

## Erskine May, Vol. III, Chapter XII, pp. 94-107

### Advance of Toleration, Continued

#### Relief of Catholics

At this period, the penal laws affecting Roman Catholics also came under review. By the government, the English Catholics were no longer regarded with political distrust. The memory of Jacobite troubles had nearly passed [95] away; and the Catholics of this generation were not suspected of disloyalty. Inconsiderable in numbers, and in influence, they threatened no danger to church or state. Their religion, however, was still held in aversion by the great body of the people; and they received little favour from any political party. With the exception of Fox, Burke, and Sir G. Savile, few of the Whigs felt any sympathy for their grievances. The Whigs were a party strongly influenced by traditions and hereditary sympathies. In struggling for civil and religious liberty at the Revolution, they had been leagued with the Puritans against the Papists: in maintaining the House of Hanover and the Protestant succession, they had still been in alliance with the church and dissenters, and in opposition to Catholics. Toleration to the Catholics, therefore, formed no part of the traditional creed of the Whig party. Still less indulgence was to be expected from the Tories, whose sympathies were wholly with the church. Believing penal laws to be necessary to her interests, they supported them, indifferently, against dissenters and Catholics. But the growing enlightenment of the time made the more reflecting statesmen, of all parties, revolt against some of the penal laws still in force against the Catholics. They had generally been suffered to sleep: but could, at any time, be revived by the bigotry of zealots, or the cupidity of relatives and informers. Several priests had been prosecuted for saying mass. Mr. Maloney, a priest, [96] having been informed against, was unavoidably condemned to perpetual imprisonment. The government were shocked at this startling illustration of the law; and the king being afraid to grant a pardon, they ventured, on their own responsibility, to give the unfortunate priest his liberty. Another priest owed his acquittal to the ingenuity and tolerant spirit of Lord Mansfield. In many cases, Roman Catholics had escaped the penalties of the law by bribing informers not to enforce them. Lord Camden had protected a Catholic lady from spoliation, under the law, by a private Act of Parliament.

To avert such scandals as these, and to redeem the law from the reproach of intolerance, Sir George Savile, in 1778, proposed a measure of relief for English Catholics. Its introduction was preceded by a loyal address to the king, signed by ten Catholic Lords and one hundred and sixty-three Commoners, giving assurance of their affection for His Majesty, and attachment to the civil constitution of the country; and expressing sentiments calculated to conciliate the favour of Parliament and ministers. When it was explained that the penalties, imposed in 1700, and now to be repealed, were the perpetual imprisonment of priests for officiating in the services of their church,—the forfeiture of the estates of Roman [97] Catholic heirs, educated abroad, in favour of the next Protestant heir,—and the prohibition to acquire land by purchase,(1) the bill was allowed to be introduced without a dissentient voice; and was afterwards passed through both Houses, with general approbation.(2) Such was the change in the feelings of the legislature, since the beginning of the century!

#### Riots in Scotland

But in its views of religious liberty, Parliament was far in advance of considerable classes of the people. The fanaticism of the puritans was not yet extinct. Any favour extended to Roman

Catholics, however just and moderate, aroused its latent flames. This bill extended to England only. The laws of Scotland relating to Roman Catholics, having been passed before its union with England, required further consideration, and a different form of treatment. The lord advocate had, therefore, promised to introduce a similar measure, applicable to Scotland, in the ensuing session. But in the meantime, the violent fanatics of a country which had nothing to fear from Catholics, were alarmed at the projected measure. They had vainly endeavoured to oppose the English bill, and were now resolved that, at least, no relief should be granted to their own fellow-countrymen. They banded together in 'Protestant Associations;'(3) and by inflammatory language incited the people to dangerous outrages. In Edinburgh, the mob [98] destroyed two Roman Catholic chapels, and several houses of reputed Papists. In Glasgow, there were no chapels to destroy: but the mob were able to show their zeal for religion, by sacking the factory of a Papist. The Roman Catholics trembled for their property and their lives. Few in numbers, they found little protection from Presbyterian magistrates; and were at the mercy of the rioters. Preferring indemnity for their losses, and immediate protection for their persons, to a prospective relief from penal statutes, they concurred with the government in the postponement of the contemplated measure, till a more favourable occasion. In an admirable petition to the House of Commons, they described the outrages which had been committed against them, and expressed their loyalty and attachment to the constitution. While they readily forbore to press for a revision of the penal statutes, they claimed a present compensation for the damages inflicted upon their property. Such compensation was at once promised by the government.

### **The Gordon Riots**

The success of the fanatical rioters in Scotland, who had accomplished an easy triumph over the Roman Catholics and the government, encouraged the anti-Catholic bigotry in England. If it was wrong to favour Papists in Scotland, the recent English Act was also an error, of which Parliament must now repent. The fanatics found a congenial leader in Lord George Gordon; and the [99] metropolis of England soon exceeded the two first cities of the North in religious zeal, and outrage. London was in flames, and Parliament invested by the mob, because some penalties against Roman Catholics, condemned by sober men of all parties, had lately been repealed. The insensate cry of 'No Popery' resounded in the streets, in the midst of plunder, and the torches of incendiaries.(4)

Petitions praying for the repeal of the recent Act were met by resolutions of the House of Commons, vindicating its provisions from misrepresentation. One unworthy concession, however, was made to the popular excitement. Sir George Savile, hitherto the foremost friend of toleration, consented to introduce a bill to restrain Papists from teaching the children of Protestants. It was speedily passed through the House of Commons. In the House of Lords, however, the lord chancellor inserted an amendment limiting the bill to boarding-schools; and this limitation being afterwards opposed by the bishops, led to the loss of the bill.(5)

### **Relief of Dissenters**

For several years, the grievances of Catholics were permitted to rest in oblivion: but the claims of Protestant dissenters to further toleration elicited ample discussion.

The grievances suffered by dissenters, under the [100] Corporation and Test Acts, had not been urged upon Parliament since the days of Sir Robert Walpole: but in 1787, the time seemed favourable for obtaining redress. In Mr. Pitt's struggle with the coalition, the dissenters having sided with the minister, and contributed to his electoral triumphs, expected a recognition of their services, at his hands. Having distributed a printed case, in which the history and claims of nonconformists were ably stated, they entrusted their cause to Mr. Beaufoy, who moved for a bill to repeal the Corporation and Test Acts. He showed how the patriotism of a nonconformist soldier might be rewarded with penalties and proscription; and

how a public-spirited merchant would be excluded from municipal offices, in the city which his enterprise had enriched, unless he became an apostate from his faith. The annual indemnity acts proved the inutility of penal laws, while they failed effectually to protect dissenters. Members were admitted to both Houses of Parliament without any religious test: then why insist upon the orthodoxy of an exciseman? No danger to the state could be apprehended from the admission of dissenters to office. Who, since the Revolution, had been more faithful to the constitution and monarchy than they? Was there danger to the church? The church was in no danger from [101] dissenters before the Test Act: the church of Scotland was in no danger where no Test Act had ever existed: the church of Ireland was in no danger now, though dissenters had for the last seven years been admitted to office in that country.(6) But danger was to be apprehended from oppressive laws which united different bodies of dissenters, otherwise hostile, in a common resentment to the church. Howard, the philanthropist, in serving his country, had braved the penalties of an outlaw, which any informer might enforce. Even members of the church of Scotland were disqualified for office in England. Belonging to the state church, they were treated as dissenters. In conclusion, he condemned the profanation of the holy sacrament itself: that rite should be administered to none unworthy to receive it; yet it had become the common test of fitness for secular employments. Such was the case presented in favour of dissenters. Mr. Beaufoy was not in the first rank of debaters, yet from the force of truth and a good cause, his admirable speech puts to shame the arguments with which the first statesmen of the day then ventured to oppose him.

Lord North regarded the Test Act as 'the great bulwark of the constitution, to which we owed the inestimable blessings of freedom, which we now happily enjoyed.' He contended that the exclusion of dissenters from office was still as necessary as when it was first imposed by the legislature; and denied that it involved the least contradiction to the principles of toleration. The state had allowed all [102] persons to follow their own religion freely: but might decline to employ them unless they belonged to the established church.

Mr. Pitt was no friend to the penal laws: his statesmanship was superior to the narrow jealousies which favoured them.(7) On this occasion he had been disposed to support the claims of the dissenters: but yielding to the opinion of the bishops, he was constrained to oppose the motion. His speech betrayed the embarrassment of his situation. His accustomed force and clearness forsook him. He drew distinctions between political and civil liberty; maintained the right of the state to distribute political power to whom it pleased; and dwelt upon the duty of upholding the established church. Mr. Fox supported the cause of the dissenters; and promised them success if they persevered in demanding the redress of their grievances. The motion was lost by a majority of seventy-eight.

In 1789, Mr. Beaufoy renewed his motion: and to a recapitulation of his previous arguments, added some striking illustrations of the operation of the law. The incapacity of dissenters extended not only to government employments, but to the direction of the Bank of England, the East India Company, and other chartered companies. When the Pretender had marched to the very centre of England, the dissenters had [103] taken up arms in defence of the king's government: but instead of earning rewards for their loyalty, they were obliged to shelter themselves from penalties, under the Act of Grace,—intended for the protection of rebels.

Mr. Fox supported the motion with all his ability. Men were to be tried, he said, not by their opinions, but by their actions. Yet the dissenters were discountenanced by the state,—not for their actions, which were good and loyal, but for their religious opinions, of which the state disapproved. No one could impute to them opinions or conduct dangerous to the state; and Parliament had practically admitted the injustice of the disqualifying laws, by passing annual acts of indemnity. To one remarkable observation, later times have given unexpected significance. He said: 'It would perhaps be contended that the repeal of the Corporation and Test Acts might enable the dissenters to obtain a majority. This he scarcely thought probable: but it appeared fully sufficient to answer, that if the majority of the people of England should

ever be for the abolition of the established church, in such a case the abolition ought immediately to follow.'(8)

Mr. Pitt opposed the motion in a temperate speech. 'Allowing that there is no natural right to interfere with religious opinions,' he contended that 'when they are such as may produce a civil inconvenience, the government has a right to guard [104] against the probability of the civil inconvenience being produced.' He admitted the improved intelligence and loyalty of Roman Catholics, whose opinions had formerly been dangerous to the state; and did justice to the character of the dissenters: while he justified the maintenance of disqualifying laws, as a precautionary measure, in the interest of the established church. The motion was lost by the small majority of twenty.

### **Increased Opposition to Concessions after the French Revolution**

Encouraged by so near an approach to success, the dissenters continued to press their claims; and at their earnest solicitation, Mr. Fox himself undertook to advocate their cause. In March 1790, he moved the consideration of the Test and Corporation Acts, in a committee of the whole House. He referred to the distinguished loyalty of the dissenters, in 1715 and 1745, when the high church party, who now opposed their claims, had been 'hostile to the reigning family, and active in exciting tumults, insurrections, and rebellions.' He urged the repeal of the test laws, with a view to allay the jealousies of dissenters against the church; and went so far as to affirm that 'if this barrier of partition were removed, the very name of dissenter would be no more.'

Mr. Pitt's resistance to concession was now more decided than on any previous occasion. Again he maintained the distinction between religious toleration and the defensive policy of excluding from office those who were likely to prejudice the [105] established church. No one had a right to demand public offices, which were distributed by the government for the benefit of the state; and which might properly be withheld from persons opposed to the constitution. The establishment would be endangered by the repeal of the test laws, as dissenters, honestly disapproving of the church, would use all legal means for its subversion.

Mr. Beaufoy replied to Mr. Pitt in a speech of singular force. If the test laws were to be maintained, he said, as part of a defensive policy, in deference to the fears of the church, the same fears might justify the exclusion of dissenters from Parliament,—their disqualification to vote at elections,—their right to possess property, or even their residence within the realm. If political fears were to be the measure of justice and public policy, what extremities might not be justified?

Mr. Burke, who on previous occasions had absented himself from the House when this question was discussed, and who even now confessed 'that he had not been able to satisfy himself altogether' on the subject, spoke with characteristic warmth against the motion. His main arguments were founded upon the hostility of the dissenters to the established church, of which he adduced evidence from the writings of Dr. Priestley and Dr. Price, and from two nonconformist catechisms. If such men had the power, they undoubtedly had the will to overthrow the church of England, as the church of France had just been overthrown. Mr. Fox, in reply, deplored the opposition of Mr. Burke, which [106] he referred to its true cause,—a horror of the French Revolution,—which was no less fatal to the claims of dissenters, than to the general progress of a liberal policy. Mr. Fox's motion, which, in the previous year, had been lost by a narrow majority, was now defeated by a majority of nearly three to one.(9)

### **The Catholic Relief Act 1791**

The further discussion of the test laws was not resumed for nearly forty years: but other questions affecting religious liberty were not overlooked. In 1791, Mr. Mitford brought in a bill for the relief of 'Protesting Catholic Dissenters,'—or Roman Catholics who protested

against the pope's temporal authority, and his right to excommunicate kings and absolve subjects from their allegiance,—as well as the right alleged to be assumed by Roman Catholics, of not keeping faith with heretics. It was proposed to relieve such persons from the penal statutes, upon their taking an oath to this effect. The proposal was approved by all but Mr. Fox, who, in accepting the measure, contended that the relief should be extended generally to Roman Catholics. Mr. Pitt also avowed his wish that many of the penal statutes against the Catholics should be repealed.

[107] The bill was open to grave objections. It imputed to the Catholics as a body, opinions repudiated by the most enlightened professors of their faith. Mr. Pitt received an explicit assurance from several foreign universities that Catholics claimed for the pope no civil jurisdiction in England, nor any power to absolve British subjects from their allegiance; and that there was no tenet by which they were justified in not keeping faith with heretics. Again, this proposed oath required Catholics to renounce doctrines in no sense affecting the state. In the House of Lords, these objections were forcibly urged by the Archbishop of Canterbury, and Dr. Horsley, bishop of St. David's; and to the credit of the episcopal bench, the latter succeeded in giving to the measure a more liberal and comprehensive character, according to the views of Mr. Fox. An oath was framed, not obnoxious to the general body of Catholics, the taking of which secured them complete freedom of worship and education; exempted their property from invidious regulations; opened to them the practice of the law in all its branches; and restored to peers their ancient privilege of intercourse with the king.(10)

#### **Footnotes.**

1. 11 and 12 Will. III. c. 4.
2. Roman Catholic Relief Act 1778.
3. Supra, Vol. II. p. 272.
4. See supra, Vol. II. p. 273.
5. In this year (1780) the Earl of Surrey, eldest son of the Duke of Norfolk, and Sir Thomas Gascoigne, abjured the Roman Catholic faith, and were immediately returned to parliament.—Lord Mahon's Hist., vii. 111.
6. Supra, Vol. III. p. 94.
7. 'To the mind of Pitt the whole system of penal laws was utterly abhorrent,'—Lord Stanhope's Life, ii, 276.
8. 'If the dissenters from the establishment become a majority of the people, the establishment itself ought to be altered or qualified.'—Paley's Moral and Political Philosophy, book vi. ch. x.
9. 294 to 105. Parl. Hist., xxviii. 357-452. The subject gave rise, at this time, to much written controversy. Tracts by Bishops Sherlock and Hoadley were republished. One of the best pamphlets on the side of the dissenters was 'The Rights of Protestant Dissenters, by a Layman, 1789.' The Bishop of Oxford, writing to Mr. Peel in 1828, speaks of fourteen volumes on the subject, written in 1789 and 1790.—Peel's Mem. i, 65.
10. 31 Geo. III. c. 32.

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