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In This Issue

THE LIBERALISM OF JUSTICE BRANDEIS. . . PAUL A. FREUND 3

The year 1956 marked the one hundredth anniversary of the birth of Louis Dembitz Brandeis. Harvard University's Paul A. Freund has composed a brief, but penetrating, study of the United States Supreme Court Justice who, as he says, "by fusing law and the moral life gave new depth and promise to both."

LEE M. FRIEDMAN, 1871-1957, In Memoriam. 12

THE POLITICAL RIGHTS OF THE JEWS IN THE UNITED STATES: 1776-1840. STANLEY F. CHYET 14

The political disabilities under which Jews had to labor everywhere in Colonial America were not immediately suspended by the Revolution. Although the Revolutionary War did result in full rights for Jews on the Federal level, Jews remained for years second-class citizens in many of the individual states. As late as 1840, in fact, Jewish disabilities still operated in five of the twenty-six states of the Union. In this article, the state constitutions in force between 1776 and 1840 are examined in terms of the rights which they granted or denied to Jewish citizens, and the rise of the American Jews to political equality is traced during these first six decades of the history of the Republic.

REVIEWS OF BOOKS

Aronson, David, The Jewish Way of Life.
Reviewed by Maurice Friedman. 76

Glazer, Nathan, American Judaism.
Reviewed by Bernard J. Bamberger. 78

<i>Pessin, Deborah</i> , History of the Jews in America. Reviewed by Sylvan D. Schwartzman	80
<i>Postal, Bernard, and Lionel Koppman</i> , A Jewish Tourist's Guide to the United States. Reviewed by Bertram W. Korn	82
Brief Notices	84
ACQUISITIONS	86

ILLUSTRATIONS

Louis D. Brandeis, facing page 8; George Washington, facing page 32; Thomas Jefferson, facing page 33; Jonas Phillips, facing page 48; Thomas Kennedy, facing page 49; New Headquarters of the B'nai B'rith, facing page 76.

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The Liberalism of Justice Brandeis

PAUL A. FREUND

We know quite well what Woodrow Wilson thought of Louis D. Brandeis. The President's steadfast and spirited support of his nominee for the Supreme Court will stand as a model of imagination and courage in high office. What Brandeis thought of Wilson is much less a matter of public record. In 1924, President Edwin Anderson Alderman of the University of Virginia invited a number of distinguished persons to express their judgment of Wilson and his legacy. Among those solicited was Brandeis, and he replied in a letter which ended with a characteristic Brandeisian concern for the proprieties: "It is better that I should not be quoted." After thirty years history may properly supplant protocol, or so at least historians can be expected to agree. Brandeis wrote to President Alderman under date of May 11, 1924:

Norman Hapgood has shown me his letter to you. With the views which he has expressed I agree, in the main.*

There may be added:

1. Perhaps the most extraordinary achievement of Mr. Wilson's first administration was dissipation of the atmosphere of materialism which had enveloped Washington for at least forty years — and probably since Lincoln's days. The rich man — the captain of industry — was distinctly at a disadvantage. One breathed the pure, rarefied air of mountain tops.

2. Mr. Wilson knew not fear.

3. He should be judged by what he was and did prior to August 4, 1918, the date of the paper justifying the attack on Russia. That was

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This essay was originally delivered as an address at a meeting of the American Historical Association in St. Louis, on December 28, 1956.

* Hapgood had written in praise of Wilson's position on the trusts, on banking, on the war aims, and on the appointment of Brandeis, and, critically, of Wilson's policy toward Soviet Russia.

the first of his acts which was unlike him; and I am sure the beginning of the sad end.

It is significant that Brandeis chose to put his judgment of Wilson in moral terms. For Brandeis was first and last a moralist — a moralist and a lawyer. The inner daemon which drove him from one harsh encounter to another, struggling against wilfulness and inertia all about him, was a passion for the moral life, the life that is free to develop character through the exercise of responsibility. But this intense concern does not mark the full measure of Brandeis, for he was, as we have said, both a moralist and a lawyer. He was concerned about ways and means as well as ends. As a lawyer he labored for a social order that would be more hospitable to the development of men's freedom, and by processes that would in themselves not be immoral. It is by virtue of his devotion to this threefold standard — the moral life, the moral order, and moral processes — that we have ventured to call Brandeis a liberal. The conservative may be just as attached to the ideal of the moral man, but he is more inclined to accept as the unalterable human condition moral man in an immoral society. The radical may be just as attached to the cause of fashioning a more hospitable moral order, but he is less anxious about the morality of the procedures. At least this is the analysis one would tender if one fancied oneself a liberal. The labels really are of no moment. Certainly they were of none to Brandeis himself. Once after a conversation Sidney Hillman said to him in a tone of surprise: "Mr. Justice, I think you are a conservative." The Justice replied blandly: "I have always so regarded myself."

The label does not matter, but the contents do. It will be seen that we have used the term liberal in much the same sense as Professor James Garfield Randall did in writing of Lincoln as "the liberal statesman."* The resemblance, both physical and spiritual, is striking — more striking, it might be said, than that between Brandeis and Wilson. Others have felt this kinship. In a letter to Brandeis in November, 1936, Alvin Johnson wrote: "I would not

* James Garfield Randall, *Lincoln, The Liberal Statesman* (New York: Dodd, Mead, 1947).

like to tell you how often, when apparently baffled and beaten in an enterprise not my egoistic own, and I have felt that it was time to take my own ease, your face has risen before my mind, yours and Lincoln's. For you two seem to me the two most serenely implacable democrats in all history." Serene and implacable democrats they were, and more. Both were moralists and lawyers, and in Lincoln's case, it has seemed to us, a leading clue to his thinking is that he thought like a lawyer.* However that may be, Lincoln and Brandeis were both lovers of freedom who insisted that freedom could be secured only within principles of order, of structure and process, of which the Federal system is a design to be cherished. Both were simple men, but both respected the complexities of living problems, distrusted panaceas, turned naturally to the shaping of ideas through working institutions, and turned up their collars against windy sloganeering. Both were humanitarians and compassionate men, but both were decidedly of William James's tough-minded, and not his tender-minded, breed.

Just how tough-minded, unsentimental, and morally deep-cutting Brandeis was — how different from the bleeding heart or the good grey judge of popular legend — may be suggested by two or three random remembrances. During the dark days of the depression a lady asked him anxiously whether he thought the worst was over. "Oh, yes," he answered cheerfully, "the worst took place in the days of prosperity before 1929." This is oral history, which perhaps not even Allan Nevins has made respectable among professionals. Fortunately, in some correspondence with Harold Laski that has just recently been made available the writer came across this passage from Brandeis, written in 1932: "The widespread suffering, the economic helplessness and the general dejection are appalling; and most painful the absence of any sense of shame on the part of those primarily responsible for existing conditions. But the process of debunking continues; and if the depression is long continued — which seems likely — America will gain much from her experience." When a visitor during the depression wrung his hands and

* Not all lawyers do: surely there is no such clue to the thought of Franklin Delano Roosevelt.

bewailed the plight of young people unable to find work, Brandeis remarked: "There is one thing that any able-bodied young man can do to earn a living — he can join the army." Had the comment come from someone else, it would be put down to callous inhumanity; coming from Brandeis, who drove himself unsparingly in the cause of his fellow men, the remark showed rather his annoyance at the doughy sogginess of mere lamenting, which had neither the tang of moral indignation nor the nourishment of a constructive idea. To think of Brandeis as a shining white knight riding off to every call of distress is to confuse the prophet Jeremiah with the all-American boy.

This account has been general and episodic. It is time to look more closely at Brandeis' philosophy in his years of practice and on the bench. A key to any public philosophy is the concept of power. Brandeis, whose zeal for a more just social order required him to espouse the power of the state, profoundly distrusted power. But the paradox is only skin-deep. He would not, we feel sure, have thought that Lord Acton was refuted by Lord Radcliffe in the latter's recent lectures on "The Problem of Power."* The answer to the paradox does not lie in Lord Radcliffe's contrast of power for good ends and in good hands with power for harm. The structure of power itself, Brandeis would have maintained, is dangerous. The paradox is resolved rather by approving and enlisting that power which is self-liquidating or is a pilot plant, while resisting that power which concentrates the decision-making process in a few hands which must be wiser and more knowledgeable than those that are controlled. Thus, the difference between regulated competition and regulated monopoly was for Brandeis fundamental in the New Freedom of 1912. In the New Deal some exercises of power were Brandeisian in nature, like the Public Utility Holding Company Act, which by forcing the simplification of holding-company systems served to make supervision of operating companies more manageable and to make the corporate structures at last intelligible to their owners. That is self-liquidating power. Other New Deal measures, like the N. R. A., were decidedly un-Brandeisian in their assump-

* Cyril John Radcliffe, *The Problem of Power* ("The Reith Memorial Lectures," 1951 [New York: Macmillan, 1952]).

tion that the public authorities could wisely intervene in the multifarious problems of business management. It is not surprising that Brandeis, who believed that no man should be a director in more than one corporation, suggested that the N. R. A. should have been set up as an object lesson in the Federal Office of Education.

His view of power was an aspect of his philosophy of responsibility: that responsibility is the great developer of men, and that the sound limit of responsibility in even the wisest men is soon reached. He was fond of quoting from Goethe: "Care is taken that the trees do not scrape the skies." And again from Goethe: "Self-limitation is the first mark of the master."

In the modern world the principle of insurance is closely entangled with the problem of responsibility, and it is illuminating to observe Brandeis' attitude to insurance. Here again we face a paradox. He believed that the insurance principle is overextended, and yet he counted as his most solid achievement at the bar his fathering of savings-bank life insurance in Massachusetts. Again the paradox dissolves. Savings-bank life insurance, by making available to wage earners a limited amount of insurance, gave them a measure of security and so of freedom, but beyond this it served as a demonstration — here is power used as a pilot plant — that men of ordinary position could compete in the business of insurance with the captains of finance. The overextension of insurance, on the other hand, occurred in fields where responsibility for fault was thereby obscured, notably in the field of fidelity insurance. To insure against the default of trusted employees was, in Brandeis' view, an abomination, for it relieved management of the responsibility for judging character. To be sure, fidelity insurance made it possible for relatively untried men to find positions of trust that might not otherwise be open to them, and this was a Brandeisian end; but the means to that end involved too great a moral loss. Unemployment insurance he treated in a similar vein. Its function in cushioning the shock of unemployment was useful, but was secondary to the effect on the employer; only if the system were geared to a plant-by-plant reserve or a strong merit-rating scheme would it serve the purpose of inducing business to regularize employment. Otherwise a moral end would be served by an amoral or an immoral means.

As a judge his preoccupation with structure and process showed itself in his concern for a working Federal system which would preserve the values of experiment, diversity, and the diffusion of responsibility. Hence his strong support of cooperative federalism: interstate compacts, Federal tax-and-credit devices, and the full faith and credit clause. He saw in the resources of political cooperation the same promise of development through shared responsibility, the same answer to the challenge of sheer size, that he found in the cooperative movement in the economic sphere.

On the bench as at the bar, sentimentality was excluded as a debilitating drain on energies that had to be marshalled for a more constructive, more inclusive task of rescue and reform. Perhaps one illustration will make the point. The Federal Employers Liability Act gives to railroad employees a somewhat liberalized right of recovery for injuries on the job. A great number of cases under the act have been brought to the Supreme Court, many of them cases in which the court of appeals had set aside, on the evidence, verdicts for the employees. Despite the human appeal of these cases, Brandeis never allowed himself to regard them as the proper business of the appellate jurisdiction of the Supreme Court. But when the question arose whether the federal act had superseded state workmen's compensation laws as applied to railroad employees, his interest was intense. The Supreme Court's decision that the state laws were superseded provoked one of his strongest and most thoroughgoing dissents. Here was an issue of distribution of power on which the Court was needlessly accelerating the march to national uniformity.

Believing as he did that America is not simply Washington, still less that it is New York, he regularly advised young men in the capital not to overstay their time, to go back to their "hinterland." On one occasion, a young man who listened to this advice replied: "But I have no hinterland. I'm from New York City." The Justice answered imperturbably: "That is your misfortune." Brandeis' image of America was the spiritual counterpart of the military tactic which builds fortified strong points to secure defense in depth.

We have stressed the uncompromisingly moral quality of Brandeis' thought. In fact, the whole enterprise of judging is, or should be, an exercise in ethical thinking of the most demanding



LOUIS D. BRANDEIS

Late Associate Justice of the United States Supreme Court

kind. Let us borrow an analysis of ethical thought from the Harvard philosopher C. I. Lewis and apply it to the judicial function. Right action, as the philosopher puts it, involves three elements: a just result, and means which are technically proper and prudentially sound. Too many observers of the Court's work are ready to pass judgment on the basis of the first element alone — the end result. We can illustrate the complexity of the problem and the sensitivity of Brandeis' mind to the other considerations of rightness by referring to one of his opinions — not one which is included in college anthologies, but one on which he lavished his utmost care and which serves as well as any to reveal the complexity of the ethical judgments which courts are called upon to make. The International News Service was copying news reports of the Associated Press and distributing them to International's subscribers. The A. P. sued to enjoin the piracy. On the face of it the cause of justice seemed to lie with the Associated Press. Not only that, but the case provided an opportunity to advance the law by establishing that the category of property is not static, that news is entitled to the same protection as more tangible and traditional kinds of property — a progressive view that might have been expected to appeal to Brandeis, who in another case was prepared to extend the category of unlawful searches and seizures to wiretapping. A majority of the Court did grant the relief sought by the A. P., but Brandeis disagreed. He believed, in terms of our analysis, that there were prudential and technical considerations given insufficient weight by the majority in the calculus of rightness. To protect the A. P., he argued, would entrench an organization dominant in the dissemination of news, whose own restrictive bylaws — as they then were — limiting membership in the association may have impelled the wrongful conduct of the I. N. S. To grant an injunction would be an act of imprudence unless the Court were prepared to enforce upon the A. P., in return, the obligations of a public utility, and this the Court could not do in the case before it and in the absence of legislation. The larger prudence and the technical role of the Court overweighed the superficial morality of the majority's result. The opinions in this case, reported in Volume 248 of the United States Reports, can be commended to historians and other commentators who wish to

perfect their knowledge of how to read and judge Supreme Court decisions.

We have said that Brandeis' inner daemon was his passion for the moral life. In fact, he was possessed by a second daemon, a passion for craftsmanship. It was a second daemon, but surely a twin. For craftsmanship was the warrant which Brandeis gave to himself that his work was right and could honorably be exposed to the verdict of history. His major opinions went through dozens, even scores, of revisions. Take infinite pains, said Michelangelo, to make something that looks effortless. Brandeis undertook to deal with every argument of the losing side, and if a petition for rehearing was filed in one of his cases he felt a sense of failure, though the writer never understood why the intransigence of counsel should be a fault attributed to the judge.

So deeply did he feel that the authority of the Court must come from the intrinsic strength of its work and not from the trappings or imprimatur of power, that he strongly disapproved the construction of the new Supreme Court building. A marble palace, he thought, would not be conducive to the spirit of humility befitting those whose title to govern rests on the power of reason. When the edifice was completed — the story is that the construction was pursuant to one of those five to four divisions within the Court — Brandeis simply declined to set foot in the office allotted to him; he continued to work at home, while the office was used as an exhibition place for visitors to the Court. His wife, being of slightly softer fibre, permitted herself to be shown through the suite. But she quickly regained her moral austerity, for on returning home she announced: "They showed me the running ice water and the shower bath — two things my husband never uses!"

But we must not close on so frivolous a note. There is one final paradox to be asserted: Brandeis, unsurpassed in his mastery of the facts of our industrial civilization, deeply immersed in its operations, speaks nonetheless with the voice of another age. The year 1956* was the centennial of two disparate events which seem to symbolize

* The year 1956 marked the centennial of Brandeis, who was born in Louisville, Ky., on November 13, 1856, and died in Washington, D. C., on October 5, 1941.

more faithfully than Brandeis the time into which we have been born. We refer to the birth of Sigmund Freud and the invention of the Bessemer process for making steel. Freud was by no means the inventor of the irrational, and his own work is an application of reason itself; but from his analyses has sprung the cult of the irrational and the irresponsible. Bessemer did not invent the giant machine, but his discovery may be viewed as a portent of the mechanization which has overtaken us. It was precisely against irresponsibility and worship of bigness and the machine that Brandeis set his face. The contest is an unequal one: all that he or his kind can bring to it is a moral tradition which on some occasions we profess to be conserving and a legal method which in some quarters we purport to teach and practice.

Not only is the struggle an unequal one; there are those who have lately insisted that this admixture of moralism and law is exactly the source of our blunders and failures in the conduct of foreign relations. George Kennan, for example, has argued forcefully that we have relied on large moral platitudes and the naive trust of lawyers in paper documents — to which Hans Morgenthau adds that lawyers trained in the case-by-case approach cannot be expected to perform the kind of planning and long-range strategy required for an effective foreign policy. If these criticisms are valid, they cannot be confined to one aspect of government; they would be equally true of domestic as of foreign affairs. The writer suspects that the critics have in mind a stereotype of a lawyer as a mere mouthpiece and draftsman. It is true that a lawyer without vision or purpose is one of the hollow men, the stuffed men, as a moralist without practical resourcefulness is a beautiful but ineffectual angel. The fusion of the two in Brandeis is the best answer the writer knows to the critics of lawyers as statesmen.

The value of the study of history, as the Dutch historian Peter Geyl has recently reminded us, is not to make us clever for another time, but wise for always. That is the meaning, is it not, of all great teachers. It is the final meaning, we suggest, of the life of one who by fusing law and the moral life gave new depth and promise to both.

Lee M. Friedman

1871-1957

In Memoriam

When Lee M. Friedman died in Boston on August 7th, a generation came to an end. Back in the 1890's, a group of wealthy cultured Jews, many of them of the older stock, founded the American Jewish Historical Society. These men, not untouched by a pardonable pride, had as their intention to emphasize the contribution that the Jew had made to the discovery of America and to signalize the achievement of those Jewish pioneers who had helped bring this country to birth. Lee M. Friedman was part of that group, but as the century advanced and his understanding of historic values grew apace, he looked askance at filiopietism and recognized the claims of a more critical methodology. Though his work as a successful and very busy practitioner of law made it difficult for him to carry on detailed research, within the limitations of the time at his disposal and of his scientific training he succeeded in writing a series of works which will long be useful to the professional historian.

This man grew with the times. He was interested in people, in ideas, in a striking incident that could enlighten a whole epoch. The German newcomer who fled from Hitler, the East European who built an industry in a Vermont village, the Christian missionary who sought to settle Jews on the soil, the beginnings of the clothing industry — all these and a host of others were the themes that poured from his pen to help build the new science of American Jewish historiography. Sensing, after the destruction of European Jewry in World War II, that here in America a new and promising Jewish life was about to burgeon, he devoted himself intensively to the writing of American Jewish history. If he wrote on *Pioneers and Patriots*, and as a Jew put his best foot forward, he wrote also on

Pilgrims in a New Land, stressing the attempt of the Jew to adjust to the New World in which he found himself.

It is no exaggeration to say that he had an impassioned love for American Jewish history. His eyes brightened as he spoke of his books and as he displayed his manuscripts, and his whole being glowed as he puffed away at his pipe and talked of his latest find or sketched his next essay. As one who integrated devotion to the history of his people with a love and respect for American life and folkways, Lee Friedman may well serve as a pattern to those many brilliant Jewish professional men who seek new cultural horizons.

Because of his charm, his courtesy, his generosity, and his whole-souled attachment to his studies, we shall always hold him in our thoughts and salute his memory.

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

STANLEY F. CHYET

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."¹ 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,"² 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,³

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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."⁴ 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."⁵ Even economic rights were granted him by 1700.⁶ 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.⁷ It was also on this basis that Jews were tolerated wherever they dwelt in the colonies.⁸

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 "poli piety"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,"¹³ 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.¹⁴ Indeed, in contravention of the British Government's Naturalization Act of 1740, the Jew Aaron Lopez was denied citizenship in Rhode Island in 1761¹⁵ and "found it necessary to go over the border to Massachusetts, where he was naturalized without serious difficulty."¹⁶ 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."¹⁷ 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,¹⁸ while Massachusetts, Connecticut, and New Hampshire had no synagogues and at best only scattered Jewish families.¹⁹ 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.²⁰ According to Marcus, there was no colony in which prejudice was "directed solely against Jews."²¹ 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,"²² 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 "poli piety" 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,"²³ 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."²⁴ In addition, however, to persecuting Lutherans²⁵ and Quakers,²⁶ Stuyvesant, "a decided anti-Semite," demanded of the Dutch West India Company in 1654 that no Jews be permitted "to infest New Netherland."²⁷ 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,"²⁸ 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."²⁹ 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."³⁰

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."³¹ 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.³² 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,³³ 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.³⁴ 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 Socinian³⁵ should be denied all civil rights."³⁶ 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 1716,³⁷ and the election law of 1759 made Protestantism a requirement.³⁸ 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.³⁹

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."⁴⁰ 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.⁴¹

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."⁴² The Revolution, although it achieved little for the Jew respecting political rights in the newly independent states themselves,⁴³ found him on the whole a Whig.⁴⁴ The very fact, as Marcus points out, that the Jew enjoyed in America "so many rights and privileges,"⁴⁵ 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.⁴⁶

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.⁴⁷ 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.⁴⁸

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.⁴⁹ 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 Quebecois] 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]⁵⁰

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.⁵¹ 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,⁵²

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 denomina-

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 exercised 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."⁶⁹ 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.⁷⁰

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 1779,⁷¹ 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 present⁷²

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 maintenance 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 Commonwealth, 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 controul [*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.⁸⁰

“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.⁸¹

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,⁸²

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.⁸³

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,"⁸⁴ 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."⁸⁵ 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."⁸⁶

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, 1777.⁸⁷ 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"⁸⁸] 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.⁸⁹

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 doth 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.

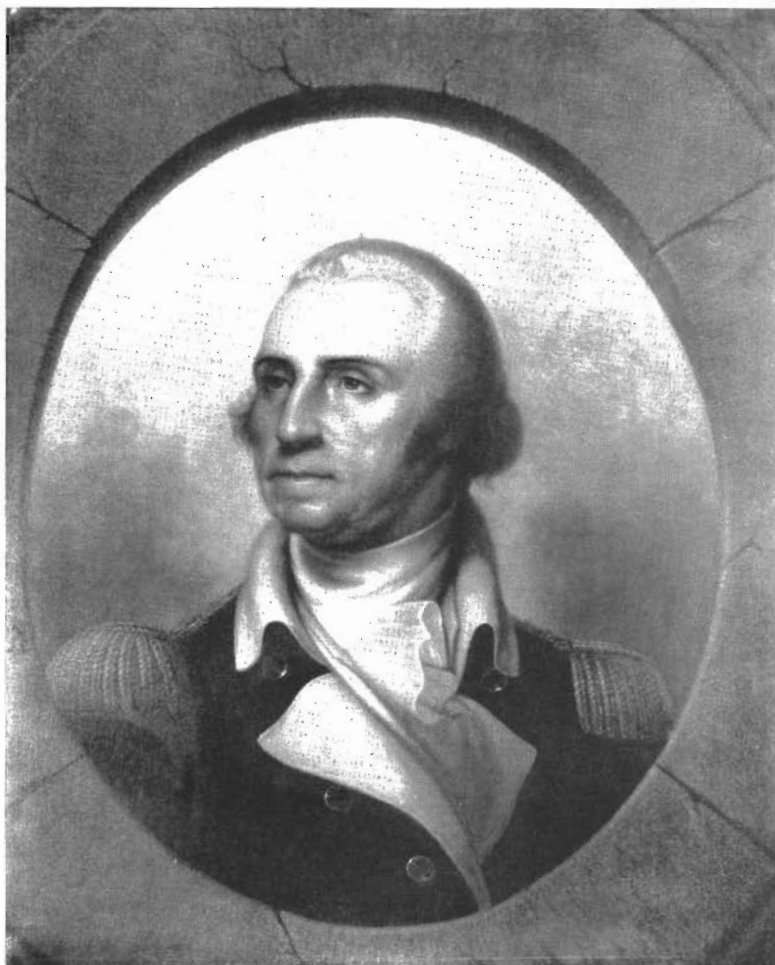
For the first time, Jews were full citizens in a North American polity. That, furthermore, the convention which framed and adopted this constitution was aware of the unique character of its achievement and that it intended the Jews as such to be fully emancipated is manifest in the convention records.⁹¹

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

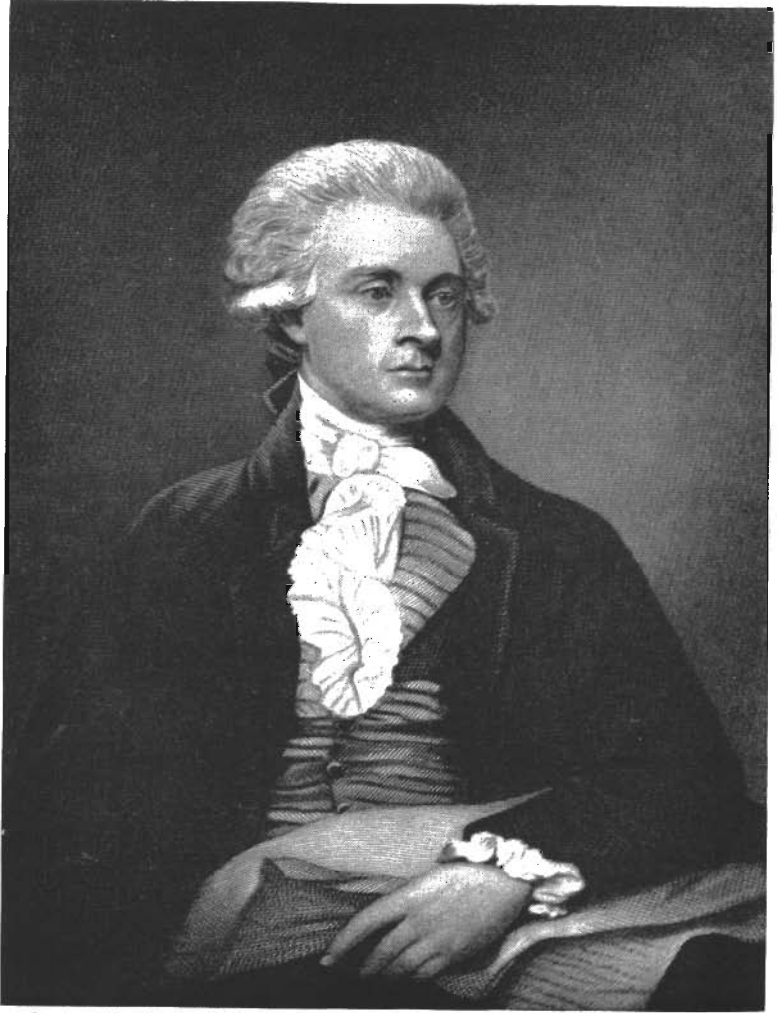
ordain, determine, and declare that it shall be in the discretion of the legislature to naturalize all such persons, and in such manner, as they shall think proper; provided, all such of the persons so to be by them naturalized, as being born in parts beyond sea, and out of the United



Courtesy, New York Public Library

GEORGE WASHINGTON

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



Courtesy, New York Public Library

THOMAS JEFFERSON

Author of the Declaration of Independence, 1776, and of the
Virginia Act for Religious Freedom, 1785

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]⁹⁴

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,"¹⁰⁵ 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.¹⁰⁶

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.¹⁰⁷

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"¹⁰⁸ 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.¹⁰⁹

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.¹¹⁰

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.¹¹¹

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"¹¹² 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";¹²³ insisted that "no person shall be capable of being elected a senator, who is not of the Protestant religion";¹²⁴ 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."¹²⁵ 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.¹²⁶ 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 ffree inhabitants of our island, called Rhode-Island, and the rest of the Colonie of Providence Plantations . . . [were] pursueing, with peaceable and loyall mindes, their sober, serious and religious intentions, of godlie edifieing themselves, and one another, in the holie Christian ffaith and worshipp as they were perswaded.¹²⁷

Whereas, in the words of the charter,

they have ffreely 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 sov-ereignetye, and will lay in the hearts of men the strongest obligations to true loyaltie,

King Charles had consented

to encourage the hopefull undertakinge of [his] sayd loyall 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] loveinge subjects; and to preserve unto them that libertye, in the true Christian ffaith and worshipp of God, which they have sought . . . to enjoye.¹²⁸

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 molested, punished, disquieted, or called in question, for any differences in opinione 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 their owne judgments and consciences, in matters of religious concernments, throughout the tract of lande hereafter mentioned.¹²⁹

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 their 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 12, 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 consciences, 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.²⁴⁴ 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 destroys 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.²⁴⁵

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 religious 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 commonwealth, 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,¹⁵⁴ 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.¹⁵⁵

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.¹⁵⁶

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 1776.¹⁵⁷ 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.¹⁵⁸

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."¹⁵⁹ The requirement endured likewise that members of the House of Representatives, senators, and the governor be Protestants.¹⁶⁰ 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,¹⁶¹

full political rights for the Jews were not conceded until the so-called "Jew Bill" of December, 1824, which became law in 1826.¹⁶² This "act for the relief of the Jews in Maryland," championed by a Scottish immigrant, Thomas Kennedy,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.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.¹⁶⁵

That confirmation came in 1826, largely through the efforts of State Senator Reverdy Johnson,¹⁶⁶ but it was actually not until 1867 that the Maryland constitution was so modified as to become fully acceptable to all non-Christians except atheists and agnostics.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,"¹⁶⁸ was abolished,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.

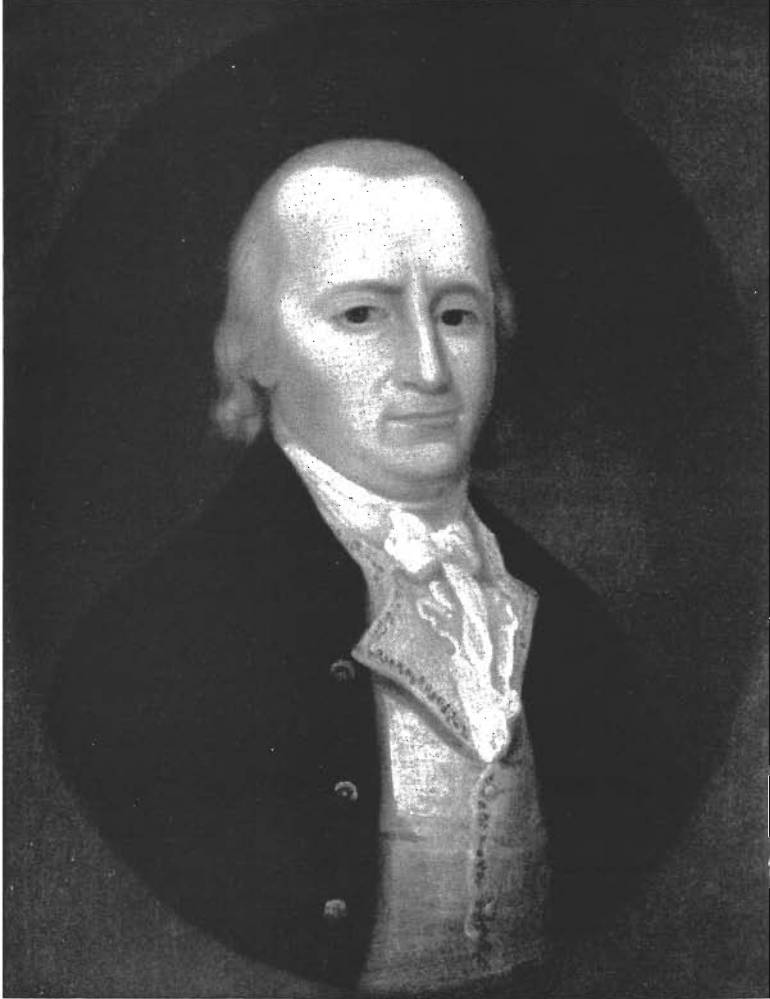
Art. VII. No oath, declaration, or subscription, excepting the oath prescribed in the preceding article, and the oath of office, shall be required of the governor, lieutenant-governor, councillors, senators, or representatives, to qualify them to perform the duties of their respective offices.¹⁷⁰

It was not, however, until November 11, 1833,¹⁷² 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 morality¹⁷²

and limiting equality “under the protection of the law” to “every denomination of Christians.”¹⁷³ 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.¹⁷⁴



The Harry Stone Gallery, New York

JONAS PHILLIPS

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"¹⁷⁵ 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.¹⁷⁶

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 Protestants¹⁷⁷ was amended in 1835 to extend the right of holding public office to all who admitted "the truth of the Christian religion."¹⁷⁸ Jews, despite the instance of Jacob Henry, a Jewish officeholder who evaded the law, continued under disabilities until 1868.¹⁷⁹

VERMONT AND TEXAS

Vermont and Texas, alone¹⁸⁰ 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,"¹⁸¹ and in July, 1777, a convention assembled at Windsor to frame a constitution,¹⁸²

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.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.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,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,¹⁸⁶ 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.¹⁸⁷

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,"¹⁸⁸ 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,¹⁸⁹ and struck away the religious restrictions that had characterized the two previous constitutions.¹⁹⁰ 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 1803.¹⁹¹ 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,"¹⁹² the constitution was translated into English for the benefit of the United States immigrants who had settled in the Mexican state of Texas.¹⁹³ Whatever the merits of this constitution, the "polipietty" which the New Englander Ward had scored years before as "the greatest impiety in the world"¹⁹⁴ 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.¹⁹⁵

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.¹⁹⁶

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.¹⁹⁷

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. . . .¹⁹⁸

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.¹⁹⁹

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 territory²⁰²

— 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,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”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.²⁰⁵

No less a personage than Jefferson himself had drafted Kentucky’s bill of rights,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.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.²⁰⁸

This last had, of course, been inspired by the Pennsylvania constitution of 1790.²⁰⁹

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,²¹⁰ 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.²¹¹

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.²¹²

This, too, was derived from Pennsylvania's constitution of 1790.²¹³ All these sections of Tennessee's 1796 constitution were repeated almost verbatim in her next constitution, adopted in 1834.²¹⁴

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-seven²¹⁵

— 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.²¹⁶

This last was inspired, of course, by the third article of the Northwest Ordinance.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.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.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,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.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 1787²²² 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.²²³

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 burthened with those of another.²²⁴

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.²²⁵

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.].²²⁶

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."²²⁷], shall be considered, deemed, and taken [to be] fundamental conditions and terms, upon which the said state is incorporated in the Union.²²⁸

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.²²⁹

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.²³⁰

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 1792.²³¹

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.”²³² 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,²³³ 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.²³⁴

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 1777²³⁵ and the fourth article, tenth section, of Georgia’s 1798 constitution,²³⁶ 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,²³⁷

and also decreed that

no preference shall ever be given by law to any religious sect or mode of worship.²³⁸

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.²³⁹

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.²⁴⁰

This was a repetition of the eighth article, second section, of Tennessee's constitution of 1796,²⁴¹ itself essentially a restatement of a similar provision in Pennsylvania's constitution of 1790.²⁴²

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.²⁴³

All these provisions of the 1817 constitution were repeated in Mississippi's next constitution, ratified in 1832.²⁴⁴ 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. . . .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 Ordinance²⁴⁶ — 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 1787.²⁴⁷ 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.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.²⁴⁹

These laws included, of course, the provisions of the Northwest Ordinance which had been extended to the Mississippi Territory at its organization in 1800²⁵⁰ 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."²⁵¹ 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,²⁵² 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.²⁵³ 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.²⁵⁴

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.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.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.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.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 *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]²⁵⁹

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]²⁶⁰

Prior to June 4, 1812, Missouri had been designated the Territory of Louisiana.²⁶¹ 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 burthened 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.²⁶²

This stipulation recapitulated, of course, a Congressional act of 1804²⁶³ 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.²⁶⁴ 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,²⁶⁵

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.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 1799.²⁶⁷

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 1799.²⁶⁸ 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."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.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.²⁷¹

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.²⁷²

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.²⁷³

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,²⁷⁴

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.²⁷⁵

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

¹ Jacob Rader Marcus, *Early American Jewry: The Jews of Pennsylvania and the South, 1655-1790* (Philadelphia: Jewish Publication Society, 1953), II, 517-18.

² George Bancroft, *History of the United States* (23d ed.; Boston, 1864), VII, 354, quoted in Sanford H. Cobb, *The Rise of Religious Liberty in America: A History* (New York: Macmillan, 1902), p. 1.

³ Cobb, p. 5.

⁴ Marcus, II, 514.

⁵ *Ibid.*, pp. 514-15.

⁶ *Ibid.*, p. 515.

⁷ Cobb, p. 8.

⁸ Including Rhode Island; see pp. 17, 39-40, below.

⁹ Cobb, p. 67.

¹⁰ *Ibid.*, p. 68.

¹¹ By "poliopiety," 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.

¹³ Cobb, p. 71.

¹⁴ Marcus, II, 519.

¹⁵ *Ibid.*, p. 515.

¹⁶ Anson Phelps Stokes, *Church and State in the United States*, with an introduction by Ralph Henry Gabriel (New York: Harper & Bros., 1950), I, 859.

¹⁷ Cobb, p. 71.

¹⁸ Marcus, II, 521.

¹⁹ *Ibid.*, p. 519.

²⁰ *Ibid.*, p. 524.

²¹ *Ibid.*, pp. 523-24.

²² Cobb, p. 302.

²³ *Ibid.*, pp. 302-3.

²⁴ *Ibid.*, p. 304.

- ²⁵ *Ibid.*, pp. 313-15.
- ²⁶ *Ibid.*, pp. 318-21.
- ²⁷ *Ibid.*, p. 316.
- ²⁸ Marcus, II, 516-17.
- ²⁹ Quoted in Cobb, p. 316.
- ³⁰ Quoted in Cobb, p. 317.
- ³¹ *Ibid.*, p. 302.
- ³² Marcus, II, 517.
- ³³ *Ibid.*, p. 516. Jews were formally naturalized also in Massachusetts, South Carolina, and Maryland.
- ³⁴ Quoted in Cobb, p. 444.
- ³⁵ Socinianism, an anti-Trinitarian heresy founded by the Italian theologian Faustus Socinus (1539-1604), was the forerunner of modern Unitarianism.
- ³⁶ Cobb, p. 450.
- ³⁷ Marcus, II, 522.
- ³⁸ Abram Vossen Goodman, *American Overture: Jewish Rights in Colonial Times* (Philadelphia: Jewish Publication Society, 1947), p. 165.
- ³⁹ Marcus, II, 522.
- ⁴⁰ Cobb, p. 376.
- ⁴¹ *Ibid.*, p. 377.
- ⁴² Marcus, II, 527.
- ⁴³ *Ibid.*, p. 514.
- ⁴⁴ *Ibid.*, pp. 530-31.
- ⁴⁵ *Ibid.*, p. 527.
- ⁴⁶ *Ibid.*, pp. 526-27.
- ⁴⁷ Stokes, I, 459.
- ⁴⁸ Quoted in Stokes, I, 460.
- ⁴⁹ *Ibid.*, p. 459.
- ⁵⁰ *Ibid.*, pp. 460-61.
- ⁵¹ Marcus, II, 529; Cobb, p. 502.
- ⁵² The Declaration of Independence.
- ⁵³ "The Confederate Congress, July 13, 1787, an ordinance for the government of the territory of the United States northwest of the river Ohio," Sec. 13, in Howard W. Preston, ed., *Documents Illustrative of American History 1606-1863* (4th ed.; New York: G. P. Putnam's Sons, 1899), p. 246.
- ⁵⁴ *Ibid.*, Art. I.
- ⁵⁵ *U. S. Const.*, Art. VI, Sec. 3.
- ⁵⁶ Cobb, p. 508, mentions only the surnames of "Major Lusk" and "the Rev. Mr. Shute." Stokes, I, 603, calls Shute a Baptist. For further information on Shute, see Jonathan Elliot, ed., *The Debates in the Several State Conventions on the Adoption of the Federal Constitution, as Recommended by the General Convention at Philadelphia, in 1787* (2d ed.; Philadelphia: J. B. Lippincott & Co., 1866), II, 178. For Lusk, see Elliot, II, 181, and also *Heads of Families at the First Census of the United States Taken in the Year 1790: Massachusetts* (Washington: Government Printing Office, 1908), p. 38.
- ⁵⁷ *U. S. Const.*, Amend. I.
- ⁵⁸ Two states retained their colonial charters: Connecticut until 1818, and Rhode Island until 1842.
- ⁵⁹ *N. H. Const.* (1776), in Francis Newton Thorpe, ed., *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America* (Washington: Government Printing Office, 1909), IV, 2452.
- ⁶⁰ Thorpe, VI, 3241, note a.
- ⁶¹ *S. C. Const.* (1776), Thorpe, VI, 3241-42.
- ⁶² *S. C. Const.* (1776), XI, Thorpe, VI, 3245.
- ⁶³ Goodman, p. 165.
- ⁶⁴ *S. C. Const.* (1776), XI, Thorpe, VI, 3245. It is of interest to note that, despite

the strictures of the constitution, Francis Salvador (1747-1776), a London-born Jew, served as a deputy to South Carolina's Provincial Congresses in 1775 and 1776. See Harry Simonhoff, *Jewish Notables in America, 1776-1865: Links of an Endless Chain*, with a foreword by Dr. David de Sola Pool (New York: Greenberg, 1956), pp. 1-4.

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

⁶⁶ Quoted in Stokes, I, 303. According to William Wirt Henry, *Patrick Henry: Life, Correspondence, and Speeches* (New York, 1891), I, 430-31 (cited in Stokes, I, 312-13), Patrick Henry wrote the original — and, to Madison, objectionable — draft of Section 16. Cobb, 491-92, concurs in this view, but Stokes, I, 312-13, is sure that Mason was the author.

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

⁶⁸ James Madison to William Bradford, Jr., Jan. 27, 1774, quoted in Cobb, p. 490.

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 peculiar 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.

⁷² *Va. Const.* (1776), Thorpe, VII, 3816.

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.

⁷⁶ *Pa. Const.* (1776), Declaration of Rights, I-II, Thorpe, V, 3082.

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, 1689-90. 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.

⁸⁶ *Ga. Const.* (1777), Art. VI, Thorpe, II, 779.

⁸⁷ Thorpe, V, 2624, note.

⁸⁸ *N. Y. Const.* (1777), XXXV, Thorpe, V, 2635.

⁸⁹ *N. Y. Const.* (1777), XXXV, Thorpe, V, 2636.

⁹⁰ *N. Y. Const.* (1777), XXXVIII, Thorpe, V, 2636-37.

⁹¹ Marcus, II, 530.

⁹² Quoted in Stokes, I, 405.

⁹³ Art. XXXVIII. See above, note 90.

⁹⁴ *N. Y. Const.* (1777), XLII, Thorpe, V, 2637-38.

⁹⁵ Stokes, I, 406.

⁹⁶ See p. 24, above.

⁹⁷ Thorpe, VI, 3248, note a.

⁹⁸ *S. C. Const.* (1778), III, Thorpe, VI, 3249.

⁹⁹ *S. C. Const.* (1778), XIII, Thorpe, VI, 3251-52.

¹⁰⁰ *S. C. Const.* (1778), XII, Thorpe, VI, 3250.

¹⁰¹ *S. C. Const.* (1778), XIII, Thorpe, VI, 3252.

¹⁰² *S. C. Const.* (1778), XII, XIII, Thorpe, VI, 3250, 3252.

¹⁰³ *S. C. Const.* (1778), XXXVIII, Thorpe, VI, 3255-57.

¹⁰⁴ Stokes, I, 434.

¹⁰⁵ *Mass. Const.* (1780), Preamble, Thorpe, III, 1889.

¹⁰⁶ *Mass. Const.* (1780), Pt. I, Art. I, Thorpe, III, 1889.

¹⁰⁷ *Mass. Const.* (1780), Pt. I, Art. II, Thorpe, III, 1889.

¹⁰⁸ *Mass. Const.* (1780), Pt. I, Art. III, Thorpe, III, 1889.

¹⁰⁹ *Ibid.*, pp. 1889-90.

¹¹⁰ *Ibid.*, p. 1890.

¹¹¹ *Ibid.*

¹¹² *Mass. Const.* (1780), Pt. II, Ch. II, Sec. I, Art. II, Thorpe, III, 1900.

¹¹³ *Mass. Const.* (1780), Pt. II, Ch. II, Sec. II, Art. I, Thorpe, III, 1903.

¹¹⁴ *Mass. Const.* (1780), Pt. II, Ch. VI, Art. I, Thorpe, III, 1908.

¹¹⁵ 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 perswaded 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.”

¹¹⁶ *Mass. Const.* (1780), Pt. II, Ch. V, Sec. I, Arts. I, III, Thorpe, III, 1906-7.

¹¹⁷ See p. 24, above.

¹¹⁸ Thorpe, IV, 2453, note b.

¹¹⁹ *N. H. Const.* (1784), Pt. I, Arts. II, V, Thorpe, IV, 2453-54.

¹²⁰ *N. H. Const.* (1784), Pt. I, Art. IV, Thorpe, IV, 2454.

¹²¹ *N. H. Const.* (1784), Pt. I, Art. VI, Thorpe, IV, 2454.

¹²² *Ibid.*

¹²³ *N. H. Const.* (1784), Pt. II, House of Representatives, Thorpe, IV, 2461-62.

¹²⁴ *N. H. Const.* (1784), Pt. II, Senate, Thorpe, IV, 2460.

¹²⁵ *N. H. Const.* (1784), Pt. II, Executive Power. — President, Thorpe, IV, 2462-63.

¹²⁶ Marcus, II, 519.

¹²⁷ *R. I. Colonial Charter* (1663), Thorpe, VI, 3211.

¹²⁸ *Ibid.*, p. 3212.

¹²⁹ *Ibid.*, p. 3213.

¹³⁰ *Ibid.*

¹³¹ See p. 17, above.

¹³² Leo Pfeffer, *Church, State, and Freedom* (Boston: Beacon Press, 1950), p. 104.

¹³³ Cobb, p. 72.

¹³⁴ *Conn. Colonial Charter* (1662), Thorpe, I, 533-34.

¹³⁵ Stokes, I, 408.

¹³⁶ Thorpe, I, 537, note.

¹³⁷ *Conn. Const.* (1818), Art. I, Sec. 1, Thorpe, I, 537.

¹³⁸ *Conn. Const.* (1818), Art. I, Sec. 3, Thorpe, I, 537.

¹³⁹ *Conn. Const.* (1818), Art. I, Sec. 4, Thorpe, I, 537.

¹⁴⁰ *Conn. Const.* (1818), Art. VII, Thorpe, I, 544-45.

¹⁴¹ Stokes, I, 416.

¹⁴² Goodman, p. 30.

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.

¹⁴⁵ Quoted in Francis W. Hirst, *Life and Letters of Thomas Jefferson* (New York: Macmillan, 1926), pp. 138-40.

¹⁴⁶ *Va. Const.* (1830), Art. III, Sec. II, Thorpe, VII, 3824-25.

¹⁴⁷ *Ga. Const.* (1789), Art. I, Sec. 7, Thorpe, II, 786; cf. *Ga. Const.* (1777), Art. VI, Thorpe, II, 779.

¹⁴⁸ *Ga. Const.* (1789), Art. IV, Sec. 5, Thorpe, II, 789.

¹⁴⁹ *Ga. Const.* (1798), Art. IV, Sec. 10, Thorpe, II, 800-801.

¹⁵⁰ See pp. 33-35, above.

¹⁵¹ *S. C. Const.* (1790), Art. I, Secs. 6, 8, Thorpe, VI, 3259-60.

¹⁵² *S. C. Const.* (1790), Art. VIII, Sec. 1, Thorpe, VI, 3264.

¹⁵³ See p. 32, above.

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.* (1799), Art. X, Sec. 28, Thorpe, III, 1291; *Vt. Const.* (1793), Sec. 42, Thorpe, VI, 3771; *Ga. Const.* (1789),

- Amend. VIII, Thorpe, II, 790; *Tenn. Const.* (1796), Art. X, Sec. 4, Thorpe, VI, 3421-22; *Tenn. Const.* (1834), Art. XI, Sec. 12, Thorpe, VI, 3440; *Ohio Const.* (1802), Art. VIII, Sec. 28, Thorpe, V, 2912; *Ind. Const.* (1816), Art. I, Sec. 24, Thorpe, II, 1059; *Miss. Const.* (1817), Art. I, Conclusion, Thorpe, IV, 2035; *Miss. Const.* (1832), Art. I, Conclusion, Thorpe, IV, 2051; *Ala. Const.* (1819), Art. I, Sec. 30, Thorpe, I, 98; *Me. Const.* (1819), Art. I, Sec. 24, Thorpe, III, 1649; *Ark. Const.* (1836), Art. II, Sec. 24, Thorpe I, 270-71; and *Mich. Const.* (1835), Art. I, Sec. 21, Thorpe, IV, 1932.
- ¹⁵⁷ See p. 27, above.
- ¹⁵⁸ *Del. Const.* (1792), Art. I, Sec. 2, Thorpe, I, 568.
- ¹⁵⁹ *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.
- ¹⁶⁰ *N. H. Const.* (1792), Pt. II, Secs. XIV, XXIX, XLII, Thorpe, IV, 2477, 2479, 2481.
- ¹⁶¹ *Md. Const.* (1776), Amend. XIII, Thorpe, III, 1705. This article amended Art. XXXIII of the 1776 constitution. See note 80, above.
- ¹⁶² Stokes, I, 874.
- ¹⁶³ 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.
- ¹⁶⁴ "An act for the relief of the Jews in Maryland," Maryland, 1824, Sec. 1, in E. Milton Altfeld, *The Jew's Struggle for Religious and Civil Liberty in Maryland* (Baltimore: M. Curlander, 1924), p. 204.
- ¹⁶⁵ *Ibid.*, Sec. 2.
- ¹⁶⁶ Stokes, I, 874.
- ¹⁶⁷ *Ibid.*, p. 878.
- ¹⁶⁸ See p. 37, above.
- ¹⁶⁹ Thorpe, III, 1908, note a.
- ¹⁷⁰ *Mass. Const.* (1780), Amends. VI-VII, Thorpe, III, 1912-13.
- ¹⁷¹ *Mass. Const.* (1780), Amend. XI, Thorpe, III, 1914, 1922.
- ¹⁷² See p. 36, above.
- ¹⁷³ See p. 37, above.
- ¹⁷⁴ See note 171, above.
- ¹⁷⁵ See pp. 31-32, above.
- ¹⁷⁶ *N. Y. Const.* (1821), Art. VII, Sec. 3, Thorpe, V, 2648.
- ¹⁷⁷ See p. 30, above.
- ¹⁷⁸ *N. C. Const.* (1776), Amend. IV, Sec. 2, Thorpe, V, 2799.
- ¹⁷⁹ Stokes, I, 864-65.
- ¹⁸⁰ Maine, originally part of Massachusetts, was also not subject to the ordinance of 1787. See p. 62, below.
- ¹⁸¹ *The Encyclopedia Americana* (New York: Americana Corp., 1945), XXVIII, 26.
- ¹⁸² Thorpe, VI, 3737, note b.
- ¹⁸³ *Vt. Const.* (1777), Preamble, Thorpe, VI, 3739.
- ¹⁸⁴ *Vt. Const.* (1777), Ch. I, Sec. III, Thorpe, VI, 3740.
- ¹⁸⁵ *Vt. Const.* (1777), Ch. II, Sec. IX, Thorpe, VI, 3743.
- ¹⁸⁶ *Vt. Const.* (1786), Ch. II, Sec. XII, Thorpe, VI, 3757.
- ¹⁸⁷ *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.
- ¹⁸⁹ *Vt. Const.* (1793), Ch. I, Art. 3, Thorpe, VI, 3762.
- 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.
- ¹⁹⁵ *Mex. Const.* (1824), Title I, Art. I, Sec. 3, Thorpe, VI, 3476.
- 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, 3536.
- ²⁰² See p. 23, above.
- ²⁰³ 1st Cong., 2d sess., "An act for the government of the territory of the United States, south of the river Ohio," Thorpe, III, 1263.
- 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.
- ²⁰⁸ *Ky. Const.* (1792), Art. XII, Sec. 28, Thorpe, III, 1276; *Ky. Const.* (1799), Art. X, Sec. 28, Thorpe, III, 1291.
- 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.
- ²¹⁷ "The Confederate Congress, July 13, 1787, an ordinance for the government of the territory of the United States northwest of the river Ohio," Art. III, Preston, p. 247.
- 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 thereof," Sec. 4, Thorpe, III, 1365.

²²² 8th Cong., 2d sess., "An act further providing for the government of the territory 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 government, 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 [1819]," Art. V, Thorpe, II, 651.

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 government, 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.

- ²⁴⁹ 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.
- ²⁵⁰ See p. 59, above.
- ²⁵¹ See pp. 54, 59, above.
- ²⁵² See p. 60, above.
- ²⁵³ 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.
- ²⁵⁴ *Ala. Const.* (1819), Art. I, Secs. 3-7, Thorpe, I, 97.
- ²⁵⁵ *Ala. Const.* (1819), Art. I, Sec. 30, Thorpe, I, 98.
- ²⁵⁶ See p. 54, above.
- ²⁵⁷ *Me. Const.* (1819), Art. I, Sec. 3, Thorpe, III, 1647.
- ²⁵⁸ See pp. 35-37, 47-48, above.
- ²⁵⁹ *Me. Const.* (1819), Art. VII, Sec. 5, Thorpe, III, 1660.
- ²⁶⁰ *Mo. Const.* (1820), Art. XIII, Sec. 18, Thorpe, IV, 2164.
- ²⁶¹ See p. 56, above.
- ²⁶² 12th Cong., 1st sess., "An act providing for the government of the Territory of Missouri," Sec. 14, Thorpe, IV, 2143.
- ²⁶³ See pp. 56, 63, above.
- ²⁶⁴ "By the President of the United States [of America]. A Proclamation [August 10, 1821]," Thorpe, IV, 2150.
- ²⁶⁵ *Mo. Const.* (1820), Art. XIII, Sec. 4, Thorpe, IV, 2163.
- ²⁶⁶ *Mo. Const.* (1820), Art. XIII, Sec. 5, Thorpe, IV, 2163.
- ²⁶⁷ See p. 54, above.
- ²⁶⁸ *Ark. Const.* (1819), Art. II, Secs. 3-4, 24, Thorpe, I, 269-71.
- ²⁶⁹ *Ark. Const.* (1819), Art. VII, General Provisions, Sec. 2, Thorpe, I, 284.
- ²⁷⁰ 8th Cong., 2d sess., "An act to divide the Indiana Territory into two separate governments," Sec. 2, Thorpe, IV, 1925-26.
- ²⁷¹ *Mich. Const.* (1835), Art. I, Secs. 3-6, Thorpe, IV, 1931.
- ²⁷² *Mich. Const.* (1835), Art. XII, Sec. 1, Thorpe, IV, 1939-40.
- ²⁷³ Cobb, pp. 9-10.
- ²⁷⁴ Quoted in Cobb, pp. 12-13.
- ²⁷⁵ Quoted in Stokes, I, 425.
- ²⁷⁶ 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.
- ²⁷⁷ Cobb, p. 2.

Reviews of Books

ARONSON, DAVID. *The Jewish Way of Life*, revised edition. New York: The United Synagogue of America. 1957. x, 227 pp. \$3.75

The Jewish Way of Life is a comprehensive, popular presentation of normative Judaism — Talmudic, medieval, Hasidic, and, to a lesser extent, modern. A readable synthesis designed for the Jewish layman and perhaps also for confirmation classes, this book covers the Jewish way of life as it manifests itself in the Jew's relationship to God and the Jewish community, in justice and charity, in the approach to social problems, and in the role of the Jewish people in history. This synthesis is too simple and unproblematic, however, to satisfy the thoughtful layman, too lacking in intensity and religious fervor to inspire those young people who ask whether, after all, there is a Jewish way of life that can call forth their highest allegiance.

If the first chapter, "Experiencing God's Presence," is an excellent statement of man as co-creator with God, the second, "Why Evil, Suffering, Death?", falls short both of the urgency of the problem and of the profundity of Jewish tradition. Rabbi Aronson's "answer" to Job's question is "the divine plan" whose "progressive pattern" man may glimpse in history: "What may appear evil for the moment may prove to be good when the whole plan is revealed." Like Alexander Pope, Rabbi Aronson assumes that "whatever is is right" — a sentiment worthy of the eighteenth century, with its vision of Newtonian harmony, but hardly of our era of genocide and global war!

In general, the author summarizes but does not probe, raises issues but quickly moves on to others. As the middle way between leaving too little room for the living present and failing to respect the authority of the past, he offers "a conscious evolution" in which we "study the experiences and accumulated wisdom of the past" and also "give due consideration to the spiritual and moral needs of the present." In actual fact, all three branches of American Judaism represent, each in its own way, a combination and interaction of the present and the past, and the adherents of each hold that their branch alone has the right combination. Yet Rabbi Aronson makes this central paradox of modern Judaism a simple matter of moderation, needing only a few happy phrases to produce a working harmony! The reader could never discover from this book either that there are important distinc-



Courtesy, B'nai B'rith, Washington, D. C.

The B'nai B'rith, founded in 1843, dedicated its new national headquarters, in Washington, D. C., in 1957

tions between traditional and modern Judaism or that there are fundamental divergencies between the various branches of modern Judaism. The attempt to reach a synthesis has often resulted in the synthetic, as in the blending of quotations from the medieval Jewish philosophers and the Hasidim, from Mordecai M. Kaplan and Abraham Heschel, as if they were really essentially the same or part of a common approach.

One wonders why the author is so modern and specific when dealing with labor problems and Zionism, when in all other areas, from Judaism to the relation of religion to science, he is content to summarize the tradition with none or only the most general applications to modern situations. "Law and justice must be enforced against groups as against individuals," he writes, and the test of whether this attitude is being abused by a nation that makes war against another "is not difficult to apply": "The nation which plans, when victorious, to accept no spoils of war, and demands no privileges for itself which it is not willing to grant to others — that nation is motivated by a righteous cause." In the light of modern history, this attempt to dismiss the most agonizing problem of our time in a pat phrase appears naive and myopic. The relation of Judaism to other religions is treated with a similar superficiality: the essence of all religions is simply defined as bringing man into communion with the Deity and setting up an ethical rule of life, while the differences between religions are explained away on the basis of the accidents of birth and history. "It is the manner in which the religious impulse realizes itself in him; and to him, therefore, it is a true religion." This easy relativism makes truth itself a subjective matter and divests it of its essential meaning. Religious impulses do not "realize themselves," moreover. Religion is a relationship between man and God or it is *nothing*. To reduce it to the merely immanent makes God merely a means to some higher independent goal, such as "self-realization" or "happiness."

In his treatment of the chosen people, the author waters down the meaning of Israel's "chosenness" to a general moral ideal, one, moreover, which is not really concerned with the people's becoming holy *as a people*. This book, in fact, seems really less concerned with the covenant between Israel and God than with the "group personality that constitutes the sense of peoplehood and the experience of nationhood." This Reconstructionist approach permeates the whole of the book and is the real key to its synthesis. This mystique of a "group personality" may help us understand how Rabbi Aronson, an American, identifies himself with the sovereign political State of Israel to the extent of speaking in its name. But by what right does a *rabbi* identify the State of Israel with the Zion of the prophets

without placing a single critical judgment or demand on that state? If "the great need of our generation is a leadership endowed with prophetic vision and courage," as Rabbi Aronson suggests, there is little of it to be found in this book. The criteria which Mordecai M. Kaplan points out for the progress of Judaism and which Aronson advances in his epilogue — "continuity," "individuality," and "organic character" — are really no criteria at all but facile labels that anyone is free to apply to his own selection of Judaism. There is no reason on the face of it why "identification with Jewish Peoplehood" should, as Professor Kaplan and Rabbi Aronson hope, "presage that brotherhood of the nations which will mold this world of ours into the Kingdom of God." And on the basis of this book, there seems still less chance of realizing the hope placed in American Jewry by Milton Steinberg and quoted by Rabbi Aronson in his conclusion:

An American Jewry standing four square by Judaism's great moral ideals, sharpening them into the keenest contemporaneousness, applying them boldly, imaginatively — so that the name Jew is a synonym for the practice and advocacy of justice, compassion, freedom and peace.

Would that it were so!

Bronxville, New York

MAURICE FRIEDMAN

GLAZER, NATHAN. *American Judaism*. Chicago: The University of Chicago Press. 1957. xi, 176 pp. \$3.50

This volume appears in a series entitled *The Chicago History of American Civilization*. It is a historical presentation of Jewish religious experiences and institutions in America. The author is a competent sociologist, and writes very well. He has made good use of published materials on American Jewish history, and has even gone to a number of unpublished studies, including several dissertations by graduates of the Hebrew Union College - Jewish Institute of Religion. He has also had the advantage of consulting with specialists in the field of American Jewish history.

The result is a book in which there are few misstatements or distortions of fact. Much of importance is omitted, but then, of course, one can not include everything in so short a summary. The tone of the book is thoughtful, judicious, and not unsympathetic. Yet it leaves this reader, for one, profoundly dissatisfied.

The reason is that the author, so far as one may judge from his book, has no positive Jewish convictions of his own. He gives little evidence of

hostility to religion. One gets the impression at times that he would be happy if he did have some Jewish religious beliefs. But though he writes without apparent animus, he writes likewise without an iota of real affection or ardor.

Our author, for example, has a good deal to say about David Einhorn and about the inclusion of material from Einhorn's prayer book in the *Union Prayerbook*; but he does not convey anything of the deep and positive piety that breathes forth from some of Einhorn's original prayers. Indeed, he does not seem to be aware that Reform and Conservative congregations contain some genuinely religious personalities, both in pew and in pulpit. The fact that such personalities are not excessively numerous is beside the point: profoundly pious men and women have never been plentiful.

Dr. Glazer discusses at considerable length the dual character of Judaism: as the life of an ethnic community, and as a religion. He is at some pains to explain the peculiar character of the Jewish social group. But he gives only the vaguest account of the Jewish religion at any stage of its development. He properly points out that Judaism emphasizes action rather than creed; but this action appears as little more than tribal custom. A reader with no previous knowledge of Judaism could hardly guess that there are basic theological and ethical principles upheld by all believing Jews, orthodox or modernist. Nor would he suppose that Judaism has anything of positive value to contribute to American life. And yet organized Jewish life in the United States has exercised a constructive influence for social betterment and improved philanthropic practices. In many communities, the Temple or Jewish Center has been the civic forum and the citadel of liberalism. Prayers from the Jewish liturgy have been added to Christian manuals of worship. And surely Dr. Glazer should have mentioned the important contribution made initially by the Central Conference of American Rabbis in its struggle to keep sectarian influences out of the public schools, a struggle which has more recently been carried on by the secular defense agencies.

Our author reports the vast sums raised by American Jewry for the United Jewish Appeal, without pointing out to the casual reader that this act of generosity has no parallel in the entire history of philanthropy. He makes no mention of the interesting phenomenon of Jewish sobriety; and he dismisses in a few dry sentences the fact that Jews present a high level of family stability and a low percentage of crime and juvenile delinquency. He does not take note of the positive religious results that have been obtained in the youth organizations of national Jewish bodies, or of the

increasing proportion of boys from Conservative and Reform homes who are preparing for the rabbinic office in their respective denominations.

As an honest man, our author confesses that quick and facile sociological explanations of the Jewish revival of the last fifteen years are not easily achieved. He senses that factors which he cannot fully identify have a bearing on the survival of Judaism. Yet he has no confidence in the future; and when he comes to speculate on the possible sources of continuing Jewish religious life, his eye falls with faint and uncertain hope on Williamsburg!

Such a book, though informative and stimulating, can hardly either encourage or challenge the Jewish reader. As for the Christian reader, he must surely be convinced that Judaism has no future, and that a large-scale effort to win the Jews for Christianity is long overdue. The same set of facts could have been presented with equal candor, yet with utterly different effect, by someone who believes in Judaism and is ready to give his life to it.

New York, N. Y.

BERNARD J. BAMBERGER

PESSIN, DEBORAH. *History of the Jews in America*. New York: The United Synagogue of America. 1957. 317 pp. \$2.75

In the past few years, the United Synagogue of America (Conservative) has intensified the production of texts for its religious schools, and by and large these constitute a fine contribution to the field of Jewish education. Eminently readable, attractive in format, and geared more adequately to the level of the children who read them, volumes such as Sadie R. Weilerstein's *Jewish Heroes* and Deborah Pessin's *The Jewish People* are already widely used in non-Conservative religious schools as well. In the process, a thirty-five-year-old pattern of Reform hegemony in the area of Jewish history texts is slowly coming to an end, although it must be pointed out that the texts of the United Synagogue of America still adhere to the basic curriculum of the Reform movement.

The United Synagogue's newest publication is Deborah Pessin's *History of the Jews in America*. Beautifully designed and illustrated, this volume is most appealing. Moreover, its organization into five overall, logical units, its lively anecdotal style, and the skillful treatment of social, political, and economic forces operating in the making of the American Jew all contribute

to the readability of the text. Happily, too, the author has avoided two major pitfalls of history-text writers: inundating youngsters with oceans of facts, and ignoring the readers' emotions. She has made good use of selectivity, and has attempted to tell her story with some excitement and enthusiasm. Hence, *History of the Jews in America* is bound to be an improvement over its predecessors in this field.

The volume is, however, not without shortcomings. In the first place, it is by no means an objective presentation. In general, its orientation is toward Conservatism, and this becomes evident in the treatment of the Hebrew Union College, to which it devotes a single sentence, whereas the Jewish Theological Seminary of America receives several pages. Another example is the touting of Maimonides College, founded in 1867, as the first American rabbinical seminary, despite the fact that Zion College was organized by Isaac Mayer Wise in 1855 for the express purpose of educating American Jewish "ministers," as Wise put it in one of his editorials in *The Israelite*.

But there are other weaknesses. One is the temptation of the author to succumb to "lists" when it comes to Jewish contributions to America, as in the case of the Jewish heroes of the Civil War (pages 143-45) and the all-too-familiar catalogue of American Jews in the arts, sciences, and entertainment field (pages 262-63). It is unfortunate, too, that under the heading of Unit Five, "New Responsibilities," the author did not include the area of Jewish religious needs. For one concerned with Jewish *religious* education can hardly agree that philanthropy, Zionism, and contributions to American life constitute the whole of the "new responsibilities" which the American Jew of the twentieth century faces.

From the educational standpoint, the volume presents two serious problems. The first, certainly, is the age-range for which the book is intended. In the main it appears to be directed to pupils in the sixth and seventh grades, but in certain instances — as in the case of the discussion of "cultural pluralism" — it calls for a much higher maturational level, perhaps around the ninth grade. Secondly, for the most part the volume fails to make contact with the everyday American Jewish experiences of the child, and the author leaves it strictly up to the reader to discover the connection between the incidents which she describes and his own current Jewish life. Sadly, as we know from experience, many of our children never bridge this gap, and for them Jewish history remains an amalgam of irrelevant facts.

Summarizing, then: while in many respects *History of the Jews in*

America represents a marked improvement over previous volumes, it is by no means the final word in American Jewish history for the modern religious school.

*Hebrew Union College - Jewish
Institute of Religion*

SYLVAN D. SCHWARTZMAN

POSTAL, BERNARD, and LIONEL KOPPMAN. *A Jewish Tourist's Guide to the United States*. Philadelphia: The Jewish Publication Society of America. 1954. xxx, 705 pp. \$5.00

We become bored, we academicians, with the continual need to explain the difficulty of writing a final, definitive history of the Jews of the United States: too much raw research has to be done in hundreds of different fields, too many basic questions need to be answered, too many problems have not even been explored. Until all this basic academic activity takes place, we keep saying, it will not be possible to write a definitive history.

We have been thinking, of course, in terms of a connected narrative. It did not occur to any of us that the entire problem could be avoided by compiling a directory of known material on the local and state level. So the professional historians continue to deal with national trends in a somewhat ponderous and confused manner — while few of us have ever really come to grips with the real problem: whether it will ever really be possible to tell a full, connected story of American Jewry, because of the very nature of American Jewish life. Meanwhile, two journalists, unencumbered with academic apprehensions and paraphernalia, have shown what can be accomplished in terms of a directory of local and state Jewish history.

This was not actually the aim which Bernard Postal and Lionel Koppman had in mind when they set about compiling their *Tourist's Guide*, but it is what came out of their immense card files and folders of correspondence. Without footnotes, references, or citations, they have assembled in one volume more reliable, authentic data on Jewish history as it has been lived at the real level, in the towns, villages, and cities of the land, than can be discovered in any encyclopedia or other reference series. The test of the usefulness of such a volume is not so much the finding in it of facts which the reader knows, as the discovering in it of facts which he never knew. Every student of American Jewish history will relish the zest of uncovering something new as he turns the pages of this book (which too few will want to read page by page, although the lack of a "plot" ought, in this case, to be overlooked). Here one finds the record of the rich con-

tributions in every state and major city (and many a minor town) which Jews have made to the life of their neighbors. Here one finds the story of early Jewish settlement in every state in the land. Here one finds odd bits of information that are fascinating in a suggestive sort of way: the windows in the Episcopalian Church in Newport, Arkansas, memorializing members of a Jewish family which was generous to the church, while remaining loyal to Judaism; the gift of Beethoven's piano to Yale University by Morris Steinert of New Haven; the fact that Frederick Delius, the well-known British composer, was organist to the Jacksonville (Fla.) congregation in 1882-84; the fact that the first well-planned, brick school building in the entire state of Mississippi (constructed in 1888) was named for Rabbi Judah Wechsler of Meridian, who led the campaign for a bond issue to finance the school; the enormous contribution of Dr. Raphael Zon who, as head of the Lake States Forest Experimental Station, developed the concept of the "great Plains Shelterbelt," a belt of trees 100 miles wide and 1,000 miles long.

Of course, there are mistakes in the book. So huge a volume, the first of its kind, is bound to contain errors. But the authors are constantly revising their text, and it may be hoped that future editions of the work will be forthcoming. One improvement that may be suggested is this: whenever a congregation or institution is named, its date of founding ought to be included. Such data will further enhance the book, and now that the Tercentenary celebration has stimulated the publication of numerous pamphlets and brochures containing local historical material, perhaps the names of such publications could be listed as bibliography for each town, city, or state in turn.

The historical profession must always be indebted to Messrs. Postal and Koppman for cutting the Gordian knot and producing this endlessly fascinating, eminently useful volume.

Philadelphia, Pa.

BERTRAM W. KORN

Brief Notices

BIGMAN, STANLEY K. *The Jewish Population of Greater Washington in 1956*. Washington, D. C.: The Jewish Community Council of Greater Washington. 1957. xix, 173 pp. \$5.00

This lengthy and detailed study of the capital's Jewish community by the Project Director, Division of Research of the American University, contains chapters on the size and distribution of the Jewish community, its economic, social, institutional, and religious life, its experience of intermarriage, and the like.

LEWIN, ISAAC. *In the Struggle Against Discrimination*. New York: Bloch Publishing Co. 1957. 148 pp. \$2.75

Dr. Lewin, the well-known spokesman for Orthodox Jewish causes, has gathered together eight addresses delivered by him before the United Nations and United States Congressional committees in the struggle against discriminatory regulations and practices. The book, in addition, documents the official records which pertain to recent issues of Jewish concern such as the United Nation's Calendar Reform Plan and the United States Congress' deliberations about the banning of *Shechita*.

RICH, JACOB C. *60 Years of the Jewish Daily Forward*. New York: The Daily Forward Association. 1957. 38 pp. 25¢

A brief history of the New York newspaper, described by the author as "materially the most successful newspaper in the Yiddish language," the democratic socialist *Forverts*.

RICHMOND, HARRY R. *God on Trial*. New York: The Bond Wheelwright Company. 1955. 156 pp.

A selection of sermons delivered by the author, a Reform rabbi, in connection with a series of Interfaith Chapel Hour Programs broadcast over radio station KFH in Wichita, Kansas.

SCHNEIDERMAN, HARRY, Edited by. *Two Generations in Perspective: Notable Events and Trends 1896-1956*. With a Foreword by Louis Finkelstein. New York: Monde Publishers, Inc. 1957. xxii, 458 pp. \$7.50

Dedicated to the Zionist leader, Rabbi Israel Goldstein, this volume chronicles important events and developments in world, especially American and Israeli, Jewish life during the past sixty years. Included

are essays by prominent people like Nahum Goldmann, Mordecai M. Kaplan, Robert Gordis, Channing H. Tobias, Pierre van Paassen, and Israeli President Itzhak Ben-Zvi.

STOLNITZ, NATHAN. *Music in Jewish Life*. Toronto, Canada: Morris Printing Co. 1957. 62 pp. (English), 266 pp. (Yiddish).

This volume deals with Jewish music and *hazzanuth* particularly in the United States and Canada. It has some English chapters, but the greater part of it is in Yiddish. The Yiddish section includes, among others, chapters on music in Israel and the Diaspora, *hazzanuth* in Argentina, Ernest Bloch, and Jewish *n'ginoth* in world music.

TOBIAS, THOMAS J. *The Hebrew Orphan Society of Charleston, S. C., Founded 1801: An Historical Sketch*. Charleston, S. C.: The Hebrew Orphan Society. 1957. viii, 61 pp. \$3.00

A short sketch of a charitable association whose lengthy history of service has been interrupted only by the Civil War. Also included are appendices relating to the Society's members, its Act of Incorporation in 1802, and its constitutions of 1867, 1887, and 1949.

Benjamin Index

The American Jewish Archives has recently acquired a card index to I. J. Benjamin, *Three Years in America, 1859-1862*, Vols. I and II, translated from the German by Charles Reznikoff (Philadelphia: The Jewish Publication Society of America, 1956).

This index, prepared by Samuel Sokobin of Atherton, California, is available for reference purposes at the Archives.

Acquisitions

CONGREGATIONAL RECORDS

- Cincinnati, Ohio, Congregation K. K. Bene Israel (Rockdale Avenue Temple) Correspondence, 1845-1875; 1900-1920 Account Book of Matzot Sales, 1847-1858
Miscellaneous Accounts, 1849-1860
Business and Financial Records, 1850-1875
Membership Applications, Miscellanea pertaining to Ritual Matters, and Legal Documents, 1850-1890
Mound Street Temple Record Book, 1863
Minute Books, 1864-1890
Treasurers' Receipts, 1890-1916; Ledger, 1906; Contribution Book, 1906; Bond Book, 1885
Board of Trustees Minute Book, 1904-1913
Building Contracts, Correspondence, and Miscellanea pertaining to Financial Matters, 1904-1923
Ledgers and Cash Books, 1908-1925
- High Point, North Carolina, Congregation B'nai Israel, Minute Book, 1930-1945; *English and Yiddish*
- New Orleans, Louisiana, Touro Synagogue, Records, 1846-1917; *Microfilm*

RECORDS OF ASSOCIATIONS, LODGES, AND SOCIETIES

- Boston, Massachusetts, Boston Fraternal Orders, 1,200 pp.; *Yiddish; Photostats; Samuel Broches Collection*
(Gift of Samuel Broches, Boston, Mass.)
- Chapel Hill, North Carolina, United Jewish Appeal Record Book, 1942-1947
(Gift of Rabbi Efraim M. Rosenzweig, Chapel Hill, N. C.)
- Charleston, South Carolina, Happy Workers. Minute Books, Correspondence, and Ephemera, 1889-1949
(Gift of Mrs. Harry M. Rubin, Charleston, S. C.)
- Cincinnati, Ohio, Hebrew General Relief Association. Records and Correspondence, 1871-1873
- Cincinnati, Ohio, Hebrew Union College Alumni Association. Minutes and Correspondence, 1921-1948
- Houston, Texas, Jewish Chautauqua Society, Southwestern Assembly. Notes, Documents, and Correspondence during the presidency of William M. Nathan, 1935-1937
(Gift of William M. Nathan, Houston, Texas.)
- Philadelphia, Pennsylvania, Aids of Zion Minute Book, October 23, 1904, to January 27, 1907
(Gift of Ben Reibstein, Philadelphia, Pa.)
- Richmond, Virginia, B'nai B'rith Rimmon Lodge, No. 68. Minute Book, 1911-1916
(Gift of Gustavus Ezekiel, Richmond, Va.)

LETTERS AND PAPERS

ADLER, LIEBMANN; Langsfeld, Germany; Thirty-five letters to his fiancée, Sarah Eiel, 1842-1843; *German*

Adler later distinguished himself as a Reform rabbi in Chicago.

(Gift of Rabbi Jacob J. Weinstein, Chicago, Ill.)

ADLER, MAX; Twenty-three letters relating to the Palestine Symphony Orchestra and Music Foundation, 1936-1954

(Gift of Robert S. Adler, Chicago, Ill.)

BLOCH, JOSHUA; Correspondence concerning the Jewish Institute of Religion, New York, 1922-1924

(Gift of the late Dr. Joshua Bloch, New Hyde Park, New York.)

EINSTEIN, EDWIN; New York, N. Y.; One hundred and thirty-seven letters and documents relating to a post in the foreign service, also letters and petitions to President William McKinley seeking office as United States Ambassador to Italy, 1892-1898; *Photostats*

FOX, G. GEORGE; Sixty-one letters on current social and political matters, 1937
(Gift of Rabbi G. George Fox, Chicago, Ill.)

FRANKS, DAVID and MOSES; Letters and depositions of sufferers from Indian depredations; other signatories: Joseph Simon, Myer Myers, Solomon Levy, Sampson Simson, Hyam Myers, Levy Andrew Levy. *Photostats*

(Sir William Johnson Papers; copies from the New York State Library, Albany, N. Y.)

FROMENTHAL, BENOIT; Fifteen hundred letters to his parents and friends, about five hundred from American cities, 1851-1890; *French and Yiddish*

A remarkable collection of letters by an Alsatian Jew. His keen observations

on American life during the Civil War, his business transactions in the American Southwest, and his touching personal sidelights are an illuminative source for the period covered.

(Purchased.)

HEYMAN FAMILY; Correspondence and ephemera relating mostly to the Civil War, 1861-1870; *Photostats*

(Gift of Miss Bertha Heyman, West Point, Ga.)

JOEL, JOSEPH A.; New York, N. Y.; Letter to Nathan Appleton about his service in the Civil War, October 18, 1876; *Photostat*

(Copy from The Rutherford B. Hayes Library, Fremont, Ohio.)

KRUTTSCHNITT, J.; New Orleans, Louisiana; Letter to Robert E. Lee, President of Washington College, Lexington, Va., with respect to the enrollment of Kruttschnitt's son in the College, July 2, 1867; *Typed copy*

(Gift of Samuel J. White, South Boston, Va.)

LEVY, ELEAZAR; New York, N. Y.; Letter to Aaron Hart concerning the education of Hart's son, Benjamin, June 4, 1794; *Photostat*

(Copy from St. Joseph Seminary, Three Rivers, Canada.)

LOEWNER FAMILY; Harrisonburg, Virginia; Seventy letters dealing with personal and immigration problems in America, 1854-1870; *Yiddish and German; Photostats*

MEARS, SAMSON; Wilton, Conn.; Letter to Aaron Lopez dealing with political, family, and business matters, July 30, 1779; *Photostat*

(Copy from the Newport Historical Society, Newport, R. I.)

MORDECAI, BENJAMIN; Correspondence (four letters) with the Treasury Department relating to the return of a silver pitcher and other personal belongings captured on February 17, 1865, by the Federal troops in Columbia, S. C., 1887-1888; item from the *Charleston Courier*, March 13, 1862, describing Mordecai's financial contributions to the Confederacy; necrology (*Times-Democrat*, Charleston, March 31, 1893).

NAUMBURG, WALTER W.; New York, N. Y.; Letter to Jacob R. Marcus dealing with the history of the clothing industry, with particular reference to the firm of Naumburg, Kraus, Lauer & Co. (1867-1899), March 5, 1957

NEUMARK, DAVID; Three letters from Hayim Nahman Bialik, U. Ginsberg, and Abraham Goldberg, 1913; *Hebrew*

NOAH, MORDECAI M.; New York, N. Y.; Letter to Erasmus H. Simon with respect to the belief that the American Indians are descendants of the lost tribes of Israel, and the establishment of a small congregation on Grand Island, October 22, 1825; *Photostat*

NOAH, MORDECAI M.; New York, N. Y.; Letter to Azariah C. Flagg, Secretary of the State of New York, asking for a copy of a railroad bill, April 29, 1831; *Photostat*
(Gift of Rabbi Abraham Karp, Rochester, New York.)

PEIXOTTO, BENJAMIN FRANKLIN; Corres-

pondence (nine letters) of Benjamin F. Peixotto, Rutherford B. Hayes, William H. Seward, Stanley Matthews, Charles Foster, James G. Blaine, Benjamin Harrison, Isaac Markens, and George D. M. Peixotto, concerning Benjamin F. Peixotto's appointment to foreign service, 1872-1897; *Photostats*
(Copies from the National Archives, Washington, D. C.)

SIMON, JOSEPH; Lancaster, Pa.; Letter to Barnard Gratz relating to business matters, October 14, 1771; *Yiddish*; *Photostat*
(Copy from the Historical Society of Pennsylvania.)

STRAUS, OSCAR S.; New York, N. Y.; Seven letters to President William McKinley relating to personal and other matters, 1898-1900; *Photostats*
(Copies from the Library of Congress, Washington, D. C.)

WELLES, TITUS; Boston, Mass.; Five letters to Stephen Gould relating to the Jewish cemetery in Newport, Rhode Island, and other matters of Jewish interest, 1823-1826
(Gift of the late Rabbi Ephraim Frisch, New York, N. Y.)

WILSON, WOODROW; Washington, D. C.; Letter to Senator Charles A. Culberson concerning the appointment of Louis D. Brandeis to the Supreme Court, May 5, 1916; *Photostat*
(Gift of Rabbi Murray I. Rothman, West Newton, Mass.)

DOCUMENTS

ABRAHAMS, ISRAEL; Halifax, Nova Scotia; Petitions for permission to give instructions for making potash at a fixed salary, 1752; *Photostats*

(Copies from the Public Archives of Canada, Ottawa, Canada.)

ABRAMS, CHAPMAN; Quebec, Canada; Mercantile License, 1769; *Photostat*

(Copy from the Public Archives of Canada.)

ABRANTES, DUKES OF; Seventy-five documents relating to the Inquisition and to the estates of the Dukes of Abrantes in Mexico, 1744-1810; *Spanish*

BALTIMORE, MARYLAND; Har Sinai Ver-

ein; Act of Incorporation, 1844; *Photostat*
(Gift of Rabbi Abraham Shusterman,
Baltimore, Md.)

BONAN[E], SIMON; New York, N. Y.;
Deposition, March 30, 1699; *Photostat*
(Copy from the Public Records Office,
London, England.)

CASTRO, HENRY; Paris, France; Contract
for a concession of Texas land, September
21, 1843; *Photostat*
(Copy from the Newberry Library,
Chicago, Ill.)

DYER, LEON; Appointment as aide-de-
camp to General Green in the Army of
the Republic of Texas, May 18, 1836;
Photostat
(Copy from the Rosenberg Library,
Galveston, Texas.)

GITTELSON, ROLAND B.; Dedicatory ad-
dress delivered at the Iwo Jima cemetery;
Illuminated manuscript
(Gift of the late Dr. Lee M. Friedman,
Boston, Mass.)

HIRSCHMAN, MOSES; Nevada, Montana,
and Utah; Mining and land papers, 1870
and miscellaneous dates; *Microfilm*
(Gift of Mrs. Henry Tuman, Phila-
delphia, Pa.)

KOHN, LAZARUS; Unsleben, near Neu-
stadt, Bavaria; Ethical letter to Moses and
Yetta Alsbacher and their friends on the
eve of their departure for the United States,
May 5, 1839; *Photostat*
(Gift of Abe Nebel, Cleveland, Ohio.)

LUMBROZO, JACOB (JOHN); Inventory of
personal effects, 1666; *Photostat*
(Copy from the Hall of Records,
Annapolis, Md.)

MENDELSON, SIGMUND; Civil War Pen-
sion Records; *Photostats*

MINIS, ABIGAIL; Parish of St. Mary,
Province of Georgia; Land Grant, Sep-
tember 6, 1760; *Photograph*

(Gift of Louis Ginsberg, Petersburg,
Va.)

PHILADELPHIA, PENNSYLVANIA; Descrip-
tion of the "Jews Burying Ground" and
additional lots granted to Mathias Bush,
October 8, 1765; *Photostat*
(Gift of Jack Solis-Cohen, Jr., Phila-
delphia, Pa.)

RAPHAEL, SOLOMON; Philadelphia, Penn-
sylvania; Peddler's license issued by
Benjamin Franklin, March 23, 1787;
Photograph
(Copy from the American Jewish
Historical Society, New York, N. Y.)

ROSENBERG, SAMUEL; Documents relating
to the Mexican War, 1843-1910; *Photo-
stats*
(Gift of Rabbi Jerome Rosen, Leaven-
worth, Kansas.)

ST. PAUL, MINNESOTA; Hebrew Congrega-
tion of St. Paul, Minnesota Territory; Act
of Incorporation, February 10, 1857;
Photostat
(Copy from the Minnesota Historical
Society, St. Paul, Minn.)

SALOMON, HAYM; Business transactions
with Francisco Rendon, Philadelphia, Pa.,
November 18, 1783; *Spanish; Photostats*
(Copies from the Library of Congress.)

SCHMIDT, SAMUEL M.; Documents and
correspondence relating to activities with
the Joint Distribution Committee during
and after World War I
(Gift of Samuel M. Schmidt, Cincin-
nati, Ohio.)

WEIL, FRANK L.; New York, N. Y.;
Citation awarded by the American Jewish
Tercentenary Committee, June 15, 1955

WEIL, FRANK L.; New York, N. Y.;
Program of testimonial dinner, December
7, 1955
(Gift of the late Frank L. Weil, New
York, N. Y.)

VITAL STATISTICS

BARBADOS; Census of the island, including its Jewish residents, 1715; *Photostats*
(Gift of Rabbi Malcolm H. Stern, Norfolk, Va.)

FECHHEIMER FAMILY TREE
(Gift of Mrs. Martha Seanson Stern, Cincinnati, Ohio.)

JAROSLAWSKI, SALOMON; The Descendants of Salomon Jaroslawski, compiled by Rabbi Malcolm H. Stern
(Gift of Rabbi Malcolm H. Stern.)

JOSEPH FAMILY TREE; 1852-1952
(Gift of Frank Joseph, Cleveland, Ohio.)

NAUMBURG FAMILY RECORDS; European and American; *Photostats*
(Gift of Edward Naumburg, Jr., New York, N. Y.)

OTTINGER FAMILY HISTORY; 1834-1956; *Photostats* and *Typed copies*
(Gift of Walter J. Ottinger, Toledo, Ohio.)

PHILADELPHIA, PENNSYLVANIA; Beth-El-Emeth Congregation; Marriage Record Book, 1850-1873
(Gift of Miss Emilie V. Jacobs, Philadelphia, Pa.)

MISCELLANEOUS

BERNSTEIN, MRS. MARTIN; Cheyenne, Wyoming; Notes on Wyoming Jewry
(Letter to Dr. Jacob R. Marcus, June 3, 1957.)

CHARLESTON, SOUTH CAROLINA; The Sabbath Services and Miscellaneous Prayers adopted by the Reformed Society of Israelites, 1825 (?), compiled by Isaac Harby, Abraham Moise, and David Nunes Carvalho; *Photostats*
(Gift of Dr. Moses Joel Eisenberg, Chestnut Hill, Mass.)

CHARLESTON, SOUTH CAROLINA; References to Jews in Charleston in 1671, contained in Calendar of State Papers, Colonial Series, 1669-1674; *Photostat*

CINCINNATI, OHIO; John Street Temple; Record book of a fundraising fair, 1891; *German*

COHEN'S LOTTERY AND EXCHANGE OFFICE; Baltimore, Maryland; Broadside Circular, 1817; *Photostat*
(Copy from the Medical and Chirurgical Faculty, Baltimore, Md.)

DAVEGA, RACHEL; Montreal, Canada, and Charleston, S. C.; Will, November 15, 1864; *Photostat*
(Copy from Montreal Old Court House, Montreal, Canada.)

DECASTRO, ALEXANDER; Will, August 17, 1843; *Typed copy*
(Copy from the Probate Court, Marengo County, Ala.)

EINHORN, DAVID; Baltimore, Maryland; Manuscript for his journal, *Sinai*, 1856; Sermons and correspondence; *Photostats*
(Gift of Rabbi Abraham Shusterman, Baltimore, Md.)

FROHMAN, EDWARD and LOUIS; Rushville, Indiana; Day book of dry goods merchants, 1847-1850
(Gift of Mrs. Martha Ransohoff, Cincinnati, Ohio.)

GOTTHELF, BERNHARD H.; Thirty-three sermons, undated; *Photostats*
(Gift of Rabbi Samuel R. Shillman, Roanoke, Va.)

GRUNER, DOV; Correspondence and American newspaper clippings (fifty items) relating to the hanging of Dov Gruner by the British in Palestine, 1947; *Photostats*

(Gift of Mrs. Frances Gruner, Morgantown, W. Va.)

HELLER, M., AND BROTHERS; San Francisco, California; Three invoices, 1864-1867

(Gift of Samuel Sokobin, Atherton, Calif.)

HOMBERG, MOSES; Philadelphia, Pennsylvania; Letters of Administration, January 2, 1794; *Photostat*

(Copy from the Register of Wills, Philadelphia, Pa.)

JOINT DISTRIBUTION COMMITTEE; Medical Unit Daily Gazette, Paris, France, February, March, 1921; *Typescript*

(Gift of Samuel M. Schmidt.)

MORDECAI, JACOB; Remarks on Isaac Harby's discourse delivered in Charleston, South Carolina, November 21, 1825; *Photostat*

(Copy from the Virginia Historical Society, Richmond, Va.)

NEUMARK, DAVID; Cincinnati, Ohio; Hebrew University Extension Memorandum, January 1, 1920; *Typescript*

(Gift of the late Dr. Joshua Bloch.)

OPPENHEIMER, E.; New York, N. Y.; Tax Receipt, June 19, 1868

(Gift of Mrs. Frank L. Weil, New York, N. Y.)

RAUGH (RAUH), LIPMAN; Cincinnati, Ohio; Family Documents, 1845-1856

(Gift of the Rauh family, Cincinnati, Ohio.)

SAN FRANCISCO, CALIFORNIA; Ladies United Hebrew Benevolent Society; Ticket to the twenty-first Anniversary Ball, January 25, 1877

(Gift of Samuel Sokobin.)

SHINEDLING, ABRAHAM I.; History of the Los Alamos Jewish Center, Los Alamos, New Mexico, 1944-1957; *Typescript*

(Gift of Rabbi Abraham I. Shinedling, Albuquerque, N. M.)

SUGERMAN, PHILIP; News items and notes relating to the Klondike gold rush, 1897-1899; *Photostats*

(Gift of Sidney Sugerman, New York, N. Y., through Rabbi I. Edward Kiev.)

WALLACE, DAVID AND ISAAC; Branchville, South Carolina; Invoice and account books, 1849-1865 and 1853-1859; *English and Yiddish*

(Gift of Dr. S. W. Hoffman, Statesville, N. C.)

WIESENFELD, STERN AND FRIEDENWALD; Baltimore, Maryland; Private stock account book, 1860-1875; *Photostats*

(Gift of Moses W. Rosenfeld, Baltimore, Md.)

YIDDISH PLAYS; A collection of 243 plays in Yiddish, written by I. Adler, I. Auerbach, A. Blum, Z. Gold, S. Goldberg, Jacob Gordin, M. Horowitz, I. Waxman, Ben-Menahem, S. Perlmutter, Leon Kobrin, M. Schweid, and others. Many of these are the original acting copies used during the heyday of the Yiddish theatre in New York City.

(Purchased.)

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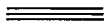
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FAMILY correspondence, diaries, memoirs, scrapbooks, photograph albums, naturalization papers, military medals, and personal souvenirs.

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