and colonies. However, his defeat in London's courts by the Jesuit priest he had taken prisoner in Maryland reveals that legal definitions of loyalty did not always correlate with those held by the Protestant populace.

Timothy Riordan's *The Plundering Time* (2004) is, to date, the most comprehensive study of Ingle's Rebellion. Riordan argues that '[e]arly studies of the Plundering Time concentrated on Richard Ingle himself without attempting to understand the context in which he operated... the Plundering Time must be interpreted within the context of the English Civil War.'<sup>11</sup> However, although Riordan acknowledges the role that religious conflict played in Ingle's Rebellion, he often separates the politics of the English Civil War from the religious identity and linguistic framework in which Ingle couched his justification for his actions in Maryland. As a result, the reader gains the impression that the anti-Catholicism espoused by Ingle and his supporters was incidental to his political and financial ambition, rather than illustrative of a mutually supportive ideological relationship between politics and religion in seventeenth-century England. The neglect of this relationship is most evident in Riordan's account of the escape of the Jesuits Thomas Copley and Andrew White from execution for treason. In fact, Riordan dedicates only three paragraphs to the Jesuits' trial under 27 Eliz.<sup>12</sup>

This article re-examines the archives to highlight that the Catholic response to Ingle's Rebellion is an example of resistance to legal and political limits placed on Catholic citizenship within post-Reformation England and her empire. The first section outlines the three areas of scholarship which help us to understand Thomas Copley's success but which rarely overlap: British and Irish Catholic studies, early American studies, and the history of the British Empire. Specifically,

<sup>11</sup> *Ibid.*, 3-5.

<sup>12</sup> *Ibid.*, 243-244.

it focuses on English jurisprudence as it relates to religious conformity and recusancy and the ideology of the English Empire which underpinned both domestic and colonial legal structures but which often failed to reconcile differences between the two. The second part of this article centres on documents found within the High Court of Admiralty and the Court of Chancery collections in the UK National Archives which relate to the plundering of Maryland during Ingle's Rebellion (1645-1646). Specifically, it examines the litigation testimonies of Captain Richard Ingle and the Jesuit priest and superior of the Maryland mission, Thomas Copley. The dispute between Ingle and Copley reveals the various mechanisms employed by the Society of Jesus to operate a successful mission in Maryland whilst remaining within the confines of English law at home and on the colonial frontier. Importantly, their testimonies highlight the intersections between national allegiance and treason, civil rights and jurisdiction, and confessional adherence in Catholic and non-Catholic imaginations in both England and her empire.

### *The Reformation and English Subjecthood*

The English Reformation inaugurated extensive political, religious, and cultural changes. For English Catholics, it introduced anti-Catholic prejudice, legal discrimination, and alienation from the Commonwealth.<sup>13</sup> The effects were felt beyond the borders of England. The Act of Supremacy (1534) announced England as a 'Protestant Empire' and forever changed the ideological foundations for English expansionism.<sup>14</sup> As Anna Suranyi writes:

The first parliamentary declaration of English imperium came with the English separation from the Church of Rome... In that period the term "empire" reflected the independence of England from any external or overseas power...

<sup>13</sup> For recent scholarship on English anti-Catholicism see: Michael Questier, 'Loyalty, Religion and State Power in Early Modern England: English Romanism and the Jacobean Oath of Allegiance,' *The Historical Journal* 40,2 (1997): 311-329; Alison Shell, *Catholicism, Controversy and the English Literary Imagination, 1588-1660* (Cambridge: Cambridge University Press, 1999); Arthur F. Marotti, ed., *Catholicism and Anti-Catholicism in Early Modern English Texts* (Basingstoke: Macmillan Press, 1999); Carol Z. Wiener, 'The Beleaguered Isle: A Study of Elizabethan and Early Jacobean Anti-Catholicism,' *Past & Present* 51 (1971): 27-62.

<sup>14</sup> For the scholarship of the 'Protestant Empire' see: Linda Colley, *Britons: Forging the Nation, 1707-1837* (New Haven: Yale University Press, 1992); Carla Gardina Pestana, *Protestant Empire: Religion and the Making of the British Atlantic World* (Philadelphia: University of Pennsylvania Press, 2009); Antoinette Sutto, *Loyal Protestants & Dangerous Papists: Maryland and the Politics of Religion in the English Atlantic 1630-1690* (Charlottesville: University of Virginia Press, 2015); Kristen Block, *Ordinary Lives in the Early Caribbean: Religion, Colonial Competition, and the Politics of Profit* (Athens, GA: University of Georgia Press, 2012); Alison Games, *The Web of Empire: English Cosmopolitans in an Age of Expansion, 1560-1660* (Oxford, UK: Oxford University Press, 2008) ch. 7; Gabriel Glickman, 'Protestantism, Colonization, and the New England Company in Restoration Politics,' *The Historical Journal* 59,2 (2016): 365-391.

Although it is from the reign of James I that the term “British” was attached to the empire, it was usually seen as an English dominion. But the term “empire” had another meaning aside from that of dominion, one which implied the existence of subject territories, and that implication was not lost on the English.<sup>15</sup>

The Council of Trent (1545-1563) and the passage of Tudor religious reforms cemented antagonistic doctrinal positions. The reality of these divisions manifested in the lives of every English subject across the social spectrum. The Act of Uniformity (1559) effectively outlawed Catholic worship by commanding all subjects to adhere to the reformed liturgy outlined in the 1559 Prayer Book, to attend Sunday and holy day services, and to receive Protestant Communion at least three times a year. Physical sites of Catholic worship, including churches and cathedrals, were appropriated by Protestant ministers, whilst state and popular iconoclasm refurbished those sites into places appropriate for reformed worship.<sup>16</sup> Indeed, by the end of the sixteenth century the belief that English Catholics were traitors to the crown had become a national zeitgeist. In response, many English Catholics sought refuge in Europe where they established English Catholic institutions for the education and training of men for the priesthood and the English mission. They, like the Jesuits who began to arrive at the beginning of the 1580s, brought with them a new Tridentine Catholicism that helped to create a new post-Reformation Catholic community. After Queen Elizabeth's excommunication by Pius V in 1570, the practice of the Catholic faith became an increasingly dangerous endeavour.<sup>17</sup> Punishments for recusancy threatened the livelihoods and lives of English Catholics. Once recusancy became an indictable offence in 1581, the fine levied

<sup>15</sup> Anna Suranyi, *The Genius of the English Nation: Travel Writing and National Identity in Early Modern England* (Newark: University of Delaware Press, 2008), 50.

<sup>16</sup> Eamon Duffy, *The Stripping of the Altars: Traditional Religion in England 1400-1580*, 2nd edn. (New Haven: Yale University Press, 2005), 11-22, 53-68, 91-95; Alexandra Walsham, *The Reformation and the Landscape: Religion, Identity, and Memory in Early Modern Britain and Ireland* (Oxford: Oxford University Press, 2001), 3.

<sup>17</sup> Lisa McClain, *Lest We Be Damned: Practical Innovation and Lived Experience among Catholics in Protestant England, 1559-1642* (London: Routledge, 2004), 3; Alexandra Walsham, *Church Papists: Catholicism, Conformity and Confessional Polemic in Early Modern England* (Suffolk: Boydell Press, 1993), 10-11, 13-14, 95, 118. The Jesuits became so closely aligned with the malignant ‘papist’ image in popular discourse that even English Catholics questioned whether the Jesuit mission did more harm than good to their cause. This division amongst Catholics led to the Appellant Controversy (1598-1602) and the Blackloist Conspiracy (1649). See: Thomas McCoog, *The Society of Jesus in Ireland, Scotland, and England, 1598-1606: Lest Our Lamp Be Entirely Extinguished* (Leiden: Brill, 2017), 11; Stefania Tutino, *Thomas White and the Blackloists: Between Politics and Theology during the English Civil War* (Abingdon: Routledge, 2017), 57-78; Michael Questier, *Catholicism and Community in Early Modern England: Politics, Aristocratic Patronage and Religion, c. 1550-1640* (Cambridge: Cambridge University Press, 2006), 296, 298, 299, 340, 432.

against Catholics for non-attendance at service of the Established Church was raised from 12d to £20, whilst attendance at Catholic Mass could result in a fine of 100 marks.<sup>18</sup> A mark was 13 shillings, 4 pence which was two-thirds of a pound; equivalently the fine for attending Catholic Mass was approximately £66.<sup>19</sup> At the time of the passing of the 1581 Act, these were substantial fines. A tract published over fifteen years later itemizing causes of poverty listed £20 as a measure of substance, while the sum of 12d was commonly acknowledged as a marker of poverty.<sup>20</sup> This assault on English Catholicism forced communities to adapt traditional religious practice and beliefs as well as the demands of the Catholic Church in order to survive. In other words, English Catholic worship became a unique patchwork of beliefs derived from doctrine and theology disseminated by both the pre-Reformation and Tridentine church, combined with the material needs of a community exercising clandestine religious practice.

In 1649, the Act of Toleration codified in Maryland the promise of religious toleration included in Baltimore's Conditions of Plantation (1632) and thus guaranteed migrating Catholics and other religious dissenters freedom from religious censure and financial, political, and corporal penalties.<sup>21</sup> However, incidental evidence of religious conflict in court-records found in the Maryland State Archives reveals that although Baltimore could deliver legal religious toleration, he could not overcome colonists' prejudice learned at home in England.<sup>22</sup> Protestant discontent centred on a cultural fantasy of an English Protestant nation which was rooted in early modern beliefs about religious conformity and statehood. Alexandra Walsham has argued that early modern Christians accepted Augustinian teachings that the 'truth' was single and indivisible. Thus, dissidence from established doctrine was literally 'soul-destroying,' and so efforts to protect against heresy were believed to deflect damning providential judgments against both the individual and the community. For conforming Protestants, the Established Church was the embodiment of the divine truth and religious conformity was thus an 'antidote to sedition and subversion and preservative against internal dissolution.' Therefore persecution and intolerance of dissenters was 'logical, rational, and legitimate,' whilst toleration was a 'loser's creed.'<sup>23</sup> Religious toleration in Maryland cut against the grain of this fantasy.

<sup>18</sup> Alexandra Shepard, *Accounting for Oneself: Worth, Status, and the Social Order in Early Modern England* (Oxford: Oxford University Press, 2015), 140-141.

<sup>19</sup> Clive Emsley, Tim Hitchcock and Robert Shoemaker, 'London History - Currency, Coinage and the Cost of Living,' *Old Bailey Proceedings Online*. <https://www.oldbaileyonline.org/static/Coinage.jsp> [Accessed 19/11/2018].

<sup>20</sup> Shepard, *Accounting for Oneself*, 141.

<sup>21</sup> 'An Act Concerning Religion,' [1649] in *AOMOL*, 1: 244-247, 245.

<sup>22</sup> Now digitised as an open access database, the *Archives of Maryland Online (AOMOL)*.

Thus, the anxiety and conflict which permeates the Maryland records in matters of religion and state reveals that religious conflict in the colony was in fact a quotidian phenomenon.<sup>24</sup> Nonetheless, the Lords Baltimore maintained religious toleration in the colony for almost fifty years before the Glorious Revolution (1688-1689) forced the removal of the Catholic proprietorship. The removal enabled Maryland legislators to introduce the Penal Codes to the colony when they passed An Act to prevent the Growth of Popery within this Province in 1704. Crucially, the wording of the act betrayed the legislators' recognition that Maryland was subject to multiple jurisdictions: it stated that Catholic priests found guilty of attempting to educate English youth would be 'transported out of this Province to the Kingdom of England together with his Conviction in order to his Suffering such pains and penaltys as are provided by the Statute [there].'<sup>25</sup> The composite legal structure of the English Empire acknowledged by the members of Maryland's Assembly enabled the Lords Baltimore to exploit the imprecise boundaries of jurisdiction within an empire dominated by proprietary colonies which were ruled by the English monarch but governed by private citizens. Only under these circumstances could the Lords Baltimore maintain religious toleration in Maryland. The Maryland Charter (1632) designed by the first Lord Baltimore, George Calvert (c. 1580-1632) empowered the Lords Baltimore as 'absolute proprietors' to govern the province as an extension of royal privilege provided that their governance did not 'contravene the Laws of England.'<sup>26</sup> The mechanisms by which the

<sup>23</sup> Alexandra Walsham, *Charitable Hatred: Tolerance and Intolerance in England 1500-1700* (Manchester: University of Manchester Press, 2006), 2-4.

<sup>24</sup> For example, On Tuesday 1 May 1666, Edward Erbery was arraigned by the General Assembly in St. Mary's City, Maryland for having called 'the whole howse Papists, Rogues, Turdy rogues, &c.' and also called the lower house 'a Company of turdy fellowes... & [who] were ashamed of the place from whence wee came.' Erbery claimed that he had been drunk on the night in question and did not remember having ever said that of which he was accused. He was condemned to suffer thirty-nine lashes, after which the sheriff was to return him to the Assembly, where he would 'publickly... aske them forgiuness.' 'Trial of Edward Erbery' [May 1666], in *AOMOL*, 2: 55-56. [Accessed 24/09/2018]. See also: C. J. Nuesse, 'Social Thought among American Catholics in the Colonial Period,' *The American Catholic Sociological Review* 7, (1946): 43-52; Michael Graham, 'Popish Plots: Protestant Fears in Early Colonial Maryland, 1676-1689,' *The Catholic Historical Review* 79 (1993): 197-216; Owen Stanwood, 'The Protestant Moment: Antipopery, the Revolution of 1688-1689, and the Making of an Anglo-American Empire,' *Journal of British Studies* 46 (2007): 481-508.

<sup>25</sup> 'An Act to prevent the Growth of Popery within this Province,' [3<sup>rd</sup> October 1704] in *AOMOL*, 26: 340.

<sup>26</sup> George Calvert, first Lord Baltimore (c. 1580-1632) was born in Kipling, Yorkshire to an established Roman Catholic family. He and his father converted to Anglicanism after their conviction for recusancy in 1580. Calvert attended Trinity College at Oxford and became a prominent statesman allied to Robert Cecil, 1<sup>st</sup> Earl of Salisbury (1563-1612). Calvert obtained his barony in 1624 when he left the service of King James I after failing to secure the Spanish Match and having announced his reconversion to Roman Catholicism. See John D. Krugler, 'Calvert, George, First Baron Baltimore, (1579/80-1632),' *Oxford Dictionary of National Biography* (hereafter *ODNB*) (May 2010). <https://doi.org/10.1093/ref:odnb/4420>



Lords Baltimore maintained religious toleration thus belong to a history of the constitutional foundations of the English Empire.

### *Imperial Jurisdictions and Proprietary Colonies*

In spite of recognising that Protestantism ‘provided Englishness, Britishness and the British Empire with a common chronology and a history stretching from the English and Scottish Reformations,’ David Armitage has argued that

[T]he visceral anti-Catholicism to which a unifying British identity has been attributed in the eighteenth century was mostly negative in content, and hence could hardly be a source of positive arguments in favour of a particular mission or foundation for the British Empire. Least of all could it, or post-Reformation theology more generally, provide a solution to the problem of defining, justifying or correlating claims both to sovereignty (*imperium*) and property (*dominium*) as the ideological basis for the Empire.<sup>27</sup>

In 1645, the term ‘dominion’ was legally imprecise and entirely contextual; Derek Hirst and Michael Braddick have both documented in detail that in relation to the Three Kingdoms, dominion could imply mere control or possession or equally lordship and regality. Thus, in 1645 use of the term ‘dominion’ had far more brutal connotations in relation to the founding of the Ulster plantation in 1609 than to Scotland following the union of the crowns in 1603.<sup>28</sup> Furthermore, Armitage has emphasised that this slippage was a result of the early English Empire having been a post-Renaissance empire which engaged in classical scholarship to interrogate human nature and the religious, social, and political institutions which were defined by it. In England, for example, debates surrounding an Anglo-Scottish union from the 1540s until the passing of the Act of Union (1707) were couched in classical rhetoric in which opponents used ‘neo-Roman language of empire (*imperium*) and colony (*colonia*) to describe the territorial consolidation they envisaged or the jurisdictional subordination they feared.’<sup>29</sup> In the context of the English Empire, Armitage has stressed that the genesis of the ideological and constitutional developments which made colonization practical is found in the Three Kingdoms rather than the Americas. In particular,

[Accessed 25/01/2019]. For the terms of the Maryland Charter see: ‘The Charter of Maryland: 1632,’ in *AOMOL*, 549: 13.

<sup>27</sup> David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2004), 63.

<sup>28</sup> Michael J. Braddick, *State Formation in Early Modern England, c. 1550-1700* (Cambridge: Cambridge University Press, 2000), 337, 345-6; Derek Hirst, *Dominion: England and Its Island Neighbours, 1500-1707* (Oxford: Oxford University Press, 2012), 12, 144-6.

<sup>29</sup> Armitage, *The Ideological Origins of the British Empire*, 68; Gabriel Glickman, ‘A British Catholic Community? Ethnicity, Identity and Recusant Politics, 1660-1750,’ in James Kelly and Susan Royal eds. *Early Modern English Catholicism: Identity, Memory and Counter-Reformation*, 60-81 at 63.

English policy towards Ireland since the Tudors was a turning point in English imperial ideology. Despite Ireland having been a kingdom after 1541, the English treated it as a colony after the 'New English' period of settlement from the 1560s onwards. Under this policy, both the 'barbaric' Gaelic Irish and the Catholic 'Old English' descendants of Norman settlers required civilizing and Protestantising, in much the same way as the inhabitants of the Americas.<sup>30</sup> However, this policy intensified under the Cromwellian regime. As a composite state, English judges assumed a common heritage between England and Ireland that was crucial to the Cromwellian regime's prosecution of Irish Catholics involved in the 1641 rebellion. English judges argued that:

[w]hile the king's political body of Ireland may have been separate and distinct from his political body of England, it was rendered a political body by virtue of the same fundamental rule of law, the English common law. Accordingly, the subversion of the fundamental law of Ireland was as great an evil as the subversion of the fundamental law of England.<sup>31</sup>

When the Irish High Court of Justice was established in 1652, it was done with the intention both to prosecute Irish rebels and to implement the *Act for the Settlement of Ireland* that had been passed by Westminster the same year.<sup>32</sup> The latter was a landmark piece of legislation that enabled the confiscation and redistribution of Irish Catholic lands to English Protestant settlers. Jennifer Wells has thus argued that these measures enabled the Cromwellian government to establish a 'language of legitimation,' grounded in law but motivated by prejudice.<sup>33</sup> Most importantly:

[T]he regime shrewdly embraced both long-standing domestic traditions and emerging legal principles to establish a sophisticated judicial apparatus that was possible as a result of the distinctive circumstances in Ireland [which] enabled the parliamentarians to use the law to move away from violence, legitimizing and enhancing English power there, in the archipelago and, ultimately abroad.<sup>34</sup>

As a result, the Cromwellian government launched a campaign to violently subdue and Anglicize, in the political and religious sense, the conquered nation of Ireland. In its eagerness to establish legitimacy

<sup>30</sup> Armitage, *The Ideological Origins of the British Empire*, 24-25; Nicholas P. Canny, *The Elizabethan Conquest of Ireland: A Pattern Established 1565-76* (Hassocks: Harvester Press, 1976), 50-51, 63-65, 75-80 and ch. 6.

<sup>31</sup> D. Alan Orr, *Treason and the State: Law, Politics, and Ideology in the English Civil War* (Cambridge: Cambridge University Press, 2002), 73.

<sup>32</sup> 'An Act for the Settling of Ireland,' [August 1652] *Acts and Ordinances of the Interregnum, 1642-1660*, ed. C. H. Firth, and R. S. Rait (London: His Majesty's Stationery Office, 1911), 598-603. *British History Online (BHO)* <http://www.british-history.ac.uk/no-series/acts-ordinances-interregnum/pp598-603>. [Accessed 01/10/2018].

<sup>33</sup> Jennifer Wells, 'English Law, Irish Trials and Cromwellian State Building in the 1650s,' *Past & Present*, 227 (2015): 80, 89-90.

<sup>34</sup> *Ibid.*, 81.

and cultural hegemony, the Cromwellian government published high-profile trials of Irish Catholics involved in the 1641 Rebellion to sanitize the English colonization of Ireland by appealing to a 'common legal identity' that it claimed was derived from the Saxon era.<sup>35</sup> Thus:

When violence materialized, it came from the axes and pikes of recalcitrant Irish Gaels, not the swords of English conquerors. Expunging force from invasion and immediately emphasizing England's legal claims to Ireland served an important didactic purpose: power could be secured through the civilized, legitimating language of law; violence remained a weapon of the conquered barbarian.<sup>36</sup>

Wilcomb Washburn argued, in 1959, that from the time of the Spanish encounter with the Americas in 1492, a 'Law of Nations' had developed within Europe in which Old World traditions were transformed so that, regardless of how colonizers justified their settlement of the New World, whether by discovery, conquest, royal or papal grant, they all demonstrate that the 'principal ethico-legal concern in the period was about the claims of rival European powers, not about the rights of the Native Americans.'<sup>37</sup> Crucially, in the Americas the construction of the 'savage' and 'barbarian' Irish Catholic had a decisive impact on who the lawmakers defined as 'English subjects' in an increasingly expansive empire. The changes in law subsequently developed a 'language of legitimation' in colonial endeavours and in the English imagination. The colonial ideology of 'difference' between the English and the 'other' and the legal frameworks which codified it was developed in Tudor Ireland and traversed the Atlantic to the Caribbean and North America.<sup>38</sup>

The boundaries of jurisdiction in England and her empire are central to Maryland's history. The Maryland Charter (1632) was based upon the rights and privileges of the Palatinate of Durham. These rights and privileges were introduced by William the Conqueror who had provided quasi-independence to the Bishopric of Durham in matters of defence, finance and even law-making. As a result, Baltimore was able to maintain religious tolerance in the colony by arguing that his authority was an extension of royal privilege.<sup>39</sup> George Calvert's decision to obtain a charter based on the Palatinate

<sup>35</sup> *Ibid.*, 89.

<sup>36</sup> *Ibid.*, 89-90.

<sup>37</sup> Wilcomb E. Washburn, 'The Moral and Legal Justifications for Dispossessing the Indians,' in James Morton Smith, ed. *Seventeenth-Century America: Essays in Colonial History* (Chapel Hill: University of North Carolina Press, 1959), 15; Wells, 'English Law, Irish Trials and Cromwellian State Building in the 1650s', 85.

<sup>38</sup> Armitage, *The Ideological Origins of the British Empire*, 24.

<sup>39</sup> John Krugler, *English and Catholic: The Lords Baltimore in the Seventeenth Century* (Baltimore: Johns Hopkins University Press, 2004), 122-123; Tim Thornton, 'The Palatinate of Durham and the Maryland Charter,' *The American Journal of Legal History* 45,3 (2001): 235-255 at 242-244; Albert J. Martinez Jr., 'The Palatinate Clause of the Maryland Charter,

of Durham was crucial to the success of the colony not only because it provided a legal mechanism by which he could introduce religious toleration, and thus offer religious and economic freedom to Catholics, but because it enabled the entire enterprise to be legitimized by the English legal framework. This was a lesson hard learned by Calvert's friend and co-religionist Sir Edmund Plowden (c. 1590-1659) who had attempted to establish a colony in present-day Delaware and New Jersey.<sup>40</sup> In an attempt to circumvent powerful opposition in London, Plowden obtained the patent for the New Albion colony from the Irish Privy Council on 24 July 1632.<sup>41</sup> Personal problems and the Swedish settlement of Delaware forced Plowden to wait until 1641 to accept his grant. When he did, legal concerns arose as to whether the Dublin government could issue patents to settle a colony in the English Empire and this led Plowden to petition the English Privy Council to ratify his charter. Although he was eventually successful in doing so, Plowden never established New Albion, and eventually his charter was subsumed into that of New York when the English captured the colony from the Dutch in 1664.<sup>42</sup> The delay caused by the legal challenges to Plowden's Irish charter was compounded by financial difficulties that were, in part, the result of legal persecution of Catholics in England: as a Catholic and a Royalist many of Plowden's assets were seized by the Committee for Compounding for the Estates of Royalists and Delinquents (est. 1643) for his actions during the English Civil War.<sup>43</sup> The failure of the New Albion venture thus demonstrates that the ambiguity of English imperial jurisdiction presented both pitfalls and opportunities for Catholics. Whereas Calvert and other Catholics involved in the

1632-1776: From Independent Jurisdiction to Independence', *The American Journal of Legal History* 50, 3 (2008-2010): 305-325 at 305-307.

<sup>40</sup> Sir Edmund Plowden (c. 1591-1659) was born into a recusant family and was the grandson of the renowned legal scholar and author of *Plowden's Commentaries*, Edmund Plowden (c. 1518-1585) who served as treasurer of the Middle Temple between 1566 and 1572. See, Edward C. Carter and Clifford Lewis, 'Sir Edmund Plowden and the New Albion Charter, 1632-1785,' *The Pennsylvania Magazine of History and Biography* 83, 2 (1959): 150-179 at 150-151.

<sup>41</sup> The Irish and English Privy Councils were both established in the 13<sup>th</sup> century and provided the link between the executive and Parliament. However, the authority of the Irish Privy Council was limited in comparison to its English counterpart. See Karen Stanbridge, *Toleration and State Institutions: British Policy towards Catholics in Eighteenth Century Ireland and Quebec* (Lanham: Lexington Books, 2003), 36, 42.

<sup>42</sup> L. H. Roper, 'New Albion: Anatomy of an English Colonisation Failure, 1632-1659' *Itinerario* 32, 1: 39-57.

<sup>43</sup> The Committee for Compounding with Delinquents was established alongside the Sequestration Committee in 1643 with the purpose of raising funds for Parliament by allowing Royalists to compound (pay a fine) for the return of their sequestered estates. See Roper, 'New Albion', 42; Edward C. Carter II and Clifford Lewis III, 'Sir Edmund Plowden and the New Albion Charter, 1632-1785,' *The Pennsylvania Magazine of History and Biography* 83, 2 (1959): 150-179, p. 170; Stephen C. Manganiello, *The Concise Encyclopaedia of the Revolutions and Wars of England, Scotland, and Ireland, 1639-1660* (Lanham: Scarecrow Press, 2004), 125.

Maryland venture exploited the ambiguity in order to obtain religious, political, and economic freedom, Plowden fell victim to his recusancy and the imprecision of England's constitutional relationship with both Ireland and the Americas. Plowden's story is one we might expect to recover from the archives but his misfortune brings into sharp relief the significance of Richard Ingle's defeat by a Jesuit priest to our understanding of early modern English Catholicism.

### *Copley vs. Ingle*

In June 1645, Richard Ingle delivered the Jesuits Thomas Copley and Andrew White to the authorities in London. Both were subsequently tried under the Act Against Jesuits, Seminary Priests and Such Other Like Disobedient Persons (1585).<sup>44</sup> The potential outcome of the trial was grave; under the same statute Father Henry Morse had been indicted and hanged at Tyburn in February of that year.<sup>45</sup> 27 Eliz refuted the argument that Catholic priests residing in the realm were present for pastoral reasons; rather, it stated, they were agents of Rome who intended to 'stir up and move sedition, rebellion, and open hostility.'<sup>46</sup> As a result, priests were given forty days to leave the realm, after which they risked arrest and execution for treason. Englishmen studying for the priesthood abroad were given six months to return to England after which point they too would be considered traitors if they entered the realm.<sup>47</sup> A layperson caught aiding a priest was judged to be a felon, but not necessarily a traitor—although the martyrdom of Margaret Clitherow in 1586, amongst others, demonstrates that during Elizabeth's reign at least, this was more often a semantic distinction.<sup>48</sup> However, Alan Orr has argued that by the time of the English Civil War the statutory foundation of treason was unclear. Confusion lay, firstly, in the lack of clarity about which statutes and which particular provisions therein were actually in force; and, secondly, for those statutes which (it was generally agreed) were in force, disputes arose over the meaning of the text. This was particularly true of medieval and Tudor statutes which were often the result of particular political circumstances which no longer applied—although early Stuart juries often appropriated them to serve their arguments. Lastly, exploitation of textual ambiguities could result in

<sup>44</sup> 27 Eliz.1, c. 2 (1585). See Henry Bettenson and Chris Maunder, eds. *Documents of the Christian Church*, 4<sup>th</sup> ed (Oxford: Oxford University Press, 2011), 257-259 at 258.

<sup>45</sup> 'St. Henry Morse (1595-1645)' in Joseph N. Tylenda, *Jesuit Saints & Martyrs: Short Biographies of the Saints, Blessed, Venerables, and Servants of God of the Society of Jesus* (Chicago: Loyola Press, 1998), 22-30.

<sup>46</sup> Bettenson and Maunder, *Documents of the Christian Church*, 258.

<sup>47</sup> *Ibid.*, 259.

<sup>48</sup> Peter Lake and Michael Questier, 'Margaret Clitherow, Catholic Nonconformity, Martyrology and the Politics of Religious Change in Elizabethan England,' *Past and Present* 185 (2004): 43-90 at 44-45.

statutes being applied in a more generous form than their original framers had intended.<sup>49</sup> For example: treason was prescribed by the Treason Act of 1352 (much of which still remains in force), but by the sixteenth century lawyers were debating whether the 1352 statute was sufficiently exhaustive.<sup>50</sup> Subsequently, a system of 'common-law treasons' developed which, in turn, provided the legal basis for extra-statutory treasons and the growth of additional treason statutes under the Tudors—of which 27 Eliz. is an example.<sup>51</sup> The court documents which record the Jesuits' trial and defence are lost, and so our knowledge of the proceedings is scant and based only on the record of the trial included in Henry More's account of the martyrdom of Henry Morse in an earlier draft of the *Historia Missionis Anglicanae Societatis Iesu* (1660).<sup>52</sup> According to More's narrative, White and Copley both successfully pleaded that although they were priests they were not guilty of treason because Ingle had returned them to England against their will; therefore they had not violated 27 Eliz. In other words, Copley and White argued that those who had drafted 27 Eliz. had not intended to pronounce the priesthood itself to be treasonous, but rather the act of entry of a priest into the kingdom of England and her dominions. Although Copley and White's argument that they did not voluntarily return to London seems logical, it is nonetheless surprising that the court did not consider Maryland to be a dominion of the realm. Had the court done so, as presumably Ingle had expected it to, then White and Copley would have undoubtedly been found guilty of treason. The loss of the trial documents means that it is impossible to be certain that contemporary debates about empire and state-building had an impact on White and Copley's trial yet it seems feasible that the priests were able to exploit these debates to argue that as a proprietary colony Maryland was subject to its own jurisdiction. Consequently, the Jesuits could argue that their entry into the colony was not a treasonous act, because they had neither entered the realm of England nor one of its dominions which were subject to the jurisdiction of 27 Eliz. This is an important point because if they accepted this argument then the judges presiding at White and

<sup>49</sup> Orr, *Treason and the State*, ch. 1, 11.

<sup>50</sup> 25 Edward III, 5, c. 2.

<sup>51</sup> Orr, *Treason and the State*, 15.

<sup>52</sup> General Archives S.J., *Anglia, Historia*, iv., 125-140, 857-864: a MS. draft in the handwriting of H. More, 863-864, [1645] reprinted in Thomas Hughes S.J., *History of the Society of Jesus in North America: Colonial and Federal*, 1, pt. 1 [Documents] (London: Longmans, Green, 1908), 125-126. More's account of the Copley and White trial was omitted from the published version of *Historia Missionis Anglicanae*. c.f.: Henry More SJ, *Historia Missionis Anglicanae Societatis Iesu, ab Anno Salutis, MDLXXX. ad DCXIX. et Vice-Provinciae primum, tum Provinciae, ad ejusdem saeculi annum XXXV. Collectore Henrico Moro, ejusdem Societatis Sacerdote. Audomari: typis Thomae Geubels MDCLX*. (St. Omers, 1660). The account is also extant in a redaction made by Father Nathaniel Southwell from the More MS. See: General Archives S.J., *Anglia, Historia*, iii. f. 227, 228, [1645].

Copley's trial confirmed that Catholic priests could not be indicted for missionary work in the colonies unless 27 Eliz. had been adopted by colonial legislatures directly. If this was the prevailing legal opinion then it would explain why members of the Maryland legislature felt the need to pass the Act to Prevent the Growth of Popery in this Province (1704).

Following their trial Copley and White were released but ordered to leave the country—although neither appears to have done so immediately. Copley remained in London until 1648, apparently unmolested, while White was recaptured and imprisoned for three years under threat of execution for having disobeyed the directive.<sup>53</sup> That Copley was allowed to continue his business without trouble may have more than one explanation. Firstly, it cannot be underestimated that Copley belonged to a prestigious gentry family, the Copleys of Gatton, who, like the Lords Baltimore, were part of an influential network in London. However, the English and Maryland records suggest that having been born in Madrid, Copley had another hand to play. Prior to his departure to Maryland, Copley's alias, Philip Fisher, appears more than once in reports related to the 1628 raid at the Jesuit Clerkenwell residence where he had worked as both a minister and procurator.<sup>54</sup> In order to gain greater freedom to administer his duties, he had petitioned the King for protection as an 'alien born' resident.<sup>55</sup> The petition was granted in December 1635, two years prior to his departure to Maryland. Upon his return to Maryland in 1648, Copley also registered this protection with the Maryland Assembly.<sup>56</sup> In doing so, Copley may have been able to claim special privileges and protections under the law. Certainly Benjamin Kaplan's work on European early modern understandings of 'extraterritoriality,'—on which modern claims to ambassadorial immunity are based—has shown that this was the case for the Stranger Churches and Roman Catholic chapels used by Catholic dignitaries at the Stuart court.<sup>57</sup>

<sup>53</sup> John Bollandus S.J., Antwerp, 'Extract from a letter,' [1 March 1648], General Archives SJ, *Anglia, Necrologia* reprinted in Hughes S.J., *History of the Society of Jesus in North America* 1, pt. 1 [Documents]: 128.

<sup>54</sup> Thomas Hughes S.J., *History of the Society of Jesus in North America: Colonial and Federal* 1 [Text] (London: Longman, Green, 1908), 367-368.

<sup>55</sup> *Ibid.*, 367.

<sup>56</sup> 'Court and Testamentary Business [1648-9], in *AOMOL* (Maryland State Archives Publication Series, 1999) 4: 479. <http://aomol.msa.maryland.gov/html/index.html> [Accessed 03/12/2018].

<sup>57</sup> Benjamin Kaplan, *Divided by Faith: Religious Conflict and the Practice of Toleration in Early Modern Europe* (Cambridge: Harvard University Press, 2009), 185-188. See also Matthew Lockwood's work on the medieval roots of foreign privilege in English law: Matthew Lockwood, "Love ye therefore the strangers': Immigration and the Criminal Law in Early Modern England," *Continuity and Change* 29, 3 (2014): 349-371, 350-351. Other avenues of research that may prove informative are: the limits of royal privilege, especially in light of the suspension of Parliament under Charles I (1625-1649); and the legal process of applications for naturalization and denizenship.

Although further research is required to confirm whether these privileges extended to England's empire, it does seem clear that Copley at least believed that whilst 'alien status' by no means granted him immunity from anti-Catholic legislation, it certainly complicated their application.

Having escaped execution, Copley pursued the goods stolen by Ingle through the High Court of Admiralty. However, his ability to do so again highlights the inconsistency of legal censure of Roman Catholicism across the English Empire. In England, the suppression of landholding by the Roman Catholic Church since the Dissolution of the Monasteries (1536-1541), alongside the expulsion of priests and men and women religious, inaugurated the new social and political order. In practical terms, these measures attempted to force Catholics to convert to Protestantism lest they be cast adrift from any form of Christian ministry. The risk presented by the Society of Jesus's ownership of land in Maryland was not lost on the proprietor. Prior to Ingle's Rebellion, the Jesuits and the second Lord Baltimore had come into heated conflict about this Jesuit landownership, a conflict that had resulted, again, from the imprecise relationship between the colonial frontier and the imperial centre. The dispute was rooted in the contested interpretations of jurisdiction and, in this case, inflected with specifically English Catholic controversies surrounding national and religious allegiance.<sup>58</sup> During a dispute in which Thomas Copley demanded that the Society be granted manors under the patronage of the Lords Baltimore, Copley betrayed that he had little regard for the delicacy of Baltimore's attempts to maintain an English colony in which religious toleration could flourish. Most likely referring to his experience of Spanish patronage of the English colleges in Habsburg territories, Copley reprimanded Baltimore, telling him

... there is not any care at all taken, to promote the conversion of the Indians. to [sic] provide or to shew any fauor to Ecclesiasticall persons, or to preserue for the church the Immunitie and priueledges, w<sup>ch</sup> she enioyeth euery where else.<sup>59</sup>

27 Eliz. declared that any English subject found supporting the clergy financially would 'incur the danger and penalty of a Praemunire' and thus be judged a traitor.<sup>60</sup> In Maryland, Baltimore refuted the Jesuits'

<sup>58</sup> For the English Catholic struggle to reconcile their faith with the Oath of Allegiance (1606) and the Oath of Supremacy (1559) which acknowledged the Sovereign as Supreme Governor of all matters spiritual and temporal, see: Michael Questier, 'Loyalty, Religion and State Power in Early Modern England: English Romanism and the Jacobean Oath of Allegiance,' *The Historical Journal* 40, 2 (1997): 311-329 at 314-316; Tutino, *Thomas White and the Blackloists*, esp. chs. 3 and 4.

<sup>59</sup> 'Thomas Copley to Lord Baltimore' [3 April 1638], *The Calvert Papers* 1, [S.1.] (The Maryland Historical Society (Dec. 1888). Reprint. (London: Forgotten Books, 2015), 162.

<sup>60</sup> 'Act Against Jesuits and Seminarists' (1585) in Bettenson and Maunder, eds., *Documents of the Christian Church*, 250-261.



assertion that his colony was a Catholic kingdom and in doing so resisted their claims to ecclesiastical privilege. Baltimore even attempted to introduce the English Statutes of Mortmain (1279, 1290), which prevented the transfer of land to the possession of the Church to protect crown revenue; he argued that Maryland was an extension of the Kingdom of England by royal prerogative, as codified in his proprietary charter.<sup>61</sup> Following a protracted debate, in 1642 the Superior of the English Province, Henry More, compromised with Baltimore and agreed that Jesuits could hold property as individuals but not as a corporate body.<sup>62</sup> Three years later, the agreement reached by More and Baltimore benefitted the society in their case against Ingle. On behalf of the mission, Copley was able to petition the High Court of Admiralty as a ‘sober honest and peaceable man’ who sought reparations no differently to the layman Giles Brent with whom he submitted a petition.<sup>63</sup> Although the sheer wealth of the contested goods might have raised suspicions as to the true nature of ownership and their use—especially the fine jewels and cloth that were most likely used as altar vestments—by presenting his case as a gentleman planter Copley was operating entirely within the law.<sup>64</sup> Crucially, in all libel testimony submitted to the High Court of Admiralty by Catholic planters—including Copley—each planter emphasised his national allegiance rather than his religious allegiance.<sup>65</sup> When asked the nature of Thomas Copley’s politics by the High Court of Admiralty, Thomas Cornwaleys emphasised Copley’s assets, and thus gentleman status, before reaffirming Copley’s own declaration almost verbatim: ‘The said Copley was generally accounted, reputed and taken to be a sober, quiet and peaceable man and one that lived without... sedition and was no way opposed in hostility against the King and Parliament.’<sup>66</sup>

<sup>61</sup> An Act for meinteing the Lord Proprietaries Title to the Lands of this Province [19 March 1638/9] *AOMOL* 1: 41-42 [Accessed 02/10/18]; Krugler, *English and Catholic*, 169-178; E. A. Livingstone (ed.) ‘Mortmain,’ *The Concise Oxford Dictionary of the Christian Church* (Oxford: Oxford University Press, 2014) <http://www.oxfordreference.com/view/10.1093/acref/9780199659623.001.0001/acref-9780199659623-e-3923> [Accessed 02/10/2018]

<sup>62</sup> Krugler, *English and Catholic*, 178.

<sup>63</sup> ‘Libel of Thomas Copley and the Brents against the Reformation’ [1645] Libels, High Court of Admiralty, HCA 24/176, No. 205, NA.

<sup>64</sup> For a transcription of the two inventories submitted as part of Copley and Brent’s libel, see Anon., ‘Richard Ingle in Maryland,’ *Maryland Historical Society Magazine* Vol. 1, No. 2 (1906) 124-141 at 139-140.

<sup>65</sup> ‘Examinations of John Lewgar, Thomas Cornwaleys, and Giles Brent,’ Section K, in Cornwaleys vs. Ingle; Copley et al. vs. Ingle, Examinations, High Court of Admiralty, HCA 13/60, NA.

<sup>66</sup> ‘Examination of Thomas Cornwaleys,’ Answer 10, [8 August 1645], Section K, in Copley et al. vs. Ingle, Examinations, High Court of Admiralty, HCA 13/60, NA.

*The Legacy of Ingle's Rebellion*

The Jesuits were not alone in exploiting the imprecise boundaries of jurisdiction in England's early empire. Following his defeat of Ingle in the High Court of Admiralty, the Catholic Thomas Cornwaleys pursued Richard Ingle in the Court of Chancery for damages incurred during the rebellion.<sup>67</sup> The Court of Chancery was a common law court and could, therefore, attach real property and Cornwaleys probably coveted Ingle's English estate. Yet, because Ingle's offence had been committed in Maryland and involved breaches of maritime and civil law the common law court had no jurisdiction. However, as a result of England's ambitions abroad in the sixteenth century, common law lawyers had created the convenient fiction that such breaches occurred in a parish of London rather than the colonies, and this remained the practice in the early seventeenth century.<sup>68</sup> Thus, Ingle was forced to admit that he had committed the misdemeanor for which he was accused so that he could protest that it had occurred in Maryland and not the Parish of St. Christopher's in London.<sup>69</sup> Richard Ingle's ability to hold onto the plunder seized in Maryland rested on proving that his actions had been taken against enemies of the Parliamentary cause. If Ingle was found to have operated beyond the terms of his Letter of Marque he could be tried for piracy.

The understanding that success or loss in the courts rested on proof of open opposition to Parliament was not lost on either party. Not only did Cornwaleys and Copley both assert that they remained loyal to the king and Parliament, Ingle repeatedly used similar language when he made accusations of disloyalty towards his Catholic captives. He declared that Cuthbert Fenwick was 'in Armes & opposition & hostility against King and Parliament' and in his petition to the House of Lords in response to Cornwaleys' suit in the Court of Chancery, Ingle claimed that 'the very Goods that were by Force of War justly and lawfully taken from these wicked Papists and Malignants in *Maryland* [original emphasis], and with which he [Ingle] relieved the poor distressed Protestants there, who otherwise must have starved and been rooted out.'<sup>70</sup> Ingle's capture of Copley and White, alongside Lewgar, Brent, and Fenwick, was intended to prove that Baltimore's

<sup>67</sup> 'Cornwaleys vs. Ingle [1645],' Examinations, Court of Chancery, C24 690/14, NA; Cornwaleys vs. Ingle [1645], Bills and Answers, Court of Chancery, C24 15/23, NA.

<sup>68</sup> Riordan, *Plundering Time*, 254; Christopher Brooks and Michael Lobban, eds., *Communities & Courts in Britain, 1150-1900* (London: A&C Black, 1997), 89.

<sup>69</sup> "Capt. Ingle, who assisted the Protestants against the Papists in Maryland, Petition, to be relieved in Actions brought against him for it by Cornwallis & al,' [24 February 1646] *Journal of the House of Lords (JHL)* 8, (1645-1647) (London: His Majesty's Stationery Office, 1767-1830): 183-186. *British History Online*. <http://www.british-history.ac.uk/lords-jrnl/vol8/pp183-186>.

<sup>70</sup> Answer of Richard Ingle to a libel of Thomas Cornwaleys and Alan Lane [31 July 1645] in Cornwaleys vs. Ingle, Answers, High Court of Admiralty, HCA 13/119, NA; 'Capt. Ingle, who assisted the Protestants' [24 February 1646], *JHL* 8 (1645-1647): 186; Gregory Durston,

colony harboured priests and allowed Catholics to flourish extra legally. Following Henry VIII's break with Rome, boundaries of allegiance were drawn along national as much as confessional lines, and the Elizabethan Settlement and the Oath of Allegiance (1606) especially fixed onto the national memory the image of Catholics as anathema to the English state. Furthermore, in March 1643 Parliament reinforced this image of the disloyal Catholic by passing a sequestration ordinance which authorised the confiscation of royalist and 'delinquent' estates for the war effort.<sup>71</sup> For Ingle, and indeed many Protestant Englishmen and women, the Jesuit mission, the open practice of Roman Catholic worship, and the presence of Roman Catholics as members of the colonial government in Maryland was tantamount to treason simply by virtue that they appeared to operate in spite of those activities having been circumscribed by English statutes. John Lewgar and Thomas Cornwaleys testified to the Court of Chancery in autumn 1645 that for this reason, during the rebellion, Ingle distributed letters in Maryland which attempted to rally discontented Protestants to his cause.<sup>72</sup> Lewgar stated that he saw 'in a Letter which the defendent [sic?] wrote unto... the Protestants of Maryland latt [sic?] his first coming upp with his Shipp, wherein [he had] a Comi[ss]ion... to plunder the Papists... and to plunder all them [who] would not take upp Armes with him... [under] the [s]ame Comi [ss]ion from Parliament.'<sup>73</sup> At least some Protestants in Maryland responded to Ingle's invitation.

As a result of the legal proceedings in London, a treatise entitled *A Petition of Diverse Inhabitants of Maryland* was sent to the Committee for Foreign Plantations in November 1645 which complained of the 'tyranicall rule' of 'papists' and requested that a Protestant government be instituted, and that Ingle be granted immunity.<sup>74</sup> In addition, despite Copley having been found not guilty of treason under 27 Eliz., Ingle still pushed the disloyalty of the Jesuit's Catholicism in his own libel filed against Copley. For example, Ingle reported that Copley's usual residence was called 'St. Ignatius Loyolas Colledges' and that he lived there with Jesuits and papists. Most dangerously for Copley, Ingle accused him of attempting to rally the Native Americans at Portobacco 'to cut the throats of the Protestants.'<sup>75</sup> However,

*The Admiralty Sessions, 1536-1834: Maritime Crime and the Silver Oar* (Newcastle: Cambridge Scholars Publishing, 2017), 206.

<sup>71</sup> Ben Coates, *The Impact of the English Civil War on the Economy of London, 1642-1650* (Aldershot: Ashgate, 2004), 40.

<sup>72</sup> 'Bill of Thomas Cornwaleys' [22 August 1645] in Cornwaleys vs. Ingle, Bills and Answers, Court of Chancery, C24 15/23, NA; Examination of John Lewgar, Answer 14, [26 September 1645] in Cornwaleys vs. Ingle, Court of Chancery, Examinations, C24 690/14, NA.

<sup>73</sup> Examination of John Lewgar, Answer 14, [26 September 1645] in C24 690/14, NA.

<sup>74</sup> 'Report from the Com<sup>tee</sup> of forraigne Plantacons cone Maryland.' [1645] in *AOMOL* 3: 164.

around the same time as he submitted his libel against Copley, Ingle lost his suit against the *Looking Glass* (*Der Spiegel*), a Dutch merchant ship that Ingle had seized in St. Mary's City harbour. The *Looking Glass* was owned by a number of merchants operating out of Rotterdam including Henry Brooks Jr. who had travelled with the *Looking Glass* to Maryland. Brooks was captured by Ingle but inexplicably he never reached London with the other captives.<sup>76</sup> If Brooks' demise was a part of Ingle's plan it was ill-conceived. Ingle's claim to the *Looking Glass* as a prize relied upon the judges of the High Court of Admiralty and the Court of Chancery accepting that Ingle had operated within the limits of his Letter of Marque. The questions they thus posed to deponents during proceedings focused heavily on Ingle's actions. On the 26<sup>th</sup> September 1645 they asked John Lewgar 'do you know or have you audibly heard that the said deft... in a violent manner possess himself of the aforesaid Dutch ship... had frauded... off another yea or no by or under what pretent or authoritie [of Parliament?]'<sup>77</sup> To award Ingle the *Looking Glass* as a prize the judges needed to confirm that either Brooks was Royalist or that St. Mary's City was a Royalist port. Without Brooks alive, Ingle could only rely on the latter argument. However, the court heard that although Leonard Calvert and Governor William Berkeley of Virginia (1605-1677) had on 26 January 1643/4 received a royal commission to seize in Virginia ships trading from London, because that city was in rebellion, the commission did not extend to Maryland.<sup>78</sup> Most importantly, upon Calvert's return from England the Maryland Assembly had affirmed that it would thus enjoy free trade with all who visited the colony's ports.<sup>79</sup>

The Assembly's actions probably ensured that the judges of the High Court of Admiralty rejected Ingle's suit. Importantly, by passing this judgement the judges had declared by implication that the inhabitants of Maryland were not in opposition to Parliament and that Ingle had operated beyond the mandate of his Letter of Marque leaving him vulnerable to the charge of piracy. Ingle's hope now rested on the Protestant petition from Maryland submitted to the Committee of Foreign Plantations finding favour with the House of Lords. If not for Lord Baltimore's shrewd interventions to protect his charter in

<sup>75</sup> 'Answer of Richard Ingle to a libel of Thomas Copley et al.,' Answer 11 [29 September 1645], Answers, High Court of Admiralty, HCA 13/119, NA.

<sup>76</sup> Riordan, *The Plundering Time*, 215.

<sup>77</sup> Examination of John Lewgar, Question 13, [26 September 1645] in C24 690/14, NA.

<sup>78</sup> William Berkeley (1605-1677) was a member of the aristocracy and established church who governed Virginia from 1642 until his death in 1677. He was a courtier, adventurer, and even playwright but he best remembered for governing Virginia during Bacon's Rebellion in 1676. See: Warren M. Billings, 'Berkeley, Sir William' (1605-1677), *ONDB*, <https://doi.org/10.1093/ref:odnb/2225>. [Accessed 25/01/2019].

<sup>79</sup> Anon., 'Richard Ingle in Maryland', 129-130; Riordan, *The Plundering Time*, 249.

1646-1647, it is likely that Ingle would have survived the affair with his plunder intact. On 28<sup>th</sup> November 1646 the House of Lords reached a third reading of an ordinance that, had it been passed in the House of Commons, would have removed the Catholic proprietary government and secured Ingle's immunity.<sup>80</sup> Ingle lost, but the record is incomplete. We can only be certain that Cornwaleys was able to extract as a settlement the equivalent of about £300 sterling worth of debt owed to Ingle by several inhabitants of Maryland listed in an inventory dated 25<sup>th</sup> November 1646.<sup>81</sup>

In 1648, Copley returned to Maryland and set about ensuring that the Jesuit mission would never again face near annihilation. He registered his status as 'alien born' in the Maryland legislature on 13 March 1648, launched a number of suits against those Protestants who had capitalised on the seizure of Jesuit property, and deeded property to lay Catholics for them to hold in trust on behalf of the society. For example, in January 1646, Governor Leonard Calvert authorised Lt. William Lewis to inventory the Jesuit property St. Inigoes that Calvert described as 'M<sup>r</sup> Copley's Land' but which was then occupied by Mrs. Baldrige who was a wife of one of the rebels.<sup>82</sup> Baltimore likewise made overtures to the new Parliamentary government, and reshuffled his council to include a significantly higher number of Protestants.<sup>83</sup> Ultimately, whilst Copley exploited every legal loophole available to him, Ingle miscalculated that the cultural identity of 'Englishness' defined by Protestant anti-Catholicism would be enough to sway the judges of the High Court of Admiralty and the Court of Chancery to find in his favour. Ingle failed to understand or account for the complex constructions of the English realm, empire, and

<sup>80</sup> Ordinance to indemnify Persons that shall reduce Maryland, [25 December 1645] in *JHL* 8, 1645-1647: 66-69; 'Paper from the Committee for Plantations, about reducing Maryland; and for an Indemnification for Persons employed for that Service,' [25 December 1645] in *JHL* 8, 1645-1647: 66-69; Ordinance for settling Maryland under the Command of Protestants, [24 February 1646] in *JHL* 8, 1645-1647:186; Ordinance for settling the Government of Maryland, [28 March 1646] in *JHL* 8, 1645-1647: 241-145; Ordinance about Maryland, [24 November 1646] in *JHL* 8, 1645-1647: 576-577; 'L. Baltimore to be heard, about his Patent for Maryland,' [28 November 1646] in *JHL* 8, 1645-1647: 581-583; 'L. Baltimore's Cause concerning Maryland,' [22 Jan 1647] in *JHL* 8, 1645-1647: 682-684; 'L. Baltimore's Cause concerning Maryland,' [23 Jan 1647] in *JHL* 8, 1645-1647: 684-685; 'Maryland,' [31 August 1652], in *Journal of the House of Commons (JHC)* 7 1651-1660 (London, 1802): 172-173. *British History Online* <http://www.british-history.ac.uk/commons-jrnl/vol7/pp172-173> [Accessed 25 January 2019].

<sup>81</sup> 'Court and Testamentary Business' [1649] in *AOMOL* 10: 211-13.

<sup>82</sup> 'L. Calvert to Lt. William Lewis,' [1646] in *AOMOL* 3: 178-179. In 1651 Copley also reissued land patented to Cuthbert Fenwick in trust in 1641 to Fenwick again, but also to Ralph Crouch: 'Certificate of Survey for St. Inigoes' [1 October 1651], *Land Office and Prerogative Court Records of Colonial Maryland, 1634-2012* (Patent Record), Liber AB&H, f. 173, The Maryland State Archives (MSA), Annapolis: MD.; 'Patent for St. Inigoes' [4 November 1651], Patents, Liber RRO, f. 8, MSA.

<sup>83</sup> Krugler, *English and Catholic*, 182-183.

dominion in the legal framework which were not always congruent with cultural constructions of the same concepts.

Whilst the litigation found in the High Court of Admiralty and High Court of Chancery reveals that Catholics were able to navigate the ambiguities of the law and use those ambiguities to their advantage, Ingle discovered that his legal case was hollow and rooted only in what Clement Fatovic has described as xenophobic constructions of Protestant and British national identity, rather than concrete evidence of Maryland Catholics' political opposition to Parliament.<sup>84</sup> Thus the litigation battle between Copley and Ingle suggests that 'Englishness' was ambiguous; it partly relied on the law, but it was also an ethnoreligious construction of identity. As a member of a prominent gentry family Copley could lay claim to an ethnic 'Englishness', but his Catholicism and his birth in exile complicated that belonging. To Richard Ingle, Thomas Copley was an English Jesuit priest operating in violation of 27 Eliz. in a dominion of England. In many ways, it is understandable that he would feel confident of success in London's courts; but in reality, the rule of law protected Catholics from more vulgar and popular abuses of anti-Catholicism.

<sup>84</sup> Clement Fatovic, 'The Anti-Catholic Roots of Liberal and Republican Conceptions of Freedom in English Political Thought,' *Journal of the History of Ideas* 66, 1 (2005), 37-58 at 38-39.