The Political Rights of the Jews in the United States: 1776–1840

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HISTORICAL INTRODUCTION: THE COLONIAL PERIOD

On May 16, 1743, John Peter Zenger's New-York Weekly Journal described an incident in which a Jewish funeral procession had been assaulted by a mob. According to one learned Christian who had borne aggrieved witness to it, the mob had "insulted the dead in such a vile manner that to mention all would shock a human ear." The incident was exceptional, even in 1743, but it indicated that America was not in every respect a new world. If some hundred and twenty years later the historian George Bancroft could write that American law was "not an acquisition from abroad," but was "begotten from the American mind, of which it was a natural and inevitable, but also a slow and gradual development," the growth of political equality for the American Jew — and for other religious minorities as well — is a measure of how slowly and gradually that "American mind" could work. What Sanford Cobb said of the reception tendered Roger Williams' notions of religious liberty, that

not in a day will the enunciation of a new principle, especially if it be radical and revolutionary, lodge itself in the minds of men with all those details of regulated application to which only experience can give form and authority,

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This article, originally prepared as a Seminararbeit for Dr. Jacob R. Marcus of the H. U. C. - J. I. R., is limited to a study of the political rights of the Jews as defined in the Federal and state constitutions of the United States up to the year 1840.
is perhaps even truer of the rise of political liberty for the American Jew.

Religious liberty was never an especially great problem for the Jew in America. Almost from the beginning, he "found little trouble in securing religious freedom," and "no colony drove him out because he was a Jew." Whether through a grant of the freedom of the city, through letters patent of denization, through naturalization acts or "administrative connivance or indifference," the Jew did receive "the right to establish himself in those colonies which appealed to him." Even economic rights were granted him by 1700. Where the Jew was concerned, it was most notably in the area of political rights that "the American mind" underwent "a slow and gradual development." This does not mean, to be sure, that religion played no part in the political restrictions to which he was subject, for where the Jew was denied political rights — and before 1776 he was everywhere denied such rights in some measure — it was the fact of his religion which militated against him.

In the beginning, that religious liberty which, as Cobb says, "asserts the equality of all; that in matters of religion all men are equal before God and the law," was markedly absent from the American scene. In the place of religious liberty there was the toleration which "assumes that all are not equal, that one form of religion has a better right, while for the sake of peace it consents that they who differ from it shall be allowed to worship as shall best please themselves." It was on this basis that, for example, Puritan Massachusetts tolerated Episcopalians and Baptists, and that Anglican Virginia tolerated Presbyterians. It was also on this basis that Jews were tolerated wherever they dwelt in the colonies.

The early American colonists regarded a "union more or less intimate and vital" of Church and State as "a principle which was very right and necessary." Convinced, as Cobb says, that whatever form of worship they espoused was "the true form," they never doubted "the propriety of a legal insistence upon a prescribed form of worship." Indeed, long after the American Union had decided the issue in favor of religious equality on the Federal level, the
exclusivist convictions of the early colonists were reflected in the religious tests which many of the states continued to impose on their officials. Persecution was, in the minds of the early colonists, not in itself an evil, but “the impropriety and wrong of persecution were to be decided . . . by the character of the doctrine persecuted,”9 and “toleration of dissent from the ‘established order’ of religious worship was,” according to the early leaders of Massachusetts, “as sedition in the state and sin against God.” John Cotton of Massachusetts insisted that “it was toleration that made the world anti-Christian,” and another Puritan worthy, Nathaniel Ward, took it upon himself in 1645 “to proclaim to all Familists, Antinomians [&c.], to keep away from us; and such as will come, to be gone: the sooner the better.”10 Ward regarded “polypiety”11 as “the greatest impiety in the world” and declared acidly that he that is willing to tolerate any unsound opinion, that his own may be tolerated, though never so sound, will for a need hang God’s Bible at the Devil’s girdle.

As late as the 1670’s, Urian Oakes, the president of Harvard College, could avow publicly that he looked “upon unbounded toleration as the first-born of all abominations.”12

Such a spirit was by no means restricted to Massachusetts. Cobb has divided the early colonies into four groups, in at least three of which Cotton, Ward, and Oakes could have found many lips to echo their sentiments regarding toleration, if not their sentiments regarding the Puritan Church. The first group, which included Massachusetts, Plymouth, New Haven, Connecticut, and New Hampshire, was characterized by Puritan establishments wherein Massachusetts and New Haven were “more closely akin in the strictness of their religious requirements” while Plymouth and Connecticut were rather “more liberal in spirit and enactments.” Virginia and the Carolinas constituted a second group, one in which the Anglican Church was established until well into the Revolutionary era, and in which it was not unusual to find a display of “strong and bitter feeling against all forms of dissent.” A third group included New York, New Jersey, Maryland, and Georgia,
colonies in which “occurred changes of attitude toward the Church.” Maryland began with a large measure of religious freedom under Catholic auspices, but later established the Anglican Church, while in New York and New Jersey English officials labored in vain to establish Anglicanism “on a Dutch Reformed foundation.” Although the original Georgia charter had granted religious freedom, royal edict and legislative enactment abrogated that charter and established Anglicanism sometime before the Revolution.

In the fourth group alone, Rhode Island, Pennsylvania, and Delaware, was no specific church or form of worship established. Although Cobb’s contention is that, in these three colonies, “the impropriety of a religious establishment was explicitly declared,” it remains a fact that Rhode Island’s liberal law of 1665 was altered sometime between 1705 and 1719 to exclude Jews and Catholics from the rights of citizenship. Indeed, in contravention of the British Government’s Naturalization Act of 1740, the Jew Aaron Lopez was denied citizenship in Rhode Island in 1761 and “found it necessary to go over the border to Massachusetts, where he was naturalized without serious difficulty.” Cobb himself concedes that, in Pennsylvania and Delaware, “the Quaker, notwithstanding his voice for liberty of conscience, could yet make no civic room for the infidel, and insisted on certain religious restrictions.” In these colonies of the fourth group, Protestant Christianity, if no specific form of it, was in effect established.

Of all the thirteen colonies, five alone — Rhode Island, New York, Pennsylvania, South Carolina, and Georgia — had Jewish communities of any size, while Massachusetts, Connecticut, and New Hampshire had no synagogues and at best only scattered Jewish families. Though the political rights enjoyed by or denied to the Jews varied from colony to colony, there was no colony which at the onset of the Revolution extended full political equality to Jews — or, for that matter, to Catholics. Rhode Island, Pennsylvania, and Delaware were, in fact, alone in granting full rights to the Protestant Dissenters. According to Marcus, there was no colony in which prejudice was “directed solely against Jews.” Still, it is instructive to consider some of the experiences that did befall the Jews in the pre-Revolutionary era, and of partic-
ular interest was the Jewish experience in New York, Pennsylvania, South Carolina, and Georgia.

In New York, as Cobb says, "throughout the colonial period there either was, or was supposed to be, an established Church, but the Church of early institution was other than the one which the English conquest of New Amsterdam attempted to introduce." The Dutch West India Company, "unlike other colonial founders, [had] made no professions of religious motives," and, largely as a result of the religious unrest in Europe, New Amsterdam presented, as did perhaps no other colony except Rhode Island, a spectacle of the "polipiety" detested by the Puritan Ward. German Lutherans, French Huguenots, Presbyterians from Scotland and Massachusetts, as well as "the Dutch founders [who] brought with them the ordinances of discipline of the Reformed Church of Holland," all peopled the colony. Although the Reformed Church was finally established and "under this restricted rule the ecclesiastical affairs of the colony were ostensibly administered to the end of Dutch possession," New Amsterdam "showed no indications of harshness until the fiery Stuyvesant came to the governorship." In addition, however, to persecuting Lutherans and Quakers, Stuyvesant, a decided anti-Semite, demanded of the Dutch West India Company in 1654 that no Jews be permitted "to infest New Nether-

The Company, "in reality no more sympathetic than Stuyvesant ... [but] quite conscious of the fact that a trading company engaged in peopling a wilderness could not afford the luxury of ethnic and religious prejudices," refused his request as "unreasonable and unjust" and authorized Jews to remain in New Amsterdam on condition that they care for their own poor, but denied them "a claim to the privilege of exercising their religion in a synagogue, or at a gathering." When Stuyvesant forbade the Jews to purchase land in Manhattan or to trade at Fort Orange (Albany) and on the South River (the Delaware River), the Company decreed for the Jews of the colony the same liberties which Jews enjoyed in Holland — except the liberty of meeting in a synagogue: they were to "exercise in all quietness their religion within their houses."

Following the English conquest of New Amsterdam in 1664,
where matters involving religion were concerned, "whether the utmost possible laxity, or a bigoted narrowness, should prevail in the governmental policy depended entirely on the changing caprice, or principle, of governors." It is known that, although after 1700 Jews in New York voted for Assembly candidates, a right which met with an occasional challenge, they were never permitted to hold honorary offices. It is apparent, also, that the British Parliament's Naturalization Act of 1740, which gave Jewish and Protestant aliens the right of naturalization after seven years' residence in the American colonies, was accepted in New York, for Jews were formally naturalized in that colony.

In Pennsylvania, too, Jews were formally naturalized, although they lacked political rights in that colony. The Pennsylvania assembly of 1682 required all civil officers of the province as well as all assembly deputies and all electors of deputies to be "such as profess and declare that they believe in Jesus Christ to be the Saviour of the world." When this law, among others, was annulled by the government of William and Mary in 1693, it was promptly re-enacted by the assembly, and, at least where the Jews were concerned, the restrictions of Pennsylvania law were surpassed for narrowness in the colonies only by Massachusetts, Virginia, and Maryland in the latter half of her colonial history. According to Pennsylvania law, in fact, though Jews and other non-Christian theists were permitted residence, they could neither vote nor hold office, while atheists and deists were denied even the right of residence. It was not "until the Revolution came and exhibited the meanness of that rule" that Pennsylvania stirred from her "quiet content that Romanist, Jew, and Socinian should be denied all civil rights." Even then, Jews had to wait until 1790 for equality.

In South Carolina and Georgia, the case was hardly better. Although Jews are reported to have voted in South Carolina during the first decade of the 1700's, only Christians could hold office after 1716, and the election law of 1759 made Protestantism a requirement. In Georgia, Jews were permitted political rights initially, and in fact may have retained their right to vote, but they were never either appointed or elected to office.
The situation of the Jews was markedly worse in Maryland, whose Toleration Act of 1649 ordered and enacted ... that no person or persons whatever within this province, ... professing to believe in Jesus Christ, shall from henceforth be any ways troubled, molested, or discountenanced for, or in respect to, his or her religion, nor in the free exercise thereof within this province. ... 

The act also ordained the death penalty for blasphemy and denial of the Trinity, and a fine of five pounds for speaking "reproachful words of the Virgin Mary, the Apostles, or evangelists." In Maryland, as Cobb says, only Trinitarian Christians were to be tolerated. There was no room under the law for the Unitarian, the Jew, the Infidel, or the Pagan.

It was only with the onset of the Revolution that the Jew could begin to hope for political equality in America.

**The Federal Realm**

Before the critical non-importation days of the 1760's, the American Jew had been "passive politically" and "content with the measure of economic and civil rights which he possessed." The Revolution, although it achieved little for the Jew respecting political rights in the newly independent states themselves, found him on the whole a Whig. The very fact, as Marcus points out, that the Jew enjoyed in America "so many rights and privileges," even if they fell far short of political equality, rendered the Continental cause dear to him. The very fact that no Jews in the colonies ever had to defend their existence as Jews; [that] they were never beaten because of their religion, like the Quakers or the Baptists, ... made a Whig of him. Had he lived in Europe, he would have been very content to receive the rights enjoyed by American Jews. Not so here; ... He was not satisfied with a partial liberty; he wanted it whole.

Another fact which propelled him into the Continental ranks was undoubtedly that, as a merchant and tradesman, he was, like many of the non-Jewish colonists, threatened with ruin by the economic policies of the British colonial administration.
What the Revolution did achieve for the Jew was political equality on the Federal level. In the realm of Federal law, religion was no longer to enhance or to prejudice the civil and political rights of any citizen. Indeed, as early as October, 1774, in an attempt to win over Catholic Quebec to the cause of independence, the First Continental Congress adopted John Dickinson's "Letter to the Inhabitants of Quebec," in which document it was declared that "the transcendant nature of freedom elevates those, who unite in her cause, above all such low-minded infirmities" as religious prejudices and jealousies. In September of the following year, Benedict Arnold, about to depart with his troops for Canada, was charged by George Washington to protect and support the free exercise of the religion of the country, and the undisturbed enjoyment of the rights of conscience in religious matters. While we are contending for our own liberty, we should be very cautious not to violate the rights of conscience in others, ever considering that God alone is the judge of the hearts of men, and to him only in this case they are answerable.

These were extraordinarily liberal sentiments in view of the fears which the Quebec Act of 1774, granting French Canadians the free exercise of their religion, had aroused in "the ancient free Protestant colonies" to the south. They were not liberal enough, however, to guarantee the same privileges to the Jews, for the instructions given in February, 1776, by the Continental Congress to its diplomatic mission to Canada, instructions drafted by John Adams, George Wythe, and Roger Sherman, asserted that the government of everything relating to their [i.e., the Catholic Quebeçois] religion and clergy, shall be left entirely in the hands of the good people of that province and such legislature as they shall constitute: provided, however, that all other denominations of Christians be equally entitled to hold offices and enjoy civil privileges and the free exercise of their religion and be totally exempt from the payment of any tythes or taxes for the support of any religion. [italics added]

Even on the Federal level, it would take time for the Jews to secure equality. But it would not take a long time. The next steps to full political equality for the Jews, where at least Federal law was concerned, were the Declaration of Independence of 1776,
the so-called “Northwest Ordinance” of 1787, and the Constitution of the United States, also dating from 1787.

It is these three documents, the Declaration of 1776, the Northwest Ordinance, and the Federal Constitution of 1787, that must form the basis for any discussion of the rights and status of American Jewry in the realm of Federal law. How important these three documents were to the Jew is perhaps best understood when one reflects that not since the Edict of the Roman Emperor Caracalla, the Constitutio Antoniniana of 212 C.E., had a national government conferred citizenship on its Jewish subjects.

Only the Northwest Ordinance and the Federal Constitution were, to be sure, in the realm of legislation. The Declaration of Independence, for all that it has been exalted in the popular consciousness to the rank of a sacred scripture, was less a guarantee of rights than a claim to rights. It failed, even in its own day, to reflect the political opinions of most Americans, as the constitutions of all perhaps but two of the original states made clear in their frequently substantial abridgements of the rights proclaimed for all men in the Declaration of 1776. The sole exceptions were the constitutions of Virginia and New York, and even these, of course, are not beyond challenge. Virginia delayed fortifying her principles by supportive legislation, and New York, in abridging the complete religious freedom which communicants of the Catholic Church would find satisfactory, effectively abridged their political rights. Still, it is indisputable that, in holding

these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness [and] that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed,

the Declaration of 1776 posed a moral claim whose validity and justness were not lost on the framers of the Northwest Ordinance and of the Federal Constitution of 1787. The framers of these latter two documents seemed in fact bent on embodying in Federal legislation the principles as well as the spirit of the original Declaration of Independence. They appear consciously to have attempted
to render a reality on the Federal level the rights claimed in Jefferson's manifesto of 1776.

Thus, on July 13, 1787, the "Congress of the Confederation" passed "an ordinance for the government of the territory of the United States northwest of the river Ohio," which legislation was adopted for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions, are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory.53

The Congress was in earnest; Article I ordained that

no person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territory.54

In the same year, 1787, the constitutional convention meeting in Philadelphia saw fit to incorporate into the Federal Constitution the principle that

no religious test shall ever be required as a qualification to any office or public trust under the United States.55

This article occasioned much debate in the state conventions that were called to ratify the new Federal Constitution. Some feared that it afforded an insufficient guarantee of religious liberty, while others suspected it of "giving entrance to a liberty which might endanger the commonwealth." New York, New Hampshire, Virginia, North Carolina, and a minority in the Pennsylvania state convention insisted on a broader statement for religious liberty, but Major Thomas Lusk of West Stockbridge, Massachusetts, "shuddered at the idea that Roman Catholics, Papists, and Pagans might be introduced into office and that Popery and the Inquisition may be established in America." The fearful major was answered, however, by the Rev. Daniel Shute, a Baptist cleric from Hingham, Massachusetts, in these words:

Who shall be excluded from natural trusts? Whatever answer bigotry may suggest, the dictates of candor and equity, I conceive, will be, none. Far from limiting my charity and confidence to men of my own denoma-
tion in religion, I believe there are worthy characters among men of
every denomination — among Quakers, Baptists, the Church of England,
the Papists, and even among those who have no other guide in the way to
virtue and heaven, than the dictates of natural religion.56

The constitutional framers in distant Philadelphia manifestly
echoed the sentiments of Shute, and not of Lusk, when they adopted
in 1789 as the first amendment to the Federal Constitution the
principle that
Congress shall make no law respecting an establishment of religion, or
prohibiting the free exercise thereof.57

Still, the framers of the eleven original state constitutions58 were
rather less generous in their application of the Declaration of
Independence and of the principles governing religious freedom
and political equality that were implied in it. The fact remains
that at the time the realm of state legislation was at least as important
as the Federal realm, and to the Jews, as often to other groups, it
was even more so. Many religious minorities, notably the Jews
and the Catholics, discovered that, if they were to be full and free
citizens of the Federal Union, they were to be for many years
second-class citizens of several states.

THE REALM OF THE STATES: THE ORIGINAL THIRTEEN

The first constitution framed by an American commonwealth was
that of New Hampshire, adopted at Exeter on January 5, 1776,
six months before the Declaration of Independence was promulgated.
That constitution, adopted according to the recommendation of
the Continental Congress, established a bicameral legislature for
"the Colony of New-Hampshire,"59 but had no bearing on religious
liberty as such.

In South Carolina, however, the "Provincial Congress"60 on
March 26, 1776, adopted a constitution, lamenting, among other
things, that
the Roman Catholic religion (although before tolerated and freely ex-
ercised there) and an absolute government are established in that province
[of Quebec], and its limits extended through a vast tract of country [the
Trans-Appalachian country] so as to border on the free Protestant English settlements, with design of using a whole people differing in religious principles from the neighboring colonies, and subject to arbitrary power, as fit instruments to overawe and subdue the colonies.61

The eleventh article of this constitution ordained “the qualifications of electors” to “be the same as required by law” and “the qualification of the elected to be the same as mentioned in the election act.”62 The election law referred to was that of 1759, requiring voters and officeholders to be Protestants,63 and the electors were, furthermore, to “take an oath of qualification, if required by the returning-officer.”64

Some three months later, on June 29th, Virginia’s state convention, which had met to make formal severance of her political relations with England and to organize a state government, adopted a constitution, including the famous declaration of rights.65 George Mason, who had written the declaration, had proposed as the sixteenth section

that religion, or the duty that we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, that all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, unpunished and unrestrained by the magistrate, unless, under color of religion, any man disturb the peace, the happiness, or safety of society. And, that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other. [italics added]66

Mason’s draft seemed liberal enough, especially when viewed against the background of the persecution and imprisonment to which Baptist preachers had been subjected in Anglican Virginia less than two years earlier. During that outburst of bigotry, James Madison had written to his friend and Princeton classmate, William Bradford, Jr.,67

that diabolical, hell-conceived principle of persecution rages among some. . . . I have squabbled and scolded, abused and ridiculed so long about it, that I am without common patience. So I must beg you to pity me, and pray for liberty of conscience to all.68

Madison continued “without common patience” and objected to the portion of Mason’s draft, above italicized, on the ground that
both the term “toleration” and the clause referring to the magistrate conveyed a “dangerous implication.” Toleration, Madison insisted, “belonged to a system where [there] was an established church, and where a certain liberty of worship was granted, not of right, but of grace; while the interposition of the magistrate might annul the grant.” Madison succeeded in having his own version substituted, so that the sixteenth section of the Virginia bill of rights declared, when adopted in its final form,

that religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise Christian forbearance, love, and charity towards each other.

In principle, where religious liberty was involved, despite its reference to “Christian forbearance, love, and charity,” Virginia’s 1776 declaration of rights could hardly be improved upon even today. What it lacked was supporting legislation, and Thomas Jefferson prepared a bill to that effect in 1777. He presented it to the Assembly in 1779, but it was not enacted into law until 1785. In the meantime, the provision in Virginia’s constitution of 1776 that the right of suffrage in the election of members for both Houses shall remain as exercised at present effectively denied to the Jews a role in the political life of the state.

Less than a week after Virginia had adopted her constitution — and a day before the Declaration of Independence was promulgated — New Jersey published a constitution which, on the one hand, established freedom of worship and, on the other, restricted full political rights to Protestants. According to the eighteenth article of this constitution, it was “agreed” that no person shall ever, within this colony, be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor, under any pretence whatever, be compelled to attend any place of worship, contrary to his own faith and judgment; nor shall any person, within this colony, ever be obliged to pay tithes, taxes, or any other rates, for the purpose of building or repairing
any other church or churches, place or places of worship, or for the main-
tenance of any minister or ministry, contrary to what he believes to be
right, or has deliberately or voluntarily engaged himself to perform.73

The nineteenth article, however, immediately set out to delimit
the liberal spirit of the eighteenth and declared

that there shall be no establishment of any one religious sect in this province,
in preference to another; and that no Protestant inhabitant of this colony
shall be denied the enjoyment of any civil right, merely on account of his
religious principles; but that all persons, professing a belief in the faith
of any Protestant sect, who shall demean themselves peaceably under the
government, as hereby established, shall be capable of being elected into
any office of profit or trust, or being a member of either branch of the
legislature, and shall fully and freely enjoy every privilege and immunity,
enjoyed by others their fellow subjects.74

Delaware was the next state to adopt a constitution, proclaimed
on September 21, 1776. While not denying the franchise to Jews,
this constitution did establish a religious test as a qualification for
public office. The twenty-second article obliged “every person
who shall be chosen a member of either House, or appointed to
any office or place of trust, before taking his seat, or entering upon
the execution of his office,” to

take the following oath, or affirmation, if conscientiously scrupulous of
taking an oath, to wit:

“I, A B, will bear true allegiance to the Delaware State, submit to its
constitution and laws, and do no act wittingly whereby the freedom
thereof may be prejudiced.”

And also make and subscribe the following declaration, to wit:

“I, A B, do profess faith in God the Father and in Jesus Christ His
only Son, and in the Holy Ghost, one God, blessed for evermore; and I
do acknowledge the Holy Scriptures of the Old and New Testament to
be given by divine inspiration.”

And all officers shall also take an oath of office.75

Pennsylvania adopted a constitution a week later than Delaware.
The “declaration of the rights of the inhabitants of the Common-
wealth, or State of Pennsylvania” which was included in the
constitution opened auspiciously enough with the statements:

I. That all men are born equally free and independent, and have certain
natural, inherent and inalienable rights, amongst which are, the enjoying
and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

II. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understanding: and that no man ought or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against, his own free will and consent: nor can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments or particular mode of religious worship: and that no authority can or ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner control [sic], the right of conscience in the free exercise of religious worship.76

The convention proceeded, nevertheless, to embody in the constitution the provision of a religious test for holding office. The tenth section of the constitution required

each member [of the House of Representatives], before he takes his seat, to make and subscribe the following declaration, viz.:

I do believe in one God, the Creator and Governor of the universe, the rewarder of the good and the punisher of the wicked. And I do acknowledge the Scriptures of the Old and New Testament to be given by divine inspiration.

And no further or other religious test shall ever hereafter be required of any civil officer or magistrate in this state.77

Benjamin Franklin, who presided at the Pennsylvania convention and opposed any religious restrictions, was compelled to find his consolation in the final clause precluding any "further or other religious test." The Pennsylvania constitution was more liberal than many in that it admitted Catholics to full rights, and Franklin was prevailed upon to accept the "relatively broad religious test" of the tenth section lest "something narrower...be imposed later."78

Maryland was the next colony to organize herself as a state, and her constitution was adopted on November 11, 1776. The position of Jews had never been secure in Maryland, and the new state constitution did nothing to improve that situation. According to Maryland's declaration of rights, "assented to, and passed"79 on August 14, 1776, guarantees of religious liberty were extended to Christians alone, the state undertook to levy taxes for the support of Christianity, and only Christians could hold public office. This
declaration of rights contained three articles relating to religion, two of which were directly prejudicial to Jews and all of which comprehended a church-state relationship that certainly a Madison or a Jefferson would have found objectionable:

XXXIII. That, as it is the duty of every man to worship God in such manner as he thinks acceptable to him; all persons, professing the Christian religion, are equally entitled to protection in their religious liberty; wherefore no person ought by any law to be molested in his person or estate on account of his religious profession or persuasion, or for his religious practice; unless, under colour of religion, any man shall disturb the good order, peace or safety of the state, or shall infringe the laws of morality, or injure others, in their natural, civil, or religious rights; nor ought any person to be compelled to frequent or maintain, or contribute, unless on contract, to maintain any particular place of worship, or any particular ministry; yet the legislature may, in their discretion, lay a general and equal tax, for the support of the Christian religion; leaving to each individual the power of appointing the payment over of the money, collected from him, to the support of any particular place of worship or minister, or for the benefit of the poor of his own denomination, or the poor in general of any particular county: but the churches, chapels, glebes, and all other property now belonging to the Church of England, ought to remain to the Church of England forever. And all acts of Assembly, lately passed, for collecting monies for building or repairing particular churches or chapels of ease, shall continue in force, and be executed, unless the legislature shall, by act, supersede or repeal the same: but no county court shall assess any quantity of tobacco, or sum of money, hereafter, on the application of any vestry-men or church-wardens; and every encumbent of the Church of England, who hath remained in his parish, and performed his duty, shall be entitled to receive the provision and support established by the act, entitled "An act for the support of the clergy of the Church of England, in this province," till the November court of this present year, to be held for the county in which his parish shall lie, or partly lie, or for such time as he hath remained in his parish, and performed his duty.

XXXIV. That every gift, sale, or devise of lands, to any minister, public teacher, or preacher of the gospel, as such, or to any religious sect, order or denomination, or to or for the support, use or benefit of, or in trust for, any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order or denomination — and every gift or sale of goods, or chattels, to go in succession, or to take place after the death of the seller or donor, or to or for such support, use or benefit — and also every devise of goods or chattels to or for the support, use or benefit of any
minister, public teacher, or preacher of the gospel, as such, or any religious sect, order, or denomination, without the leave of the legislature, shall be void; except always any sale, gift, lease or devise of any quantity of land, not exceeding two acres, for a church, meeting, or other house of worship, and for a burying ground, which shall be improved, enjoyed or used only for such purpose — or such sale, gift, lease or devise, shall be void.

XXXV. That no other test or qualification ought to be required, on admission to any office of trust or profit, than such oath of support and fidelity to this state, and such oath of office, as shall be directed by this convention, or the legislature of this state, and a declaration of belief in the Christian religion.  

"The Constitution, or Form of Government," adopted by Maryland in November, further prescribed a religious test as a qualification for office:

LV. That every person, appointed to any office of profit or trust, shall, before he enters on the execution thereof, ... subscribe a declaration of his belief in the Christian religion.

A month after Maryland, North Carolina adopted a constitution — on December 16, 1776. The nineteenth article of the declaration of rights piously avowed that all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, but North Carolina's "Constitution, or Form of Government" evinced a lesser regard for the principles of religious liberty. According to the thirty-second article of the constitution, no person, who shall deny the being of God or the truth of the Protestant religion, or the divine authority either of the Old or New Testaments, or who shall hold religious principles incompatible with the freedom and safety of the state, shall be capable of holding any office or place of trust or profit in the civil department within the state.

Of course, the fact that the thirty-fourth article forbade a church establishment in the state, proscribed compulsory attendance at "any place of worship contrary to [one's] own faith or judgment," and freed everyone from "the maintenance of any minister or ministry, contrary to what he believes right, or has voluntarily
engaged to perform,” and the fact that “all persons” were to “be at liberty to exercise their own mode of worship,” spoke well for a state which, during the colonial period, had denied “official recognition” to dissenters like the Presbyterians and the Quakers and in which the Anglican Church had been established and endowed “at the expense of other denominations.” These considerations must, however, have provided little comfort for the Jews, Catholics, and other non-Protestants who were denied a role in the political life of their state.

Georgia’s constitution, adopted on February 5, 1777, followed suit. Like North Carolina, Georgia required that the representatives elected to the state legislature “be of the Protestant [sic] religion.”

Far to the north, however, in that year of 1777, the clouds began to lift—for the Jews, at least. New York had called a constitutional convention at White Plains in July, 1776, but the vicissitudes of the Revolutionary War urged so many adjournments and changes of location that the constitution, drafted by John Jay, was not adopted until April 20, 1777. Where the Jews were concerned, New York’s constitution was a marked departure from the norm, and the spirit of the Declaration of Independence was abridged in no respect. New York was indeed the first state whose constitution imposed on the Jews no disabilities at all. This document declared that

all such parts of the . . . common law [of England], and all such of the . . . statutes and acts [of England and Great Britain and of the New York colonial legislature “as together did form the law of the . . . colony on the 19th day of April, in the year of our Lord one thousand seven hundred and seventy five” aforesaid, or parts thereof, as may be construed to establish or maintain any particular denomination of Christians or their ministers, . . . or are repugnant to this constitution, be, and they hereby are, abrogated and rejected.

Not content with disestablishing Christianity, or any Christian church, de facto as well as de jure, the constitution went on to assert that,

whereas we are required, by the benevolent principles of rational liberty, not only to expel civil tyranny, but also to guard against that spiritual oppression and intolerance wherewith the bigotry and ambition of weak
and wicked priests and princes have scourged mankind, this convention
doeth further, in the name and by the authority of the good people of this
state, ordain, determine, and declare, that the free exercise and enjoyment
of religious profession and worship, without discrimination or preference,
shall forever hereafter be allowed, within this state, to all mankind: provided,
that the liberty of conscience, hereby granted, shall not be so
construed as to excuse acts of licentiousness, or justify practices inconsistent
with the peace or safety of this state. 90

Anticipating as it did by ten years the Constitution of the
United States, insofar at least as the political equality of the Jews
was concerned, New York’s constitution of 1777 was, as Marcus
says,

the first emancipatory law in modern history, the most significant deed
since the Roman enfranchisement act sponsored by Caracalla . . . in the
year 212.

For the first time, Jews were full citizens in a North American
polity. That, furthermore, the convention which framed and adopted
this constitution was aware of the unique character of its achieve-
ment and that it intended the Jews as such to be fully emancipated
is manifest in the convention records. 91

Unfortunately, it is as manifest that the convention intended
to deprive Catholics of full rights. No less a personage than Jay
himself proposed that

the professors of the religion of the Church of Rome . . . ought not to . . .
be admitted to a participation of the civil rights enjoyed by the members of
this state until . . . [they] shall appear in the Supreme Court of the state,
and . . . most solemnly swear that they verily believe in their consciences
that no pope, priest, or foreign authority on earth has power to absolve
the subjects of this state from their allegiance to the same. . . . 92

If the convention was dissuaded by Gouverneur Morris from
accepting Jay’s Huguenot vitriol in its entirety, it could not forego
its opportunity to excoriate “the bigotry and ambition of weak
and wicked priests and princes” 93 and went on to

ordain, determine, and declare that it shall be in the discretion of the
legislature to naturalize all such persons, and in such manner, as they
shall think proper; provided, all such of the persons so to be by them
naturalized, as being born in parts beyond sea, and out of the United
GEORGE WASHINGTON

“All possess alike liberty of conscience and immunities of citizenship.”
(From a letter to the Hebrew Congregation, Newport, R. I., 1790.)
THOMAS JEFFERSON

Author of the Declaration of Independence, 1776, and of the Virginia Act for Religious Freedom, 1783
States of America, shall come to settle in and become subjects of this state, shall take an oath of allegiance to this state, and abjure and renounce all allegiance and subjection to all and every foreign king, prince, potentate, and state in all matters, ecclesiastical as well as civil. [italics added]

This test oath was not, in fact, abolished until 1806.95

South Carolina had been the second of the colonies to organize herself as a state and to frame a constitution, adopted in March, 1776.96 A new constitution was passed as an “act” by South Carolina's general assembly on March 19, 1778, and went into effect the following November.97 This constitution has the distinction of being among the most restrictive legislation ever accorded sanction by a member of the newly independent American Union. It decreed unequivocally that the “governor and commander-in-chief,” the lieutenant governor, and the “privy council” were “all [to be] of the Protestant religion”98; and though the qualification of electors [was to] be that every free white man, and no other person, who acknowledge[d] the being of a God, and believe[d] in a future state of rewards and punishments, and who [had] attained to the age of one and twenty years, [&c.] ... [should] be deemed a person qualified to vote for, and ... capable of electing, a representative or representatives to serve as a member or members in the Senate and House of Representatives, [&c.],99

no one was “eligible to a seat in the ... Senate”100 or “to sit in the House of Representatives”101 “unless he be of the Protestant religion.”102

The thirty-eighth article of South Carolina's new constitution was undoubtedly one of the most remarkable passages ever to be incorporated into an American legislative document. It was as much a theological tract as it was an article of government, and to be appreciated it must be quoted in its entirety:

XXXVIII. That all persons and religious societies who acknowledge that there is one God, and a future state of rewards and punishments, and that God is publicly to be worshipped, shall be freely tolerated [sic! — italics added]. The Christian Protestant religion shall be deemed, and is hereby constituted and declared to be, the established religion of this state. That all denominations of Christian Protestants in this state, demeaning themselves peaceably and faithfully, shall enjoy equal religious and civil privileges.
To accomplish this desirable purpose without injury to the religious property of those societies of Christians which are by law already incorporated for the purpose of religious worship, and to put it fully into the power of every other society of Christian Protestants, either already formed or hereafter to be formed, to obtain the like incorporation, it is hereby constituted, appointed, and declared that the respective societies of the Church of England that are already formed in this state for the purpose of religious worship shall still continue incorporate and hold the religious property now in their possession. And that whenever fifteen or more male persons, not under twenty-one years of age, professing the Christian Protestant religion, and agreeing to unite themselves in a society for the purposes of religious worship, they shall, (on complying with the terms hereinafter mentioned,) be, and be constituted a church, and be esteemed and regarded in law as of the established religion of the state, and on a petition to the legislature shall be entitled to be incorporated and to enjoy equal privileges.

That every society of Christians so formed shall give themselves a name or denomination by which they shall be called and known in law, and all that associate with them for the purposes of worship shall be esteemed as belonging to the society so called. But that previous to the establishment and incorporation of the respective societies of every denomination as aforesaid, and in order to entitle them thereto, each society so petitioning shall have agreed to and subscribed in a book the following five articles, without which no agreement or union of men upon pretence of religion shall entitle them to be incorporated and esteemed as a church of the established religion of this state:

1st. That there is one eternal God, and a future state of rewards and punishments.

2d. That God is publicly to be worshipped.

3d. That the Christian religion is the true religion.

4th. That the Holy Scriptures of the Old and New Testaments are of divine inspiration, and are the rule of faith and practice.

5th. That it is lawful and the duty of every man being thereunto called by those that govern, to bear witness to the truth.

And that every inhabitant of this state, when called to make an appeal to God as a witness to truth, shall be permitted to do it in that way which is most agreeable to the dictates of his own conscience. And that the people of this state may forever enjoy the right of electing their own pastors or clergy, and at the same time that the state may have sufficient security for the due discharge of the pastoral office, by those who shall be admitted to be clergymen, no person shall officiate as minister of any established church who shall not have been chosen by a majority of the society to which he shall minister, or by persons appointed by the said
majority, to choose and procure a minister for them; nor until the minister so chosen and appointed shall have made and subscribed to the following declaration, over and above the aforesaid five articles, viz.:

"That he is determined by God's grace out of the Holy Scriptures, to instruct the people committed to his charge, and to teach nothing as required of necessity to eternal salvation but that which he shall be persuaded may be concluded and proved from the Scripture; that he will use both public and private admonitions, as well as to the sick as to the whole within his cure, as need shall require and occasion shall be given, and that he will be diligent in prayers, and in reading of the same; that he will be diligent to frame and fashion his own self and his family according to the doctrine of Christ, and to make both himself and them, as much as in him lieth, wholesome examples and patterns to the flock of Christ; that he will maintain and set forwards, as much as he can, quietness, peace, and love among all people, and especially among those that are or shall be committed to his charge."

No person shall disturb or molest any religious assembly; nor shall use any reproachful, reviling, or abusive language against any church, that being the certain way of disturbing the peace, and of hindering the conversion of any to the truth, by engaging them in quarrels and animosities, to the hatred of the professors, and that profession which otherwise they might be brought to assent to. No person whatsoever shall speak anything in their religious assembly irreverently or seditiously of the government of this state. No person shall, by law, be obliged to pay towards the maintenance and support of a religious worship that he does not freely join in, or has not voluntarily engaged to support. But the churches, chapels, parsonages, glebes, and all other property now belonging to any societies of the Church of England, or any other religious societies, shall remain and be secured to them forever. The poor shall be supported, and elections managed in the accustomed manner, until laws shall be provided to adjust those matters in the most equitable way.103

As Stokes points out, the marked "Anglican background" of this second of South Carolina's constitutions "is shown by the fact that it quotes at length and almost verbatim from the answers of the minister to the bishop in the ordination service of priests as contained in the Book of Common Prayer."104

The "Constitution or Form of Government" which Massachusetts adopted on June 16, 1780, was, in many respects, scarcely less remarkable than that of South Carolina. Jews, if Catholics less so, found themselves as much second-class citizens in Massachusetts as in South Carolina, and perhaps the disabilities imposed by
Massachusetts were even more difficult to bear than those imposed by South Carolina in view of the former's pious claim, in respect to the laws, that "every man may, at all times, find his security in them," and in view also of the rather questionable libertarianism of the "declaration of the rights of the inhabitants of the Commonwealth of Massachusetts." This declaration began agreeably enough with the assertions that

all men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness;

and that, less agreeably to agnostics and atheists,

it is the right as well as the duty of all men in society, publicly, and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession of sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

The declaration immediately went on, however, to endorse "the institution of the public worship of God, and of public instructions in piety, religion, and morality" and invested the legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of God, and for the support and maintenance of public Protestant teachers of piety, religion, and morality, in all cases where such provision shall not be made voluntarily.

It was also provided that

all moneys paid by the subject to the support of public worship, and of the public teachers aforesaid, ... if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends; otherwise it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said moneys are raised.
This last was particularly repugnant to Jews and Catholics, not to mention agnostics and atheists, in Massachusetts.

Among religious groups, however, it was on the Jews that the worst disabilities were imposed, for Catholics could take some comfort in the declaration that every denomination of Christians, demeaning themselves peaceably, and as good subjects of the commonwealth, shall be equally under the protection of the law: and no subordination of any one sect or denomination to another shall ever be established by law.\[11\]

Catholics, unlike Jews, were also not denied in law the right to hold public office. The constitution decreed that “no person shall be eligible to this office [of governor] . . . unless he shall declare himself to be of the Christian religion”\[11a\] and that the “lieutenant-governor . . . shall be qualified, in point of religion, property, and residence . . ., in the same manner with the governor.”\[113\] The constitution further required any person chosen governor, lieutenant-governor, councillor, senator, or representative, and accepting the trust, . . . before he proceed to execute the duties of his place or office, [to] make and subscribe the following declaration, viz.:

“I, A. B., do declare, that I believe the Christian religion, and have a firm persuasion of its truth. . . .”\[114\]

The Massachusetts constitution also reaffirmed with regard to Harvard College certain principles that could only prejudice any Jewish or, perhaps in somewhat lesser measure, Catholic sense of identification with the College.\[115\] “Whereas,” the constitution stated,

Our wise and pious ancestors, so early as the year one thousand six hundred and thirty-six, laid the foundation of Harvard College, in which university many persons of great eminence have, by the blessing of God, been initiated in those arts and sciences which qualified them for public employments, both in church and state; and whereas the encouragement of arts and sciences, and all good literature, tends to the honor of God, the advantage of the Christian religion, and the great benefit of this and the other United States of America, — it is declared, that the President and Fellows of Harvard College, in their corporate capacity, and their successors in that capacity, their officers and servants, shall have, hold, use, exercise, and
enjoy, all the powers ... which they now have, or are entitled to have, ... and the same are hereby ratified and confirmed unto them ... forever.

III. ... it is declared, that the governor, lieutenant-governor, council, and senate of this commonwealth, are, and shall be deemed, their successors [i.e., of the governor, deputy-governor, and magistrates of the Colony of the Massachusetts Bay], who, with the president of Harvard College, for the time being, together with the ministers of the Congregational churches in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, ... shall be, and hereby are, vested with all the powers and authority belonging, or in any way appertaining to the overseers of Harvard College. ... 116

On June 2, 1784, New Hampshire, which had been the first to adopt a constitution in 1776,117 "inaugurated"118 her second constitution. This new constitution was manifestly much influenced by the Massachusetts constitution of 1780. In respect to civil and religious liberty, New Hampshire’s new constitution contained substantially the same liberal sentiments which had characterized the first two articles of the Massachusetts constitution,119 except that New Hampshire’s statement was even stronger — and consequently even more questionable:

Among the natural rights, some are in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the Rights of Conscience.120

This statement notwithstanding, New Hampshire’s bill of rights proceeded immediately to imitate Massachusetts in respect to "the support and maintenance of public Protestant teachers of piety, religion and morality" with the difference that

no portion of any one particular religious sect or denomination ... [was] ever [to] be compelled to pay towards the support of the teacher or teachers of another persuasion, sect or denomination.121

Moreover, as in Massachusetts, so in New Hampshire,

every denomination of Christians demeaning themselves quietly, and as good subjects of the state, shall be equally under the protection of the law: and no subordination of any one sect or denomination to another, shall ever be established by law.122

Catholics had to console themselves with this assurance alone, for, unlike their situation in Massachusetts, they could hold no
public office in New Hampshire, whose constitution required "every member of the House of Representatives ... [to] be of the Protestant religion"; insisted that "no person shall be capable of being elected a senator, who is not of the Protestant religion"; and decreed likewise that "no person shall be eligible to this office [of president, as the governor was styled] ... unless he shall be of the Protestant religion." Unlike the case of Massachusetts, the rigidly Protestant character of the New Hampshire state was uncompromising.

As the nineteenth century dawned, Rhode Island and Connecticut alone among the original thirteen states remained without state constitutions. These two states continued to be governed by their colonial charters, dating from the 1660's.

It was not until the year 1842 that Rhode Island adopted a state constitution and that Rhode Island Jewry secured equal rights. The "Charter of Rhode Island and Providence Plantations," granted in 1663 by the English king, Charles II, had taken due note of the fact that

the purchasers and free inhabitants of our island, called Rhode-Island, and the rest of the Colonie of Providence Plantations ... [were] pursuing, with peaceable and loyal minds, their sober, serious and religious intentions, of godlie edifieing themselves, and one another, in the holy Christian faith and worshipp as they were perswaded.

Whereas, in the words of the charter,

they have freely declared, that it is much on their hearts ... to hold forth a livlie experiment, that a most flourishing civill state may stand and best bee maintained, and that among our English subjects, with a full libertie in religious concernements; and that true pietye rightly grounded upon gospell principles, will give the best and greatest security to soveraignetye, and will lay in the hearts of men the strongest obligations to true loyaltye,

King Charles had consented

to encourage the hopefull undertakinge of [his] sayd loyal and loveinge subjects, and to secure them in the free exercise and enjoyment of all their civill and religious rights, appertaining to them, as [his] loveing subjects; and to preserve unto them that libertye, in the true Christian faith and worshipp of God, which they have sought ... to enjoye.
The king had gone on to declare it his
royall will and pleasure ... that noe person within the sayd colonye, at
any tyme hereafter, shall bee any wise molestede, punished, disquieted,
or called in question, for any differences in opinion in matters of religion,
and doe not actually disturb the civill peace of [his] sayd colony; but
that all and everye person and persons may, from tyme to tyme, and at
all tymes hereafter, freelye and fullye have and enjoye his and theire
owne judgments and consciences, in matters of religious concernments,
throughout the tract of lande hereafter mentioned. la9

His Majesty had

further thought fit ... to create and make them a bodye politique or
corporate

so that

they may bee in the better capacity to defend themselves, in theire just
rights and libertyes against all the enemies of the Christian ffaith, and
others, in all respects. . . . 130

In view of the marked Christological tone of the charter, it
is rather doubtful that political rights had been intended for the
Jews. In any case, as there has been occasion to note earlier,131
Jews and Catholics were specifically excluded from citizenship
rights in Rhode Island in the early 1700's, and though by 1787 the
Catholic disabilities had largely disappeared,132 Jews were not to
be fully emancipated until 1842. Unfortunately, Cobb's description
of Rhode Island, that her
civil law knew neither theist nor atheist, neither Jew nor Christian, neither
Romanist nor Protestant

and that

there has never been a more perfect equality of religious beliefs before
the law than was enacted in Rhode Island at its very beginning,133
is more than a little short of the truth.

Connecticut's colonial charter, under which she continued until
1818, had granted in 1662 "unto the . . . Governor and Company
of the English Colony of Connecticut . . . and their successors" the right
to make, ordain, and establish all manner of wholesome, and reasonable
laws, statutes, ordinances, directions, and instructions, not contrary to
the laws of this Realm of England, as well for settling the forms, and
ceremonies of government, and magistracy, ... the forms of such oaths
not being contrary to the laws and statutes of this ... Realm of England,
... and for the directing, ruling and disposing of all other matters and
things, whereby our said people inhabitants there, may be so religiously,
peaceably and civilly governed, as their good life and orderly conversation
may win and invite the natives of the country to the knowledge and
obedience of the only true God, and the Saviour of Mankind, and the
Christian faith, which in our royal intentions, and the adventurers free
possession, is the only and principal end of this plantation. ..."134

This charter hardly augured well for the rights of Jews, and the
fact that for over forty years after the Declaration of Independence
Connecticut adopted no state constitution to supplant the charter
of 1662 "made it very much easier" for the Established Puritan
Church of the colony "to continue as the Established Church of
the state."135 When, on October 2, 1818, Connecticut’s constitution
was finally proclaimed "as the supreme law of this state,"136 although
the declaration of rights did recognize

that all men, when they form a social compact, are equal in rights; and
that no man or set of men are entitled to exclusive public emoluments or
privileges from the community;137

and did enunciate the principle that

the exercise and enjoyment of religious profession and worship, without
discrimination, shall forever be free to all persons in this state, provided
that the right hereby declared and established shall not be so construed
as to excuse acts of licentiousness, or to justify practices inconsistent
with the peace and safety of the state;138

the disestablishment struggle was still reflected in the statement that

no preference shall be given by law to any Christian sect or mode of
worship.139

In the article "of religion," it was stated, furthermore:

Section 1. It being the duty of all men to worship the Supreme Being,
the great Creator and Preserver of the universe, and their right to render
that worship in the mode most consistent with the dictates of their con-
sciences, no person shall by law be compelled to join or support, nor
be classed with, or associated to, any congregation, church, or religious association. But every person now belonging to such congregation, church, or religious association, shall remain a member thereof until he shall have separated himself therefrom in the manner hereinafter provided. And each and every society or denomination of Christians in this state shall have and enjoy the same and equal powers, rights, and privileges; and shall have power and authority to support and maintain the ministers or teachers of their respective denominations, and to build and repair houses for public worship by a tax on the members of any such society only, to be made by a major vote of the legal voters assembled at any society meeting, warned and held according to law, or in any other manner.

Sec. 2. If any person shall choose to separate himself from the society or denomination of Christians to which he may belong, and shall leave a written notice thereof with the clerk of such society, he shall thereupon be no longer liable for any future expenses which may be incurred by said society.140

Although there was nothing in this constitution specifically to disenfranchise Jews or to delimit their rights, and although, as Stokes says, "all religious forms consistent with morality and order were given protection, Christianity was virtually recognized as the state's belief."141 It was, furthermore, a fact that no Jewish congregation in Connecticut received recognition until 1843, twenty-five years after the disestablishment of the Congregational Church and the promulgation of a constitution.142

None of the constitutions initially adopted by the original states were entirely satisfactory in regard to religious liberty. Yet the situation did not remain static, and even before the Federal constitutional convention of 1787 measures had already been taken to right some of the inequities.

Virginia was the first, with the possible exception of New York, to secure to all her citizens equally in law complete religious and political liberty. As we have seen, the constitution of 1776 had conceded this in principle. The famed "Virginia act for religious freedom," adopted by the assembly on December 16, 1785, and put into effect a month later, supplied the necessary supportive legislation. Written by Thomas Jefferson and adopted in his absence largely through the efforts of James Madison and Zachariah Johnston,143 this act was undoubtedly the most signal advance made
by a state in the struggle for complete religious liberty during the eighteenth century. It influenced not only legislation in other states but the Federal constitutional convention itself, and its influence extended to France and England. It was very justly that Jefferson counted this legislation among the three most significant achievements of his life. The “act for religious freedom” is worth quoting in full:

Whereas, Almighty God has created the mind free; that all attempts to influence it by temporal punishment, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion, who, being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, have established and maintained false religions over the greatest part of the world, and through all time, that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical, and even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporary rewards which, proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labors, for the instruction of mankind.

That our civil rights have no dependence on our religious opinions any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which, in common with his fellow-citizens, he has a natural right; that it tends only to corrupt the principles of that religion it is meant to encourage, by bribing, with a monopoly of worldly honors and emoluments, those who will externally profess and conform to it; that though, indeed, those are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way.

That to suffer the civil magistrate to intrude his powers into the field
of opinion, and to restrain the profession or propagation of principles on
supposition of their ill tendency, is a dangerous fallacy, which at once
destroyes all religious liberty, because he, being of course judge of that
tendency, will make his opinions the rule of judgment, and approve or
condemn the sentiments of others only as they shall square with or differ
from his own; that it is time enough for the rightful purposes of civil
government, for its officers to interfere, when principles break out into
overt acts against peace and good order; and finally, that truth is great
and will prevail, if left to herself; that she is the proper and sufficient
antagonist to error, and has nothing to fear from the conflict, unless by
human interposition disarmed of her natural weapons, free argument and
debate; errors ceasing to be dangerous when it is permitted freely to
contradict them:

Be it enacted by the General Assembly, that no man shall be compelled
to frequent or support any religious worship, place or ministry whatsoever,
nor shall be enforced, restrained, molested or burthened, in his body or
goods, nor shall otherwise suffer on account of his religious opinions or
belief; but that all men shall be free to profess, and by argument to maintain,
their opinions in matters of religion, and that the same shall in no wise
diminish, enlarge or affect their civil capacities.

And though we well know that this assembly elected by the people
for the ordinary purposes of legislation only, have no power to restrain
the acts of succeeding assemblies constituted with powers equal to our
own, and that, therefore, to declare this act to be irrevocable would be
of no effect in law; yet we are free to declare, and do declare, that the
rights hereby asserted are of the natural rights of mankind; and that if
any act shall be hereafter passed to repeal the present, or to narrow its
operation, such act will be an infringement of natural right.145

Virginia did not rest content with the passage of this act. The
third article of the Virginia constitution of 1830 incorporated the
substance and some of the wording of the act of 1785:

Sec. 11. . . . No man shall be compelled to frequent or support any reli-
gious worship, place, or ministry whatsoever; nor shall any man be
enforced, restrained, molested, or burdened in his body or goods, or
otherwise suffer, on account of his religious opinions or belief; but all
men shall be free to profess, and by argument to maintain, their opinions
in matters of religion, and the same shall in no wise effect, diminish, or
enlarge their civil capacities. And the legislature shall not prescribe any
religious test whatever; nor confer any peculiar privileges or advantages
on any one sect or denomination; nor pass any law requiring or authorizing
any religious society, or the people of any district within this common-
wealth, to levy on themselves or others any tax for the erection or repair
of any house for public worship, or for the support of any church or ministry, but it shall be left free to every person to select his religious instructor, and make for his support such private contract as he shall please.146

In her second constitution, adopted in May, 1789, Georgia removed the requirement that members of her House of Representatives be "of the Protestant religion"147 and conceded that all persons shall have the free exercise of religion, without being obliged to contribute to the support of any religious profession but their own.148

Georgia's third constitution, signed on May 30, 1798, and put into effect the following October, stated even more forcefully the principle of religious freedom:

No person within this state shall, upon any pretence, be deprived of the inestimable privilege of worshipping God in a manner agreeable to his own conscience, nor be compelled to attend any place of worship contrary to his own faith and judgment; nor shall he ever be obliged to pay tithes [sic], taxes, or any other rate, for the building or repairing any place of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or hath voluntarily engaged to do. No one religious society shall ever be established in this state, in preference to another; nor shall any person be denied the enjoyment of any civil right merely on account of his religious principles.149

South Carolina, whose extraordinary constitution of 1778 has already been examined in some detail,150 adopted a new constitution on June 3, 1790, and struck away religious restrictions for office-holding.151 The "catechism" of the 1778 constitution was also abandoned, and in its place stood the statement that

the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed within this state to all mankind: provided, that the liberty of conscience thereby declared shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.152

The words were those of the New York constitution of 1777,153 but beyond question it was the Virginia act of 1785 and the Federal Constitution of 1787 that were responsible for the liberalization of South Carolina's attitude and for the striking differences between her constitution of 1778 and that of 1790.
Pennsylvania, too, was moved to liberalize her constitution in respect to religious liberty. The constitution, proclaimed on September 2, 1790, removed the New Testament reference which had restrained Jews from holding public office, and declared now that no person, who acknowledges the being of a God and a future state of rewards and punishments, shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this commonwealth.

This constitution of 1790 provided further that,

to guard against transgressions of the high powers we have delegated, ... everything in this article [Art. IX, the bill of rights] is excepted out of the general powers of government, and shall forever remain inviolate.

Full religious liberty remained lacking, to be sure, in that atheists and agnostics were not relieved of their disabilities, but no longer were Jews as such second-class citizens in Pennsylvania.

Delaware's new constitution of June, 1792, struck away the Christological confession which had barred Jews and other non-Trinitarian groups from public office in the constitution of 1776. Going beyond the concessions of Pennsylvania's 1790 constitution, Delaware now established the principle that no religious test shall be required as a qualification to any office, or public trust, under this state.

New Hampshire adopted a new constitution in September, 1792, but in respect to religious liberty there was nothing "new" in this document. As in 1784, so in 1792, the legislature was empowered to authorize "the support and maintenance of public Protestant teachers of piety, religion, and morality" and "every denomination of Christians, demeaning themselves quietly and as good subjects of the state, [was to] be equally under the protection of the law." The requirement endured likewise that members of the House of Representatives, senators, and the governor be Protestants. Fears inspired by the fact that New Hampshire bordered on Catholic Quebec undoubtedly played no small part in the religious illiberalism which continued to characterize her constitution.

In Maryland, too, the struggle to abolish religious restrictions
was protracted. Although in 1810 an amendment to the constitution of 1776 decreed

that it shall not be lawful for the general assembly of this state to lay an equal and general tax, or any other tax, on the people of this state, for the support of any religion,\textsuperscript{162}

full political rights for the Jews were not conceded until the so-called "Jew Bill" of December, 1824, which became law in 1826.\textsuperscript{162} This "act for the relief of the Jews in Maryland," championed by a Scottish immigrant, Thomas Kennedy,\textsuperscript{163} and by Judge H. M. Breckinridge and Ebenezer S. Thomas, declared

that every citizen of this state professing the Jewish religion, and who shall hereafter be appointed to any office or public trust under the State of Maryland, shall in addition to the oaths required to be taken by the constitution and laws of the state, or of the United States, make and subscribe a declaration of his beliefs in a future state of rewards and punishments, in the stead of the declaration now required by the constitution and form of government of this state.\textsuperscript{164}

It was also

enacted, that the several clauses and sections of the declaration of rights, constitution and form of government, and every part of any law of this state contrary to the provisions of this act, so far as respects the sect of people aforesaid, shall be, and the same is hereby declared to be repealed and annulled on the confirmation hereof.\textsuperscript{165}

That confirmation came in 1826, largely through the efforts of State Senator Reverdy Johnson,\textsuperscript{166} but it was actually not until 1867 that the Maryland constitution was so modified as to become fully acceptable to all non-Christs except atheists and agnostics.\textsuperscript{167}

Massachusetts, whose constitution of 1780 had limited public office to Christians, ratified and adopted on April 9, 1821, amendments which effectively annulled the religious qualifications which had hitherto obtained. The oath which public officials had been bound to take, declaring that they "believe[d] the Christian religion, and [had] a firm persuasion of its truth,"\textsuperscript{168} was abolished,\textsuperscript{169} and substituted for the provisions that the governor and lieutenant governor be obliged to declare themselves Christians were the sixth and seventh articles of the amendments:
Art. VI. Instead of the oath of allegiance prescribed by the constitution, the following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military, under the government of this commonwealth, before he shall enter on the duties of his office, to wit:

I, A. B., do solemnly swear, that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the constitution thereof. So help me, God.

Art. VII. No oath, declaration, or subscription, excepting the oath prescribed in the preceding article, and the oath of office, shall be required of the governor, lieutenant-governor, councillors, senators, or representatives, to qualify them to perform the duties of their respective offices.

It was not, however, until November 11, 1833, that Massachusetts did away with her constitutional provisions regarding suitable provision ... for the institution of the public worship of God, and for the support and maintenance of public Protestant teachers of piety, religion, and morality and limiting equality "under the protection of the law" to "every denomination of Christians." On that date in 1833, the people of Massachusetts approved and ratified the eleventh article of the amendments, substituting for the third article of the bill of rights the following:

As the public worship of God and instructions in piety, religion, and morality, promote the happiness and prosperity of a people, and the security of a republican government; therefore, the several religious societies of this commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers, to contract with them for their support, to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary expenses; and all persons belonging to any religious society shall be taken and held to be members, until they shall file with the clerk of such society a written notice, declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract which may be thereafter made, or entered into by such society; and all religious sects and denominations, demeaning themselves peaceably, and as good citizens of the commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law.
In 1787, Phillips, who was probably the only individual petitioner regarding religious liberty to the Federal Constitutional Convention, protested the test oath in the Pennsylvania State Constitution.
THOMAS KENNEDY

Courtesy, New York Public Library

THOMAS KENNEDY

Fighter for enfranchisement of the Jews of Maryland
New York, whose constitution of 1777 had been the first, and until the Virginia act of 1785, the only state legislation granting full political rights to the Jews, ratified a new constitution in February, 1822, and repeated the 1777 provisions regarding religious freedom. This new constitution, however, omitted invidious references to “weak and wicked priests and princes” and declared only that

the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

North Carolina, like New Hampshire, moved but slowly towards the liberalization of her constitution with regard to full political rights for all irrespective of their religion, yet not so slowly as New Hampshire. The 1776 constitution which had restricted public office to Protestants was amended in 1835 to extend the right of holding public office to all who admitted “the truth of the Christian religion.” Jews, despite the instance of Jacob Henry, a Jewish officeholder who evaded the law, continued under disabilities until 1868.

Vermont and Texas

Vermont and Texas, alone of all the states or future states under consideration in these pages, were neither members of the original American Union nor subject to the provisions of the Northwest Ordinance of 1787. They were, prior to their admission into the Union, independent republics.

Vermont did, of course, play a role in the American Revolution, although political differences with New York and New Hampshire kept her out of the Union until 1791. On January 15, 1777, a convention held at Westminster Court-House proclaimed the Green Mountain territory “a free and independent state” to be called “New Connecticut.” The name was changed the following June to “Vermont,” and in July, 1777, a convention assembled at Windsor to frame a constitution.
a just, permanent, and proper form of government, ... derived from, and founded on, the authority of the people only, agreeable to the direction of the honorable American Congress.\textsuperscript{183}

The "honorable American Congress," however, failed to give the Vermonters "any satisfactory response to numerous petitions," although the military value of the Green Mountain troops was duly recognized and acclaimed.

There was nothing extraordinary about Vermont's attitude to religious freedom. Like New Hampshire, bordered on the north by Catholic Quebec, the Vermonters endorsed religious freedom in principle, but reserved full civil rights to Protestants alone. The "declaration of the rights of the inhabitants of the State of Vermont" freely conceded a limited liberty:

That all men have a natural and unalienable right to worship Almighty God, according to the dictates of their own consciences and understanding, regulated by the word of God; and that no man ought, or of right can be compelled to attend any religious worship, or erect, or support any place of worship, or maintain any minister, contrary to the dictates of his conscience; nor can any man who professes the Protestant religion, be justly deprived or abridged of any civil right, as a citizen, on account of his religious sentiment, or peculiar mode of religious worship, and that no authority can, or ought to be vested in, or assumed by, any power whatsoever, that shall, in any case, interfere with, or in any manner controul [sic], the rights of conscience, in the free exercise of religious worship: nevertheless, every sect or denomination of people ought to observe the Sabbath, or the Lord's day, and keep up, and support, some sort of religious worship, which to them shall seem most agreeable to the revealed will of God.\textsuperscript{184}

The "Plan or Frame of Government" went on to impose on each member of the House of Representatives a declaration:

I do believe in one God, the Creator and Governor of the universe, the rewarder of the good and punisher of the wicked. And I do acknowledge the Scriptures of the Old and New Testament to be given by divine inspiration, and own and profess the Protestant religion.

That, as was also declared,

no further or other religious test shall ever, hereafter, be required of any civil officer or magistrate in this state,\textsuperscript{185}
was meager comfort to the few Jews and Catholics who may have been resident in the outspokenly Protestant republic.

In March, 1787, a new constitution was adopted by Vermont. Under this constitution, membership in the House of Representatives remained open to Protestants alone, but the article respecting religious freedom in the new declaration of rights was manifestly more liberal than its predecessor of 1777. No narrow Protestant spirit was evident in this declaration that

all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understandings, as in their opinion shall be regulated by the word of God; and that no man ought, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of his conscience; nor can any man be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments, or peculiar mode of religious worship; and that no authority can, or ought to be vested in, or assumed by any power whatsoever, that shall in any case interfere with, or in any manner control the rights of conscience, in the free exercise of religious worship. Nevertheless, every sect or denomination of Christians ought to observe the Sabbath or Lord's day, and keep up some sort of religious worship, which to them shall seem most agreeable to the revealed will of God.

Even though the final passage referring to the Sabbath, and modified now to specify Christian denominations, was retained in the constitution of 1787, it was admonitory rather than mandatory and would not of itself have prejudiced the rights of non-Christians.

On March 4, 1791, the Congress "received and admitted" Vermont into the Union "as a new and entire member of the United States of America" and on July 9, 1793, "the Constitution of the State of Vermont" — the fourteenth state — was established. This constitution repeated verbatim the third article of the 1787 declaration of rights, and struck away the religious restrictions that had characterized the two previous constitutions. Vermont was thus far in advance of her sister New England states in admitting all her citizens to full political rights.

As Texas was not admitted into the Union until 1845, her state constitutions lie entirely outside the scope of this essay. Properly, however, Texan history begins, not in 1845, but much
earlier. For our purposes, we begin it in 1821, the year in which Mexico brought to a successful conclusion her war of independence against Spain and in which the United States abandoned all Texan claims arising from the so-called “Louisiana Purchase” of 1803. In the 1820’s, of course, the newly independent Mexican nation comprehended all that is now the American Southwest, including Texas. When, in 1824, “the general sovereign Congress of the nation... decreed and sanctioned” a “Federal Constitution of the United Mexican States,” the constitution was translated into English for the benefit of the United States immigrants who had settled in the Mexican state of Texas. Whatever the merits of this constitution, the “polipiety” which the New Englander Ward had scored years before as “the greatest impiety in the world” was in Mexico categorically proscribed, for the religion of the Mexican nation is, and will be perpetually, the Roman Catholic Apostolic. The nation will protect it by wise and just laws, and prohibit the exercise of any other whatever.

It was decreed, moreover, that
the articles of this constitution and the constitutional act which establishes the liberty and independence of the Mexican nation, its religion, [&c.]... can never be reformed.

The state “Constitution of Coahuila and Texas,” proclaimed at Saltillo on March 11, 1827, followed suit in declaring that the Apostolic Catholic religion is that of the state; this it protects by wise and just laws, and prohibits the exercise of any other.

This state constitution also provided that in all the towns of the state, there shall be established a competent number of common schools (primeras letras), in which there shall be taught... the catechism of the Christian religion...

On March 2, 1836, however, nine years after the promulgation of the state constitution of Coahuila and Texas, the Texans declared themselves independent of Mexico, ruled now by the dictator Antonio Lopez de Santa Anna, on the ground that the dictator’s government had offered
as the cruel alternative either to abandon our homes ... or submit to the most intolerable of all tyranny, the combined despotism of the sword and the priesthood.

As "the unanimous Declaration of Independence made by the delegates of the people of Texas" charged, Santa Anna had, among other evils, denied

us the right of worshipping the Almighty according to the dictates of our own conscience, by the support of a national religion calculated to promote the temporal interest of its human functionaries rather than the glory of the true and living God. 299

On March 17, 1836, the "Constitution of the Republic of Texas" was established, and it included, in its declaration of rights, the statement that

no preference shall be given by law to any religious denomination or mode of worship over another, but every person shall be permitted to worship God according to the dictates of his own conscience. 200

There was in this constitution nothing to disqualify a man on religious grounds from holding office and exercising full political rights in the republic — except the provision denying "ministers of the gospel" and "priest[s] of any denomination whatever" the right to hold the presidential office or a congressional seat. 201

The Territories and States of the Old Northwest and the Old Southwest.

On July 13, 1787, the "Confederate Congress" adopted the so-called Northwest Ordinance "for the government of the territory of the United States northwest of the river Ohio." The principles of that ordinance — among them, that

no person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territory 202

— secured in law to Jews and other religious minorities generally full political as well as religious rights in the states which were to be carved out of the Northwest Territory. On May 26, 1790, in
"an act for the government of the territory of the United States, south of the river Ohio," the so-called Old Southwest, the Congress ordained that

the government of the said territory south of the Ohio shall be similar to that which is now exercised in the territory northwest of the Ohio,\textsuperscript{203}

and thus the principles of the Northwest Ordinance were extended below the Ohio River.

Kentucky, raised to statehood on June 1, 1792, was the second state to be "received ... into this Union as a new and entire member"\textsuperscript{204} and the first to be subject to the terms of the ordinance of 1787. Kentucky's constitution, adopted in April, 1792, included in her bill of rights the statement that

3. ... all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man of right can be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; that no human authority can in any case whatever control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious societies or modes of worship.

4. That the civil rights, privileges, or capacities of any citizen shall in no ways be diminished or enlarged on account of his religion.\textsuperscript{205}

No less a personage than Jefferson himself had drafted Kentucky's bill of rights,\textsuperscript{206} and the state's next constitution, put into effect on January 1, 1800, repeated the 1792 provisions almost verbatim, declaring in addition that

the manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed by the general assembly the most solemn appeal to God.\textsuperscript{207}

Capping the entire bill of rights in both constitutions was the declaration that

to guard against the high powers which have been delegated, ... everything in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or contrary to this constitution, shall be void.\textsuperscript{208}

This last had, of course, been inspired by the Pennsylvania constitution of 1790.\textsuperscript{209}
Tennessee, admitted in June, 1796, was the next state received into the Union, her constitution having been framed in January and February of that year. The third section of Tennessee’s declaration of rights was borrowed verbatim from the third section of Kentucky’s 1792 bill of rights, and the fourth section of the Tennessee declaration differed only in form, but not in substance, from the fourth section of Kentucky’s bill. Tennessee’s declaration was that no religious test shall ever be required as a qualification to any office or public trust under this state.

The framers of this constitution saw apparently no contradiction of their professions regarding religious freedom in their insistence that no person who denies the being of God, or a future state of rewards and punishments, shall hold any office in the civil department of this state.

This, too, was derived from Pennsylvania’s constitution of 1790. All these sections of Tennessee’s 1796 constitution were repeated almost verbatim in her next constitution, adopted in 1834.

On April 30, 1802, the Congress authorized the people of the eastern division of the territory northwest of the river Ohio to form a constitution and state government, . . . provided the same shall be republican, and not repugnant to the ordinance of the thirteenth of July, one thousand seven hundred and eighty-seven—the Northwest Ordinance—and on February 19, 1803, the Congress recognized the new State of Ohio, its constitution having been framed the preceding November. Ohio was the first state to be formed in the old Northwest Territory, to which the ordinance of 1787 had been applied in the first instance. The third section of Ohio’s bill of rights repeated almost verbatim the statement of religious freedom in the third and fourth sections of the Kentucky declarations of 1792 and 1799 and the Tennessee declaration of 1796, with the interesting addition that religion, morality, and knowledge being essentially necessary to the good government and the happiness of mankind, schools and the means of
instruction shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience.\textsuperscript{216}

This last was inspired, of course, by the third article of the Northwest Ordinance.\textsuperscript{217} The twenty-sixth section of Ohio's bill of rights went on to specify that

the laws shall be passed by the legislature which shall secure to each and every denomination of religious societies in each surveyed township, which now is or may hereafter be formed in the state, an equal participation, according to their number of adherents, of the profits arising from the land granted by Congress for the support of religion, agreeably to the ordinance or act of Congress making the appropriation.\textsuperscript{218}

This section was derived from the act passed by the Congress on May 20, 1785, and providing that lots of land in each township of the Northwest Territory be set aside for the support of schools and of religion.\textsuperscript{219} The situation reflected in the third and twenty-sixth sections of Ohio's bill of rights was such that education and religion were identified, the schools being commonly organized and sponsored by religious groups.

The "Louisiana Purchase" of 1803 was responsible for a number of statements on the part of the United States Government in respect to religious liberty. When, on October 31, 1803, the Congress authorized President Jefferson to take possession of the huge Louisiana territory purchased from France, the Congressional enabling act required the territory to be governed in such manner as the President of the United States shall direct for maintaining and protecting the inhabitants of Louisiana in the free enjoyment of their liberty, property, and religion,\textsuperscript{220}

and when, on March 26th of the following year, the Congress divided Louisiana into two territories, Louisiana and Orleans, and provided for their temporary government, they again declared for full religious freedom in their insistence that

no law shall be valid which is inconsistent with the constitution and laws of the United States, or which shall lay any person under restraint, burden, or disability, on account of his religious opinions, professions, or worship; in all which he shall be free to maintain his own, and not burdened for those of another.\textsuperscript{221}
A year later, on March 2, 1805, in providing for the government of the territory of Orleans, as the area which would later become the State of Louisiana was then called, the Congress specified that the inhabitants of the Territory of Orleans shall be entitled [to] and enjoy all the rights, privileges, and advantages secured by the Northwest Ordinance of 1787 and declared that, when the time came for the territory to apply for statehood, its constitution should be republican, and not inconsistent with the constitution of the United States, nor inconsistent with the ordinance of the late Congress, passed the thirteenth day of July, one thousand seven hundred and eighty-seven, so far as the same is made applicable to the territorial government hereby authorized to be established.

The next day, the Congress provided for the government of “the District of Louisiana,” no part of which, its name notwithstanding, is included in the present State of Louisiana, and again prescribed that no law shall be valid ... which shall lay any person under restraint or disability on account of his religious opinions, profession, or worship, in all of which he shall be free to maintain his own and not be burdened with those of another.

President Madison, in a proclamation taking possession of a part of the Louisiana Territory that had continued under Spanish rule, added the area on October 27, 1810, to the Orleans Territory and urged “the good people inhabiting” the land in every manner to conduct themselves as peaceable citizens; under full assurance that they will be protected in the enjoyment of their liberty, property, and religion.

By 1811, the Orleans Territory, or, as it was now called, the Territory of Louisiana, was ready for statehood, and on February 20th, the Congress authorized the territory to form a constitution and state government ... provided, the constitution to be formed ... shall be republican, and consistent with the constitution of the United States; that it shall contain the fundamental principles of civil and religious liberty; [&c.].
The territory formed a constitution and a state government on January 22, 1812, and on April 13th, the Congress admitted into the Union the new State of Louisiana,

provided, that it shall be taken as a condition upon which the said state is incorporated in the Union, that . . . the conditions and terms contained in the third section of the act, the title whereof is hereinbefore recited [i. e., "An act to enable the people of the Territory of Orleans to form a constitution and state government, and for the admission of the said state into the Union on an equal footing with the original states, and for other purposes."], shall be considered, deemed, and taken [to be] fundamental conditions and terms, upon which the said state is incorporated in the Union.

Curiously enough, however, the Louisiana constitution of 1812 was entirely lacking in provisions respecting religious freedom, as were the succeeding constitutions of 1845, 1852, 1861, and 1864. It was not, in fact, until 1868 that Louisiana admitted into her constitution the statements that

every person has the natural right to worship God according to the dictates of his conscience

and that

no religious test shall be required as a qualification for office.

The Indiana Territory was authorized by the Congress on April 19, 1816, to form a constitution and state government with the proviso, customary by now, that its constitutional government be republican and conformable to "those articles" of the Northwest Ordinance

which are declared to be irrevocable between the original states, and the people and states of the territory northwest of the river Ohio.

In due course, on December 11, 1816, the requirements of the Congress having been met, Indiana was admitted to statehood, the second of the polities formed in the Old Northwest to be so admitted, and her constitution, adopted on June 29th of that year, followed Ohio's in repeating almost verbatim the third and fourth sections of Tennessee's 1796 declaration of rights, which had in turn been inspired by the corresponding passages in the Kentucky constitution of 1792.
The Mississippi Territory had been established by arrangement with Georgia in 1800, and "the rights, privileges, and advantages" granted to the people of the Northwest Territory by the ordinance of 1787 had been extended to the new Mississippi Territory at that time in accordance with a Congressional act authorizing the appointment of a commission "for an amicable settlement of the limits [of the territory] with the State of Georgia." The provisions of the Northwest Ordinance had, of course, already been extended to the territory south of the Ohio in a Congressional act of 1790, those provisions concerning slavery being exempted, but what became the Mississippi Territory had been claimed as part of Georgia in 1790. The western half of the territory was admitted into the Union as the State of Mississippi in December, 1817, the Congress having been satisfied that its constitution and government were duly republican and conformable "to the principles of the articles of compact" in the Northwest Ordinance.

Mississippi had framed her first constitution during the summer of 1817, and indeed her declaration of rights, drawing upon the thirty-eighth article of the New York constitution of 1777 and the fourth article, tenth section, of Georgia's 1798 constitution, did guarantee that

the exercise and enjoyment of religious profession and worship, without discrimination, shall forever be free to all persons in this state: provided, that the right hereby declared and established shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of this state;

and also decreed that

no preference shall ever be given by law to any religious sect or mode of worship.

The declaration went on to announce

that no person shall be molested for his opinions on any subject whatever, nor suffer any civil or political incapacity, or acquire any civil or political advantage, in consequence of such opinions, except in cases provided for in this constitution.

In accordance with the spirit of the time, among the "cases provided for in this constitution" was that of the atheist or agnostic, for
no person who denies the being of God or a future state of rewards and punishments shall hold any office in the civil department of this state.\textsuperscript{249}

This was a repetition of the eighth article, second section, of Tennessee's constitution of 1796,\textsuperscript{241} itself essentially a restatement of a similar provision in Pennsylvania's constitution of 1790.\textsuperscript{242}

Mississippi, too, identified education and religion and, drawing on the third article of the Northwest Ordinance, declared that,

religion, morality, and knowledge being necessary to good government, the preservation of liberty, and the happiness of mankind, schools, and the means of education, shall forever be encouraged in this state.\textsuperscript{243}

All these provisions of the 1817 constitution were repeated in Mississippi's next constitution, ratified in 1832.\textsuperscript{244} In the meantime, in 1819, the "treaty of amity, settlement, and limits between the United States of America and His Catholic Majesty," in which Spain ceded Florida, including lands which became part of Mississippi and Alabama, had guaranteed that

the inhabitants of the ceded territories shall be secured in the free exercise of their religion, without any restriction. . . .\textsuperscript{245}

On March 1, 1809, the Congress established the Territorial Government of Illinois — "a government in all respects similar to that provided by" the Northwest Ordinance\textsuperscript{246} — and on April 18, 1818, authorized the Illinois Territory to form its state government and constitution with the customary proviso that these should conform to the ordinance of 1787.\textsuperscript{247} Illinois, her constitution having received Congressional approval, was admitted to statehood in December, 1818. Following Indiana, the Illinois constitution, which had been framed in August, 1818, repeated verbatim the third and fourth sections of the 1796 Tennessee declaration of rights.\textsuperscript{248}

Alabama, originally the eastern half of the Mississippi Territory, was organized by the Congress into a separate territory in March, 1817. The second section of the Congressional act establishing this separate territorial government declared simply that

all laws which may be in force, in said territory, . . . at the time this act shall go into effect, shall continue to exist, and be in force, until otherwise provided by law.\textsuperscript{249}
These laws included, of course, the provisions of the Northwest Ordinance which had been extended to the Mississippi Territory at its organization in 1800 and which the Congress had previously included in its 1790 "act for the government of the territory of the United States south of the river Ohio." The treaty whereby, in 1819, Spain ceded to the United States Florida, including land which became part of Alabama, constituted a further declaration in favor of religious liberty, and the Congress again stipulated, in its enabling act for Alabama on March 2, 1819, as well as in its resolution admitting Alabama into the Union the following December 14th, that the new state conform to the principles of the Northwest Ordinance, those concerning slavery being exempted. Alabama's constitution, framed during the summer of 1819, included a declaration of rights that was exemplary in its liberal tone respecting religious and civil liberty:

Sec. 3. No person within this state shall, upon any pretence, be deprived of the inestimable privilege of worshipping God in the manner most agreeable to his own conscience; nor be compelled to attend any place of worship; nor shall any one ever be obliged to pay any tithes, taxes, or other rate, for the building or repairing any place of worship, or for the maintenance of any minister or ministry.

Sec. 4. No human authority ought, in any case whatever, to control or interfere with the rights of conscience.

Sec. 5. No person shall be hurt, molested, or restrained in his religious profession, sentiments, or persuasions, provided he does not disturb others in their religious worship.

Sec. 6. The civil rights, privileges, or capacities of any citizen shall in no way be diminished or enlarged, on account of his religious principles.

Sec. 7. There shall be no establishment of religion by law; no preference shall ever be given by law to any religious sect, society, denomination, or mode of worship; and no religious test shall ever be required as a qualification to any office or public trust under this state.

The whole was buttressed by the declaration that this enumeration of certain rights shall not be construed to deny or disparage others retained by the people; and to guard against any encroachments on the rights herein retained, or any transgression of any of the high powers herein delegated, we declare that everything in this article [Article I: Declaration of Rights] is excepted out of the general powers of govern-
ment, and shall forever remain inviolate; and that all laws contrary thereto . . . shall remain void.\textsuperscript{255}

The words of Thomas Jefferson had found their way into Alabama; the declaration of rights adopted by Alabama had been inspired by the earlier Kentucky provisions drafted by Jefferson.\textsuperscript{256}

The next state admitted into the Union was Maine, hitherto a "district" of Massachusetts from which, on February 25, 1820, she was duly separated. On March 15th of that year, Maine was elevated to statehood as part of the famous "Missouri Compromise," and her constitution, which had been adopted in December, 1819, declared that all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no one shall be hurt, molested or restrained in his person, liberty or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience, nor for his religious professions or sentiments, provided he does not disturb the public peace, nor obstruct others in their religious worship; — and all persons demeaning themselves peaceably as good members of the state shall be equally under the protection of the laws, and no subordination nor preference of any one sect or denomination to another shall ever be established by law, nor shall any religious test be required as a qualification for any office or trust, under this state; and all religious societies in this state, whether incorporate or unincorporate, shall at all times have the exclusive right of electing their public teachers, and contracting with them for their support and maintenance.\textsuperscript{257}

This statement rendered Maine far in advance of her parent-state, Massachusetts, which in 1819 still countenanced the public support of Protestantism, restricted public office to Christians, and limited "the protection of the law" to Christian denominations alone.\textsuperscript{258}

The constitutional changes which Massachusetts effected in 1821 and 1833 were, in fact, strongly influenced by the Maine declaration of 1819. The old Christian conservatism of the region that now became the State of Maine was reflected only in one passage of Maine's constitution. The seventh article, fifth section, specified that persons of the denominations of Quakers and Shakers, justices of the Supreme Judicial Court and \textit{ministers of the gospel} may be exempted from military duty, but no other person of the age of eighteen and under the age of forty-five years, excepting officers of the militia who have been
honorably discharged, shall be so exempted, unless he shall pay an equivalent to be fixed by law. [italics added]

The phrase “ministers of the gospel” could not, of course, include rabbis and so could be taken as a Jewish disability. It is of interest to note, in this connection, that Missouri’s constitution of 1820 contained a similar passage, but Missouri carefully stipulated that no priest, preacher of the gospel, or teacher of any religious persuasion or sect, regularly ordained as such, be subject to militia duty, or compelled to bear arms. [italics added]

Prior to June 4, 1812, Missouri had been designated the Territory of Louisiana. On that date, however, the Congress changed its name to the Territory of Missouri and enacted a territorial government, one of the provisions of which was that no law shall be made which shall lay any person under restraint, burden, or disability, on account of his religious opinions, professions, or mode of worship, in all which he shall be free to maintain his own, and not burdened for those of another. Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall be encouraged and provided for from the public lands of the United States in the said territory, in such manner as Congress may deem expedient.

This stipulation recapitulated, of course, a Congressional act of 1804 and the third article of the ordinance of 1787. On August 10, 1821, after a lengthy and bitter debate involving the question of slavery, a presidential proclamation “declared to be complete” Missouri’s admission into the Union. Missouri’s constitution, which had been framed during the summer of 1820, announced that all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can be compelled to erect, support, or attend any place of worship, or to maintain any minister of the gospel or teacher of religion; that no human authority can control or interfere with the rights of conscience; that no person can ever be hurt, molested, or restrained in his religious profession or sentiments, if he do not disturb others in their religious worship, and that

no person, on account of his religious opinions, can be rendered ineligible to any office of trust or profit under this state; that no preference can
ever be given by law to any sect or mode of worship; and that no religious corporation can ever be established in this state.\textsuperscript{266}

Again America was put into the debt of Jefferson as his sentiments echoed across the Mississippi. Missouri’s statements were derived almost verbatim from the Kentucky constitutions of 1792 and 1799.\textsuperscript{267}

On March 2, 1819, the Congress established a separate territorial government in the southern part of the Territory of Missouri and called it “the Arkansaw Territory,” but it was not until June 15, 1836, that Arkansas was admitted to statehood, her constitution having been framed in January of that year. Where religious liberty was concerned, the declaration of rights included in this constitution was almost a verbatim repetition of the Kentucky constitutions of 1792 and 1799.\textsuperscript{268} This did not prevent the framers of the Arkansas constitution from applying against atheists and agnostics the same sanctions which their Tennessee neighbors had applied in 1796. Arkansas went further, in fact, and declined to allow a person denying “the being of God ... his oath in any court.”\textsuperscript{269}

The last state admitted into the Union during the period with which this essay has been concerned was Michigan, whose territorial government had been organized in 1805 with the customary Congressional requirement that it be republican and conformable “in all respects” to the Northwest Ordinance.\textsuperscript{270} Although Michigan was not declared a state until January 26, 1837, her constitution had been ratified on November 2, 1835, and presented to the Congress by President Andrew Jackson on December 9th of that year. The religious and political rights conceded by the Michigan constitution were complete:

Sec. 3. No man or set of men are entitled to exclusive or separate privileges.

Sec. 4. Every person has a right to worship Almighty God according to the dictates of his own conscience; and no person can of right be compelled to attend, erect, or support, against his will, any place of religious worship, or pay any tithes, taxes, or other rates for the support of any minister of the gospel or teacher of religion.

Sec. 5. No money shall be drawn from the treasury for the benefit of religious societies, or theological or religious seminaries.
Sec. 6. The civil and political rights, privileges, and capacities of no individual shall be diminished or enlarged on account of his opinions or belief concerning matters of religion. Furthermore, the oath or affirmation, prescribed for "members of the legislature, and all officers, executive and judicial, except such inferior officers as may by law be exempted," was simply:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of_______, according to the best of my ability."

And no other oath, declaration, or test shall be required as a qualification for any office or public trust.

A fitting and sanguine conclusion, these words of the Michigan constitution, to a discussion that began with mob violence in mid-eighteenth-century New York.

CONCLUSION

In the year 1902, long after the period with which we have been concerned in these pages, Sanford Cobb wrote that in every community it is the attitude of the law which defines the measure of religious liberty enjoyed. According as the civil law interferes with religious matters by direct control; by establishment of a State-Church; by preference of one form of religious organization to the prejudice of others; by exclusion from civil rights of the followers of any specified form of religion; or as it expressly abstains from all such interference, preference or control, will the measure of religious liberty be declared.

Where the Federal government was concerned, as we have seen, "the measure of religious liberty" was declared in all its fullness in the Northwest Ordinance of 1787, in the Federal Constitution of the same year, and in the first article of the so-called Bill of Rights, adopted at the first session of the first Congress in 1789. Only thirteen years after the Declaration of Independence, Jews in common with other religious minorities could feel themselves secure in their status as first-class citizens of the Federal Union.

As we have also seen, the process was considerably slower where the individual states were concerned — particularly in terms
of the state constitutions, which have commanded the greater part of our interest. Long before the establishment of an independent American Union, Roger Williams of the Rhode Island Colony had written that

all civil states, with their officers of justice, in their respective constitutions and administrations, are ... essentially civil, and therefore not judges, governors, or defenders of the spiritual, or Christian, state and worship... God requireth not an uniformity of religion to be enacted and enforced in any civil state; which enforced uniformity, sooner or later, is the greatest occasion of civil war, ravishing consciences, persecution of Christ Jesus in His servants, and of the hypocrisy and destruction of millions of souls.

Williams had desired

a permission of the most Paganish, Jewish, Turkish, or anti-Christian consciences and worship [to] be granted to all men, in all nations and countries,

but more than two hundred years would pass before a complete — or almost complete — acceptance of his principles could be achieved in the American states. Even in his own Rhode Island they did not come to fruition until 1842, and in the state constitutional convention of Massachusetts in 1820, no less a figure than Daniel Webster could declare himself

clearly of opinion that we should not strike out of the constitution all recognition of the Christian religion.

So it was that, in more than a few states, the struggle for religious liberty and for full political rights for all citizens was protracted — even bitterly in some instances, as in that of Maryland.

Yet the situation did not remain static. If there were men like Daniel Webster, there were also men like James Madison, Thomas Jefferson, Benjamin Franklin, and Thomas Kennedy.

In the year 1777, only one state, New York, had conceded full political equality to Jews. By the time the Federal Constitution was fully established in 1790, Virginia had taken steps to realize her liberal principles in fact as well as in theory, and Georgia, South Carolina, and Pennsylvania had followed suit. As the nineteenth century dawned, Jews had gained full political rights in Delaware as well as in the new states of Vermont, Kentucky, and
Tennessee. By the year 1840, only in five states—New Jersey, North Carolina, New Hampshire, Connecticut, and Rhode Island—did Jews continue subject to disabilities, while in twenty-one of the twenty-six states of the Union they generally enjoyed full religious and political equality.\(^{276}\)

The record was in fact such that what Cobb wrote in 1902 could, with few reservations, have as well been said in 1840:

... it was reserved for the people and governments of this last settled among the lands to announce the religious equality of all men and all creeds before the law, without preference and without distinction or disqualification. Here, among all the benefits to mankind to which this soil has given rise, this pure religious liberty may be justly rated as the great gift of America to civilization and the world, having among principles of governmental policy no equal for moral insight, and for recognition both of the dignity of the human soul and the spiritual majesty of the Church of God.\(^{277}\)

**NOTES**

3. Cobb, p. 5.
8. Including Rhode Island; see pp. 17, 39–40, below.
11. By “poliipiety,” a variety of sects is meant.
12. Cobb, p. 68. It is of interest to note that in 1662 Oakes himself, during his sojourn in England, had as a non-conformist been forbidden to preach.
36 Ibid., pp. 318-21.
37 Ibid., p. 316.
38 Marcus, II, 516-17.
39 Quoted in Cobb, p. 316.
40 Quoted in Cobb, p. 317.
41 Ibid., p. 302.
42 Marcus, II, 517.
43 Ibid., p. 516. Jews were formally naturalized also in Massachusetts, South Carolina, and Maryland.
44 Quoted in Cobb, p. 444.
45 Socinianism, an anti-Trinitarian heresy founded by the Italian theologian Faustus Socinus (1539-1604), was the forerunner of modern Unitarianism.
46 Cobb, p. 450.
47 Marcus, II, 522.
49 Marcus, II, 522.
50 Cobb, p. 376.
51 Ibid., p. 377.
52 Marcus, II, 527.
53 Ibid., p. 514.
54 Ibid., pp. 530-31.
55 Ibid., p. 527.
56 Ibid., pp. 526-27.
57 Stokes, I, 459.
58 Quoted in Stokes, I, 460.
59 Ibid., p. 459.
60 Ibid., pp. 460-61.
61 Marcus, II, 529; Cobb, p. 502.
62 The Declaration of Independence.
64 Ibid., Art. I.
65 U. S. Const., Art. VI, Sec. 3.
67 U. S. Const., Amend. I.
68 Two states retained their colonial charters: Connecticut until 1818, and Rhode Island until 1842.
70 Thorpe, VI, 3241, note a.
71 S. C. Const. (1776), Thorpe, VI, 3241-42.
72 S. C. Const. (1776), XI, Thorpe, VI, 3245.
73 Goodman, p. 165.
74 S. C. Const. (1776), XI, Thorpe, VI, 3245. It is of interest to note that, despite

65 The Declaration of Rights was adopted on June 12, 1776.


67 William Bradford, Jr. (1755-95) was appointed attorney-general of the United States by President Washington in 1794.


69 Quoted in Cobb, pp. 491-92.

70 Va. Const. (1776), Bill of Rights, Sec. 16, Thorpe, VII, 3814. According to Cobb, pp. 491-92, Madison also secured the addition of a restraining clause:

No man, or class of men, ought on account of religion to be invested with pecuniary emoluments or privileges, nor subjected to any penalties or disabilities, unless under color of religion the preservation of equal liberty and the existence of the state are manifestly endangered.

Such a clause is, however, lacking in the Virginia constitution of 1776. Madison did write it, to be sure, and did propose it for inclusion in Section 16, but it was not adopted by a convention not yet prepared to disestablish the Church of England. See Stokes, I, 303, 380.

71 Stokes, I, 334.


73 N. J. Const. (1776), XVIII, Thorpe, V, 2597.

74 N. J. Const. (1776), XIX, Thorpe, V, 2597-98.

75 Del. Const. (1776), Art. 22, Thorpe, I, 566.


77 Pa. Const. (1776), Sec. 10, Thorpe, V, 3085.

78 Stokes, I, 438.

79 Md. Const. (1776), Declaration of Rights, XLII, Thorpe, III, 1691.

80 Md. Const. (1776), Declaration of Rights, XXXIII--XXXV, Thorpe, III, 1889-90. In 1810, the tax provisions of Art. XXXIII were annulled. Art. XIII of the Amendments to the constitution of 1776 decreed that it shall not be lawful for the general assembly of this state to lay an equal and general tax, or any other tax, on the people of this state, for the support of any religion (Thorpe, III, 1705).

According to Stokes, I, 867, "only one serious effort" had been "made...to enforce the tax — in 1785 — and it was defeated."

81 Md. Const. (1776), LV, Thorpe, III, 1700.

82 N. C. Const. (1776), Declaration of Rights, XIX, Thorpe, V, 2788.

83 N. C. Const. (1776), XXXII, Thorpe, V, 2793.

84 N. C. Const. (1776), XXXIV, Thorpe, V, 2793.

85 Stokes, I, 401.


87 Thorpe, V, 2624, note.

88 N. Y. Const. (1777), XXXV, Thorpe, V, 2635.
According to Stokes, I, 858, Harvard "gave an unconverted Jew an M.A. degree in 1720." Though Stokes makes no mention of his name, this Jew was Judah Monis, who was born, probably in Italy, in 1683, was admitted as a Freeman of New York in 1716, and became Harvard's first instructor in Hebrew in 1722. Stokes is incorrect in regarding Monis as an unconverted Jew at the time the degree was granted and in stating that Monis received the degree in 1720.

According to Clifford K. Shipton, Biographical Sketches of Those Who Attended Harvard College in the Classes 1722-1725 ("Sibley's Harvard Graduates," Vol. VII [Boston: Massachusetts Historical Society, 1945]), pp. 626, 639, 641-42, "Monis's degree belongs...to a kind awarded less distinguished men simply because by chance they had no college degree. The modern catalogue dates [his M.A. degree]...as 1720, an error arising from the fact that there is no record of the voting of the degrees and that the names of the recipients were entered in the Harvard Class of 1720, the members of which were taking their M.A.'s in 1723." Monis was, however, converted to Christianity and "baptized with much ceremony in the college hall on March 27, 1722." He documented his conversion by publishing three theological tracts, prefaced with an account of his change. "My embracing Christianity," he wrote, "was because I was fully persuaded it is the only religion wherein I thought I could be saved...the Christian religion (the Protestant I mean)...is the best of all religions....The doctrine of the ever blessed Trinity...is not an erroneous one...but a true and certain one." On May 28, 1722, the First Church of Cambridge voted that Monis "be allowed to partake with us at the Lords Supper," but it was not until 1737 that, at his request, Monis was "publicly declared to be a member of [the First Church of Cam-
bridge] and intitled to all priviledges with
the other bretheren."


[118] Thorpe, IV, 2453, note b.


[122] Ibid.


[128] Ibid., p. 3212.

[129] Ibid., p. 3213.

[130] Ibid.

[131] See p. 17, above.


[133] Cobb, p. 72.


[135] Stokes, I, 408.


[143] Stokes, I, 392.

[144] Ibid., pp. 336, 392. The other two were his authorship of the Declaration of Independence and his founding of the University of Virginia.


[154] See p. 28, above.

[155] Pa. Const. (1790), Art. IX, Sec. 4, Thorpe, V, 3100. This article was repeated verbatim in Pa. Const. (1838), Art. IX, Sec. 4, Thorpe, V, 3113.

[156] Pa. Const. (1790), Art. IX, Sec. 26, Thorpe, V, 3101. This, or a similar provision, was incorporated into the following constitutions: Ky. Const. (1792), Art. XIV, Sec. 28, Thorpe, III, 1276; Ky. Const. (1792), Art. X, Sec. 28, Thorpe, III, 1291; Vt. Const. (1793), Sec. 42, Thorpe, VI, 3771; Ga. Const. (1789),

See p. 27, above.


N. H. Const. (1792), Pt. I, Art. VI, Thorpe, IV, 2471-72. To this very day, the New Hampshire Bill of Rights refers to "morality and piety, rightly grounded on evangelical principles," while the only groups specified as "equally under the protection of the law" are "every denomination of Christians." See Stokes, I, 431.


Md. Const. (1776), Amend. XIII, Thorpe, III, 1705. This article amended Art. XXXIII of the 1776 constitution. See note 80, above.

Stokes, I, 874.

Thomas Kennedy (1776-1832) lived in Washington County, Western Maryland, where there were no Jews at the time, and wrote that he had not "the slightest acquaintance with any Jew in the world." See Lee J. Levinger, A History of the Jews in the United States (Cincinnati: Union of American Hebrew Congregations, 1944), pp. 137-38.


Ibid., Sec. 2.

Stokes, I, 874.

Ibid., p. 878.

See p. 37, above.

Thorne, III, 1908, note a.


See p. 36, above.

See p. 37, above.

See note 171, above.

See pp. 31-32, above.

N. Y. Const. (1821), Art. VII, Sec. 3, Thorpe, V, 2648.

See p. 30, above.

N. C. Const. (1776), Amend. IV, Sec. 2, Thorpe, V, 2799.

Stokes, I, 864-65.

Maine, originally part of Massachusetts, was also not subject to the ordinance of 1787. See p. 62, below.


Thorne, VI, 3737, note b.

Vt. Const. (1777), Preamble, Thorpe, VI, 3739.

Vt. Const. (1777), Ch. I, Sec. III, Thorpe, VI, 3740.

Vt. Const. (1777), Ch. II, Sec. IX, Thorpe, VI, 3743.

Vt. Const. (1786), Ch. II, Sec. XII, Thorpe, VI, 3757.

Vt. Const. (1786), Ch. I, Sec. III, Thorpe, VI, 3752.
188 1st Cong., 3d sess., "An act for the admission of the State of Vermont into this Union," Thorpe, VI, 3761.
190 Vt. Const. (1793), Ch. II, Sec. 12, Thorpe, VI, 3767.
191 Encyclopedia Americana, XXVI, 464.
192 Mex. Const. (1824), Preamble, Thorpe, VI, 3475.
193 Thorpe, VI, 3475, note a.
194 See p. 16, above.
196 Mex. Const. (1824), Title 7th, Sec. 171, Thorpe, VI, 3494.
197 Coahuila and Tex. Const. (1827), Preliminary Dispositions, Art. 9, Thorpe, VI, 3495.
198 Coahuila and Tex. Const. (1827), Title 6th, Art. 215, Thorpe, VI, 3519.
199 Texas Declaration of Independence, 1836, Thorpe, VI, 3529.
200 Tex. Const. (1836), Declaration of Rights, 3rd Art., Thorpe, VI, 3542.
201 Tex. Const. (1836), Art. V, Sec. 1, Thorpe, VI, 3556.
202 See p. 23, above.
204 1st Cong., 3rd sess., "An act declaring the consent of Congress, that a new state be formed within the jurisdiction of the Commonwealth of Virginia, and admitted into this Union, by the name of the State of Kentucky," Thorpe, III, 1264.
205 Ky. Const. (1792), Art. XII, Secs. 3-4, Thorpe, III, 1274.
206 Stokes, I, 444-45.
207 Ky. Const. (1792), Art. VI, Sec. 7, Thorpe, III, 1286.
209 See p. 46, above.
210 Tenn. Const. (1796), Art. XI, Sec. 3, Thorpe, VI, 3422.
211 Tenn. Const. (1796), Art. XI, Sec. 4, Thorpe, VI, 3422.
212 Tenn. Const. (1796), Art. VIII, Sec. 2, Thorpe, VI, 3420.
213 See p. 46, above.
214 Tenn. Const. (1834), Art. I, Secs. 3-4, Thorpe, VI, 3426-27; Art. IX, Sec. 2, Thorpe, VI, 3437.
215 7th Cong., 1st sess., "An act to enable the people of the eastern division of the territory northwest of the river Ohio to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states, and for other purposes," Secs. 1, 5, Thorpe, V, 2897, 2899.
216 Ohio Const. (1802), Art. VIII, Sec. 3, Thorpe, V, 2910.
218 Ohio Const. (1802), Art. VIII, Sec. 26, Thorpe, V, 2912.
219 Stokes, I, 481.
220 8th Cong., 1st sess., "An act to enable the President of the United States to take possession of the territories ceded by France to the United States, by the Treaty concluded at Paris, on the thirtieth of April last [1803]; and for the temporary government thereof," Sec. 2, Thorpe, III, 1364.
221 8th Cong., 1st sess., "An act erecting Louisiana into two territories, and provid-
ing for the temporary government there-
of," Sec. 4, Thorpe, III, 1365.

222 8th Cong., 2d sess., "An act further
providing for the government of the terri-
tory of Orleans," Sec. 1, Thorpe, III, 1371.

223 Sec. 7, Thorpe, III, 1372. Sec. 5 of
this act "excluded from all operation
within the said Territory of Orleans" the
second paragraph of the Northwest
Ordinance, relating to inheritance, and the
sixth article of compact, forbidding slavery
and involuntary servitude.

224 8th Cong., 2d sess., "An act further
providing for the government of the
district of Louisiana," Sec. 3, Thorpe,
III, 1373-74.

225 "By the President of the United
States of America. A Proclamation
[Oct. 27, 1810]," Thorpe, III, 1376.

226 11th Cong., 3d sess., "An act to enable
the people of the Territory of Louisiana to
form a constitution and state government,
and for the admission of such state into the
Union, on an equal footing with the
original states, and for other purposes," Sec. 3, Thorpe, III, 1376-77.

227 The act referred to is the enabling act
for Louisiana. See note 226, above.

228 12th Cong., 1st sess., "An act for the
admission of the State of Louisiana into the
Union, and to extend the laws of the
United States to the said state," Sec. 1, Thorpe, III, 1379.

229 La. Const. (1868), Title I, Art. 12,
Thorpe, III, 1450.

230 14th Cong., 1st sess., "An act to
enable the people of the Indiana Territory
to form a constitution and state govern-
ment, and for the admission of such state
into the Union on an equal footing with the
original states," Sec. 4, Thorpe, II, 1055.

231 Ind. Const. (1816), Art. I, Sec. 3,
Thorpe, II, 1058.

232 5th Cong., 2d sess., "An act for an
amicable settlement of the limits with the
State of Georgia, and authorizing the
establishment of a government in the
Mississippi Territory," Sec. 6, Thorpe,
IV, 2026.

233 See p. 61, below.

234 15th Cong., 1st sess., "Resolution for
the admission of the State of Mississippi
into the Union," Thorpe, IV, 2032.

235 See p. 32, above.

236 See p. 45, above.

237 Miss. Const. (1817), Art. I, Sec. 3,
Thorpe, IV, 2033.

238 Miss. Const. (1817), Art. I, Sec. 4,
Thorpe, IV, 2033.

239 Miss. Const. (1817), Art. I, Sec. 5,
Thorpe, IV, 2033.

240 Miss. Const. (1817), Art. VI, Sec. 6,
Thorpe, IV, 2044.

241 See p. 55, above.

242 See p. 46, above.

243 Miss. Const. (1817), Art. VI, Sec. 16,
Thorpe, IV, 2045.

244 Miss. Const. (1832), Art. I, Secs. 3-5,
Thorpe, IV, 2049; Art. VII, Secs. 5, 14,
Thorpe, IV, 2061.

245 "Treaty of amity, settlement, and
limits between the United States of
America and His Catholic Majesty

246 10th Cong., 2d sess., "An act for
dividing the Indiana Territory into two
separate governments," Sec. 2, Thorpe,
II, 966.

247 15th Cong., 1st sess., "An act to
enable the people of the Illinois Territory
to form a constitution and state govern-
ment, and for the admission of such state
into the Union on an equal footing with the
original states," Sec. 4, Thorpe, II,
968-69.

248 Ill. Const. (1818), Art. VIII, Secs. 3-4,
Thorpe, II, 981.
14th Cong., 2d sess., "An act to establish a separate territorial government for the eastern part of the Mississippi Territory," Sec. 2, Thorpe, I, 90.

See p. 59, above.

See pp. 54, 59, above.

See p. 60, above.

15th Cong., 2d sess., "An act to enable the people of the Alabama Territory to form a constitution and state government, and for the admission of such state into [the] Union on an equal footing with the original states," Sec. 5, Thorpe, I, 93; 16th Cong., 1st sess., "Resolution declaring the admission of the State of Alabama into the Union," Thorpe, I, 95.

See p. 54, above.


Cobb, pp. 9-10.


Quoted in Stokes, I, 425.

Although, as noted above, pp. 58, 63, Louisiana lacked constitutional provisions respecting religious rights until 1868 and Maine's constitution did not exempt rabbis, while it did exempt "ministers of the gospel," from military duty.

Cobb, p. 2.