The American Revolution and the Emergence of Jewish Legal and Political Equality in the New Nation

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The forthcoming semi-quincentennial of the American Revolution provides an opportunity to consider how Jews gained political and religious liberty in the new nation and, at the same time, how the very presence of Jews in the nation helped lead to a national policy of religious liberty that would quickly be adopted by most states within the American system of federalism.[1]

The contrast between Old World polities and the new United States is striking. In 1775, when the Revolution began, *every* nation in Europe discriminated against Jews in many ways. All European countries had an official state-supported Christian faith.[2] Political rights, voting, and elective office, where they existed, were circumscribed by religious tests and sectarian oaths, which universally excluded Jews. Similarly, many

1 Finkelman presented an early draft of this article at the second annual "Law vs. Antisemitism Conference" at Lewis and Clark Law School in 2023. We thank Candace Jackson Gray, a doctoral student at Morgan State University, for helping us find some sources; Linda Tashbook, a reference librarian at the University of Pittsburgh School of Law, for helping us track down some obscure statutes; and the anonymous readers for the *American Jewish Archives Journal*. We published a very short summary of this article in *Jewish Review of Books* on 3 July 2023; see https://jewishreviewofbooks.com/american-jewry/14147/when-freedom-began-to-ring/. This was later placed in the *Congressional Record* by Rep. Brian Fitzpatrick of Pennsylvania. "Recognizing the Patriotism of Jews During the American Revolution," *Congressional Record* 169, no. 119 (Extensions of Remarks—12 July 2023): E665–E666. Finally, Professor Finkelman thanks the International Center for Jefferson Studies at Monticello, where he was a Fellow while finishing this article.

2 To the extent that the Ottoman Empire was European, that was one place where Islam was the official faith.

educational, professional, and economic opportunities were not available to Jews. In Britain Jews could not be barristers or military officers, attend universities, or engage in various forms of commerce and industry. Jewish immigrants to Great Britain—and after 1801 the United Kingdom—could not naturalize, although non-Jewish immigrants could; and as aliens Jewish immigrants were barred from owning land and other property and engaging in certain economic activities. By contrast, in the United States Jews could naturalize in most of the new states after 1776 and under the U.S. Constitution, starting with the first federal naturalization act of 1790.[3] At the end of the Revolutionary era, with the adoption of the Constitution and Bill of Rights, at the national level the United States became the first Western nation to prohibit any religious test for holding a public office, to reject the idea of a national faith, and to allow for freedom of worship and belief on a broad national scale.[4]

The age of the American Revolution was thus a major turning point in world Jewish history and the history of antisemitism, setting the stage for two and a half centuries of Jewish political engagement and cultural adaptation. It was also a remarkable moment in the history of religious liberty, since these policies affected members of other minority faiths as well as deists who had no formal faith at all. But given that at least 95 percent of all free people in the nation were Protestants, it would have been perfectly plausible for the new nation to have had a very different notion of religious liberty that excluded non-Christians or even non-Protestants.

In a relatively short period—about four decades following the end of the Seven Years War in 1763—Jews achieved almost complete political

3 Act of 26 March 1790, 1 Stat. 103. For a full discussion of this, see Gabriel J. Chin and Paul Finkelman, "The 'Free White Persons' Clause of the Naturalization Act of 1790 as Super-Statute," *William and Mary Law Review* 65 (2024).

4 U.S. Constitution. Art. VI, Cl. 3 ("no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States"); U.S. Constitution, Amendment I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof"). These clauses were limitations on the national government but did not prevent state governments from having religious tests for officeholding, abridging religious liberty, or maintaining established churches.

and legal equality in the new nation. By 1800 official, de jure, legalized antisemitism had virtually ceased to exist in the United States. A handful of states still maintained established churches, which sent a message to Jews and members of other non-favored faiths that they were "citizens" but perhaps not yet fully accepted as such. However, "the consequences of this establishment" had changed dramatically since the colonial period and the "influences responsible for the change sprang in part from developments in the colonies, in part from more general cultural trends, and in part from a transformation in the position of the Jews themselves."[5]

More significantly, limitations on Jewish (and sometimes Catholic) officeholding in some states continued, although it became increasingly rare. Some states abolished it in new post-Revolutionary constitutions, and some states sometimes ignored their own constitutional mandates.[6] After 1791 no new states ever adopted religious tests for officeholding. What had once been the rule in the British Empire—prohibiting Jews from political participation, officeholding, and many economic activities—was now increasingly rare in the United States, and limited to officeholding in a declining number of states.[7] Everywhere else in the Atlantic world,

5 Oscar Handlin and Mary F. Handlin, "The Acquisition of Political and Social Rights by the Jews in the United States," *The American Jewish Year Book* 56 (1955): 51.

6 The North Carolina legislature ignored its own constitution when it seated Jacob Henry in 1809. Seth Barrett Tillman, "What Oath (If Any) Did Jacob Henry Take in 1809?: Deconstructing the Historical Myths," *American Journal of Legal History*, 61 (2021): 349–384. See also "Jacob Henry's Address to the North Carolina Legislature, 1809," in *Religion and the State in the American Jewish Experience*, ed. Jonathan D. Sarna and David G. Dalin (Notre Dame, IN: Notre Dame University Press, 1997), 82–85.

7 In 1787, nine state constitutions contained a religious test for officeholding that prohibited Jews from holding office. Two states, Connecticut and Rhode Island, did not have constitutions, and two other states, New York and Virginia, did not have a religious test in their new constitutions. In March 1791, Vermont, the fourteenth state, entered the Union with a religious test. It would be the last new state to have such a clause. By 1821, there were twenty-four states. Rhode Island still did not have a constitution but had removed any political restrictions based on religion through statutes. Of the remaining twenty-three states only five (New Hampshire, Massachusetts, New Jersey, Maryland, and North Carolina) still had religious tests for office that excluded Jews. By 1850, of the thirty-one states in the Union, only North Carolina and New Hampshire still retained religious tests for office holding.

including England, Jews remained under legal and political regimes that denied them various rights, including the franchise, access to citizenship through naturalization, appointed or elected to civil or military office, to certain professions (such as law), to some types of commercial activity, to ownership of real and other kinds of property, to admission to universities, to public worship, and to equal justice under the laws of the places they lived. The one exception was the new United States.

This sea change in Jewish rights did not end social antisemitism, prejudice, or bigotry.[8] While a legal system can regulate behavior and even promote tolerance, laws cannot end private intolerance and bigotry, even when the legal system prohibits discriminatory acts, especially in the economic sphere, on the basis of race or religion. Antisemitism, rooted in various expressions of Christian theology, nationalisms of all kinds, private fears and hatreds, the rantings of demagogues and self-serving political figures, conspiracy theorists, and ignorance, has almost always been immune from law. In the Old World, such anti-Jewish behavior was often encouraged, supported, or even mandated by political leaders, governments, religious leaders and established churches, national and local laws, and courts. But, in the United States it was not. As President George Washington noted in his famous letter to the Newport, Rhode Island Jewish community, in

8 On social antisemitism in this period, see William Pencak, *Jews & Gentiles in Early America, 1654–1800* (Ann Arbor: University of Michigan Press, 2005). Recent work by Britt P. Tevis, "'Jews Not Admitted': Anti-Semitism, Civil Rights, and Public Accommodation Laws," *Journal of American History* 107, no. 4 (2021): 847, argues that social antisemitism in the late nineteenth and early twentieth centuries violated the Fourteenth Amendment, the Civil Rights Act of 1875, and the emerging notion of the nexus between civil rights law and public accommodations law. While the 1875 act was passed to protect the rights of Blacks, its expansive language certainly should have applied to Jews, as Tevis argues. However, this was short lived, because in 1883 the Supreme Court struck down the 1875 act in *The Civil Rights Cases*, 109 U.S. 3 (1883). Tevis's article is very useful for our understanding of the post-Reconstruction period, but in the Revolutionary and Early National period there was no connection between civil rights and public accommodations. See also Britt P. Tevis, "Trends in the Study of Antisemitism in United States History," *American Jewish History* 105, no. 1 (2021): 255. On the Northern response to the 1883 decision striking down the 1875 law, see Paul Finkelman, "The Hidden History of Northern Civil Rights Law and the Villainous Supreme Court, 1875–1915," *University of Pittsburgh Law Review* 79 (2018): 357–410.

the new nation: "All possess alike liberty of conscience and immunities of citizenship. It is now no more that toleration is spoken of, as if it was by the indulgence of one class of people, that another enjoyed the exercise of their inherent natural rights. For happily the Government of the United States, which gives to bigotry no sanction, to persecution no assistance requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support."[9]

Washington's letter set the tone for the future civic status of American Jews. In the United States, federal law (and eventually state law as well) would not support open religious discrimination or persecution.[10] But,

9 George Washington to The Hebrew Congregation in Newport Rhode Island, 18 August 1790, available at: https://founders.archives.gov/documents/Washington/05-06-02-0135. In part Washington was quoting from a letter sent to him by Moses Mendes Seixas, the *parnas* (president) of the Newport synagogue. Letter from the Hebrew Congregation of Newport to President Washington, 17 August 1790, reprinted in Morris U. Schappes, *A Documentary History of Jews in the United States, 1654–1875*, 3rd ed. (New York: Schocken, 1971), 78–79. The letter to Washington illustrates one way in which Jews influenced and helped shape the development of religious liberty in the United States. That Washington accepted Seixas's literary and policy suggestions also illustrates how Washington and other American leaders accepted Jews as equals and patriots in the new nation.

10 There are of course many examples of the nation failing to live up to its stated principles, the most famous include the persecution of members of the Church of Latter-Day Saints of Jesus Christ (Mormons) and the act of Congress to disband that church. *The Late Corporation of the Church of Jesus Christ of Latter-Day Saints et al. v. United States; Romney et al. v. United States*, 139 U.S. 1 (1890); Edmunds–Tucker Act, Public Law 4-397, 24 Stat. 635 (3 March 1887). See Edwin B. Firmage and Richard C. Mangrum, *Zion in the Courts: A Legal history of the Church of Jesus Christ of Latter-Day Saints, 1830–1900* (Urbana, IL: University of Illinois, 1988). The massive state persecutions of Jehovah's Witnesses from the 1930s to the early 1950s also illustrates religious discrimination. The most egregious example of this was Justice Felix Frankfurter's majority opinion in *Minersville School District v. Gobitis*, 310 U.S. 586 (1940) and his dissent in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, at 646 (1943) (Frankfurter, J., dissenting). A few federal laws, rules, or acts were overtly hostile to Jews. At the beginning of the Civil War federal laws required that military chaplains be Protestant clergymen. This is a rare example of a religious test for a federal office or job. Bertram W. Korn, *American Jewry and the Civil War* (Philadelphia: Jewish Publication Society, 1951), 56–97. During the Civil War this would change. Similarly, in December 1862, General Ulysses S. Grant issued an order expelling Jews from his military district, which was quickly countermanded. See Jonathan D. Sarna,

whatever the future held, already in the Revolutionary period, Jews had unprecedented political and legal equality that could not be found anywhere else in the world.

When Grant Expelled the Jews (New York: Nextbook/Schocken, 2012). There are virtually no other examples of explicit federal antisemitism, although there have been several instances where acts by the federal government that do not specifically mention Jews nonetheless caused them harm. For example, the treaty with Switzerland in 1855 collaborated with Swiss discrimination against Jewish Americans. See Paul Finkelman, *Millard Fillmore* (New York: Times Books, 2011), 95–96; Lance J. Sussman, *Isaac Leeser and the Making of American Judaism* (Detroit: Wayne State University Press, 1995), 212–213; Morton Borden, *Jews, Turks, and Infidels* (Chapel Hill: University of North Carolina Press, 1984), 82–96; and Sarna and Dalin, *Religion and the State*, 126–129.

In the twentieth century Congress would pass immigration legislation that was in part motivated by antisemitism. These laws, which dramatically impacted Jews outside the country, include the 1921 Emergency Quota Act (also called the Immigration Restriction Act of 1921 or the Johnson Quota Act), Ch. 8, 42 Stat. 5 (19 May 1921); and three years later, the Immigration Act of 1924 (also known as the Johnson-Reed Act), Pub. L. 68–139, 43 Stat. 153 (26 May 1924), which set low quotas for immigrants from Central, Eastern, and Southern Europe and what had been the Ottoman Empire. These laws prevented Jews in Europe from easily immigrating to the United States in the 1920s through the 1940s. After World War II, two refugee acts, The Displaced Persons Act of 1948, 80th Cong., 2d Sess. Ch 647, PL 774, 62 Stat. 1009, Ch. 647 (25 June 1948) and the somewhat less restrictive Refugee Relief Act of 1953, 67 Stat. 400 (7 August 1953) also harmed European Jews, many who were survivors of the Shoah, by limiting their ability to leave displaced persons camps and move to the United States. Similarly, the laws limited many non-Jewish refugees from coming to the United States. These laws were not explicitly antisemitic (even though many who voted for them were overtly antisemitic) and, unlike Grant's order or earlier rules on military chaplains, they never mention Jews or members of any other religion. Furthermore, while enormously harmful to European Jews, the laws did not directly limit the rights of Jews in the United States.

Similarly, when Congress passed the Philo-Semitic Jackson-Vanik Amendment, 9 U.S.C. 2432(a), Sec. 402, "Freedom of Emigration in East-West Trade" of the Trade Act of 1974 (Pub. L. 93–618, 88 Stat. 1978), Jews were neither singled out nor mentioned in the legislation, even though the main purpose of the amendment was to force the Soviet Union to allow Jews to freely emigrate to Israel and elsewhere. The best estimates are that this act led to about one million Jews moving to Israel and some 400,000 refugees—including Jews, Catholics, and evangelical Christians—moving to the United States and elsewhere. American Jews widely supported freedom of choice for Soviet immigrants, helping many come to the United States, whereas Israel, which anchored its policies on the Zionist value of "the ingathering of the exiles," wanted all of them to come to Israel.

There is significant scholarship on the social history of Jews and the development of Jewish religious and cultural institutions in Revolutionary America. This literature mostly focuses on the internal history of early American Judaism and Jewish life. These works of social history discuss the creation of Jewish institutions, family life, business relations, and various forms of cultural antisemitism. Some of this literature also notes formal discrimination against Jews at the Founding, through state laws and constitutional provisions that limited Jewish participation in early American politics, as well as nasty antisemitic attacks during the political debates between Federalists and Jeffersonians.[11] Much of this literature discusses what Jonathan D. Sarna addressed in his seminal 1981 essay, "The Impact of the American Revolution on American Jews." In a later essay he succinctly summarized his argument: "Judaism in America was challenged and radically transformed" by the Revolution, while "the values of the American Revolution—liberty, freedom, and especially democracy—profoundly affected the Jewish Community."[12]

Our argument looks at these issues from the opposite direction. We consider how the very presence of a small Jewish community at the Founding and the contributions of Jews to the American Cause[13] helped shape the United States and undermined "official" antisemitism in the new nation. We consider Jewish participation and activism in

11 The most notable book on this subject is Borden, *Jews, Turks, and Infidels*. On politics and antisemitism, see Pencak, *Jews & Gentiles*, 212–246. See also Pamela S. Nadell, *America's Jewish Women: A History from Colonial Times to the Present* (New York: W.W. Norton, 2019).

12 Jonathan D. Sarna, "The Impact of the American Revolution on American Jews," *Modern Judaism: A Journal of Jewish Ideas and Experience* 1 (1981): 149–160; Jonathan D. Sarna, "The Democratization of American Judaism," in *New Essays in American Jewish History*, ed. Pamela S. Nadell, Jonathan D. Sarna, and Lance J. Sussman (Cincinnati: American Jewish Archives of Hebrew Union College-Jewish Institute of Religion, 2010), 95, 96. For a very helpful discussion of cultural changes and challenges to Jews in the mainland colonies on the eve of the Revolution, see Sarna, "The Jews in British America," in *The Jews and the Expansion of Europe to the West, 1450 to 1800*, ed. Paolo Bernardini and Norman Fiering (New York and Oxford: Berghahn Books, 2001), 519–531.

13 This very useful term is from Joseph J. Ellis, *The Cause: The American Revolution and Its Discontents, 1773–1783* (New York: W.W. Norton, 2022).

the military, politics, law, national service, and civic engagement in this period. While acknowledging Sarna's pioneering work, this article refocuses the title of Sarna's work to consider "The Impact of American Jews on the Revolution and the Creation of the American Nation." This history contrasts sharply with the experience of Jews in England, the other countries of Western Europe and their American colonies, Eastern Europe, and the Ottoman Empire.

We build on the observation of church historian Winthrop S. Hudson that "one of the greatest contributions of Judaism to America" has been "to help other Americans to understand how the United States can be a pluralistic society" and that "other faiths can learn" from the experience of Jews.[14] We argue that this process began in the era of the American Revolution. Similarly, this history fits within Gary Nash's description of the "multistranded tapestry" of what he called "The Unknown American Revolution," which unleashed a "radicalism" that advocated "wholesale change and sharp transformation rooted in a kind of dream of a better future." Nash correctly notes that this "radicalism" was "usually connected to a multifaceted campaign to democratize society." Nash focuses on social issues, including slavery, race, gender, and Native Americans. He briefly notes the push to democratize religion in Virginia in the context of the ruthless and sometimes violent suppression of Baptist preachers and other religious dissenters, but otherwise ignores both religion and the small Jewish population in the nation.[15]

We argue that the experience of Jews in America was part of this radical transformation. At the beginning of the war, Jews were disfranchised throughout the Atlantic world and all over Europe. In England they were denied access to voting, jury service, holding public office, becoming lawyers or entering many other professions, serving as officers

14 Winthrop S. Hudson, *Religion in America* (New York: Charles Scribners' and Sons, 1965), 440–441.

15 Gary B. Nash, *The Unknown American Revolution: The Unruly Birth of Democracy and the Struggle to Create America* (New York: Viking, 2005) xv–xvii, 146–49. On the suppression of Christian minorities in Virginia in this period, see Thomas E. Buckley, S.J., *Church and State in Revolutionary Virginia, 1776–1787* (Charlottesville: University of Virginia Press, 1977).

in the military, and naturalization. With the exception of naturalization, which was sometimes but not always available, colonial Jews were generally denied these rights in all of the mainland colonies, although there were sometimes exceptions in New York. But by the end of the Revolutionary period, almost all of these restrictions were gone, and Jews could take their place as full citizens in a new nation that, at least for Jews, was, in Lincoln's words, "conceived in Liberty, and dedicated to the proposition that all men are created equal."[16]

Jewish participation in the Revolution led to a major change in citizenship and legal rules for Jews. They could, for the first time, actively participate in the political, legal, civic, military, and economic culture. These changes not only set the stage for American religious liberty for Jews and others but also helped lead other Western nations, such as France and Britain, to grant Jews similar rights—although the process in both countries was piecemeal, halting, and incomplete for many years. For example, starting in 1847 Lionel Rothschild won multiple elections to Parliament but was unable to take his seat until 1859, after the passage of the Jews Relief Act of 1858.[17] Further access for Jews to offices in Britain was achieved in 1871.[18] By the time Parliament passed the 1871 act, Jews in America had served in both houses of Congress, as diplomats and other federal officials, in state legislatures, and as governors, mayors, judges, sheriffs, members of city councils, and other local officials, and as high-ranking military officers, including generals.

Before the Revolution Jews were disfranchised, politically isolated, and vulnerable throughout Europe and the Atlantic world (except in some of the colonies that would become the United States). Even where

16 Abraham Lincoln, "The Gettysburg Address," 19 November 1863, available at http://www.abrahamlincolnonline.org/lincoln/speeches/gettysburg.htm.

17 An Act to provide for the Relief of Her Majesty's Subjects professing the Jewish Religion, 21 and 22 Vict. Ch. 49 (23 July 1858).

18 Promissory Oaths Act of 1871, 34 and 35 Vict. Ch. 48 (13 July 1871). However, amendments to this law in 1922, 1973, 1980, and 1986 kept Jewish officials (and other non-Anglican officials) from giving advice to the monarch on matters concerning the Church of England and Church of Scotland. On France, see Esther Benbass, *The Jews of France: A History from Antiquity to the Present* (Princeton: Princeton University Press, 1999); and Paula Hyman, *The Jews of Modern France* (Berkeley: University of California Press, 1998).

they were not threatened by antisemitic violence and were able to individually achieve some economic success—such as in England, the Netherlands, and their American colonies—they were not full citizens (if they were considered citizens at all)[19] and suffered from numerous legal restrictions. European nations and most of their colonies constricted the rights of Jews by statutes, officially sanctioned discrimination, and accepted public and private antisemitism.

The English Background

To understand the importance of Jewish participation in the American Revolution and its impact on American antisemitism, we must briefly look at the status of Jews in the Mother Country—Great Britain —during this period. A quick survey of the rights of Jews in Britain from the early eighteenth century through the mid-nineteenth century—well after the American Revolution—helps us understand how Jewish participation in the Revolution led to a new nation that rejected official antisemitism. (This rejection was not complete, however, as discrimination against Jews lingered in some states and in a few national policies until the second half of the nineteenth century.)[20]

In the early eighteenth century, Jews in England (Great Britain after 1707) suffered from various forms of discrimination. They were unable to "hold any municipal office, nor could they be 'employed in any office or trust, civil or military.'"[21] They were equally "barred from taking a degree in the two universities [Cambridge and Oxford] and could not vote nor be elected to parliament."[22] They could not engage in retail trade in London because of a required oath on the New Testament. While some Jews were granted "the freedom of the City of London," only twelve Jews at any one time were allowed to hold licenses in London to be

19 In England immigrant Jews could purchase royal letters of patents that allowed them to be "denizens." David S. Katz, *The Jews in the History of England* (New York: Oxford University Press, 1994), 242.

20 See generally, Todd Endelman, *The Jews of Georgian England, 1714–1830: Tradition and Change in a Liberal Society* (Ann Arbor: University of Michigan Press, 1999).

21 Katz, *Jews in the History of England*, 241.

22 Ibid.

"commodity brokers."[23] Jewish immigrants in Great Britain (who were growing in number) were unable to become naturalized citizens and as aliens could not own land and other types of property and were barred from various professions and businesses. A statute of 1271 prohibited Jews from owning land, and its rediscovery and publication in 1738 "may have increased Jewish fears" for their security in Britain.[24] Immigrant Jews engaged in trade to the colonies or foreign countries had to pay special "alien" taxes, and in theory they were not allowed to own any interest in a seagoing vessel.[25] At the time of the Revolution, immigrant Jews in Great Britain still could not become naturalized British citizens.

In the Plantation Act of 1740, Parliament allowed, but did not require, the American colonies to naturalize immigrant Jews.[26] As a land "in need of people,"[27] there is no evidence of any general opposition to Jewish naturalization in the mainland colonies, although in 1762 Rhode Island denied naturalization to two Jewish merchants, Aaron Lopez and Isaac Elizer.[28] By the eve of the Revolution, Jews could vote in a few mainland colonies, although not in Britain's Caribbean colonies.

The apparent success of the Plantation Act led Parliament to pass the Jewish Naturalization Act in 1753, commonly called the "Jew Bill,"[29] which allowed Jewish immigrants in the metropole to naturalize. Introduced in the House of Lords on 3 April 1753, it sailed through Parliament, passing both Houses on 22 May 1753, and receiving royal assent in July.[30] But in response to an antisemitic backlash, including

23 Ibid.

24 Ibid.

25 Ibid.

26 An Act for Naturalizing such foreign Protestants and others therein mentioned, as are settled or shall settle in any of His Majesty's Colonies in America (13 Geo. 2 Ch.7, 1740). Jews born in the United Kingdom acquired British citizenship by birth.

27 Paul Finkelman, "'A Land that Needs People for its Increase': How the Jews Won the Right to Remain in New Netherland," in Nadell et al., *New Essays*, 19–50.

28 Sarna and Dalin, *Religion and the State*, 51–59; Ellen Smith & Jonathan D. Sarna, *The Jews of Rhode Island* 3–4 (undated). https://www.brandeis.edu/hornstein/sarna/introscommnets/Archive/TheJewsofRhodeIsland.pdf

29 26 Geo. 2, Ch. 26, 1753 (royal assent, 7 July 1753).

30 Katz, *Jews in the History of England*, 245–246.

some riots, Parliament repealed it a year later. Historian David S. Katz argues this backlash was a function of party politics, with Tories playing to antisemitic prejudices. He concludes that the hostile reaction to the Jew Bill, after its passage, "was an election gimmick used by the Tories to cast further aspersions on the loyalty of the Whigs."[31]

However, what is significant is not the use of antisemitism in partisan politics, but that it worked for the political success of the Tories. Because no Jews could vote for members of Parliament, including those who were British citizens by birth, the Tories felt free to play what today we would recognize as "the race card." During these debates *The London Magazine*, an otherwise respectable journal, published a satirical piece suggesting that in a hundred years England would be "in the grip of the Jews, building a new Temple, launching a ship called the *Benjamin Salvadore*, and whipping Christians speaking disrespectfully of the Mishnah."[32]

Before 1728 Jews in Britain were not allowed to practice law at all. Under the Indemnity Act of 1728 Jews could be solicitors and hold some other professional positions, such as being notaries, without having to take an oath as "a Christian."[33] But under this law they could not become barristers and represent clients in court because admission "to the degree of barrister-at-law, holders of which alone are entitled to plead in the superior courts and are therefore considered the higher branch of the legal profession, has from time immemorial been vested in the Inns of Court," which were private societies, unregulated by

31 27 Geo 2, Ch. 1, 1754; Katz, *Jews in the History of England*, 248.

32 Katz, *Jews in the History of England,* 248. This nearly three-hundred-year-old biting satire has an eerie resemblance to late-nineteenth-century antisemitic and modern white nationalist "replacement theory," with the Jews replacing English Christians as the rulers of Great Britain.

33 "An Act for indemnifying Persons who have omitted to qualify themselves for Offices or Imployments within the Time limited by Law, and for allowing further Time for that Purpose; and for repealing so much of an Act of Parliament passed in the first Year of his late Majesty King George the First, as requires Persons to qualify themselves for Offices or Imployments within three Months, and for limiting other Times for such Qualifications; as also for the Repeal of so much of an Act passed 30 Car . 2. as relates to the sworn Servants of the King's or Queen's Majesty," 2 Geo. 2, Ch. 31, 1728.

Parliament.[34] Furthermore, the Indemnity Act was not a permanent law and had to be reenacted annually.[35] This would remain true until 1868, when the Promissory Oaths Act eliminated the need for this law.[36] Had Parliament not reenacted the Indemnity Act in any year, for any reason, Jews would have lost the ability to be solicitors, notaries, or practice some other professions until Parliament reenacted the law. This may be why no Jews sought to become solicitors in England until 1770.[37] The Indemnity Act both allowed Jews to practice some professions and served to remind them, annually, of their second-class status and the precarious nature of their professional careers.

Thus, until the mid-nineteenth century, the British government in cooperation with the Inns of Court prevented Jews from becoming barristers, what Americans would simply call lawyers. The contrast with the United States is obvious. In the Revolutionary-era Jews and people of Jewish descent with distinctively Jewish names began to practice law in the United States.[38] Moses Levy graduated from the University of Pennsylvania in 1772, began to practice law in Philadelphia in 1778,

34 Henry Straus Quixano Henriques, *Jews and the English Law* (London: Horace Hart, Jacobs, 1908) (reprint ed., Lawbook Exchange, 2019), 203–204.

35 Ibid.

36 Promissory Oaths Act of 1868, 31 and 32 Vict. Ch. 72, 1868.

37 Jacob Rader Marcus, *Early American Jewry: The Jews of Pennsylvania and the South, 1655–1790* (Philadelphia: Jewish Publication Society of America, 1955), 397–398.

38 The definition of a "Jew" is complicated. Under traditional Jewish law only people who have a Jewish mother, or have formally converted to Judaism, are "Jewish." But under English common law, personal status was inherited through the father. This led to the odd result that the child of Jewish man and a non-Jewish woman was "Jewish" under English law (unless the child was formally baptized) but not Jewish under rabbinic law, while the child of a Jewish woman and Christian man was Jewish under Jewish law, but Christian under English law. Thus, in this period the status of some "Jews" is not always clear. But it is clear that the public saw them as Jews and used antisemitic language against them in political discussions. The American colonies, led by Virginia, changed the common law with regard to the children of Africans and their descendants by declaring that the children of Black women would follow the status—slave or free—of the mother. *Negro womens children to serve according to the condition of the mother*, Act XII December 1662, William Waller Hening, *The Statutes at Large; being a Collection of all the Laws of Virginia,* vol. 2 (New York: R. & W. & G. Bartow, 1823), 170.

and by 1802 held a judicial position as the recorder of Philadelphia and later as a judge on the district court of Philadelphia. Levy and his brother Sampson, also a lawyer, both had a Christian mother and may have been baptized as children, although the preeminent historian of early American Jews, Jacob Rader Marcus, found "no record of his conversion."[39] With a Christian mother the Levy brothers were not technically Jewish under rabbinic law, but both lawyers were known as Jews, and faced antisemitic attacks from political and legal opponents.[40] Moses Myers, who was a practicing Jew, was admitted to law practice in South Carolina in 1793. His son graduated from the College of William and Mary and by 1810 was practicing law in Richmond. In New York Sampson Simpson graduated from Columbia College (now Columbia University), read the law under Aaron Burr, and was admitted to practice by 1802, as was Judah Zuntz. Meanwhile, Walter Judah graduated from Columbia in 1795 and attended Columbia's medical school.[41] At this time none of these Jews could have attended any university in England, or been admitted as barristers, and it is not clear if the Levy brothers would have been accepted in either college or the legal profession based solely on their mother's Christian faith, since under English law they were Jewish because their father was Jewish. In 1837 Benjamin Disraeli, who was born of two Jewish parents, was able to enter Parliament only because he had been baptized as an Anglican in 1816, when he was twelve years old, and therefore could take the required oath on the Christian Bible. But Lionel Rothschild, who was an important Jewish leader in England, could not, and would not, take the oath. Disraeli would become Prime Minister in 1868, by which time there were no restrictions for Jews entering Parliament.

39 Jacob Rader Marcus, ed., *United States Jewry, 1776–1985*, vol. 1 (Detroit: Wayne State University Press, 1989), 200, 416. Edwin Wolf and Maxwell Whiteman, *The History of the Jews of Philadelphia from Colonial Times to the Age of Jackson* (Philadelphia: Jewish Publication Society of America, 1975), 208–209.

40 Ibid.

41 Marcus, ed., *United States Jewry*, 1: 197–200; Leo Hershkowitz, "Some Aspects of the New York Jewish Merchant Community, 1654–1820," *American Jewish Historical Quarterly* 66 (1976): 29.

Joshua Montefiore, the son of a wealthy and important London Jewish family, studied law in England but could not become a barrister. In 1787 he moved to Jamaica, where local authorities prevented him from practicing law, citing both existing English practice and a local Jamaican statute of 1711, which prohibited Jews from holding public office, serving on juries, or practicing law.[42] Had he moved to the United States in 1787, he could have held public office, voted, and practiced law. Montefiore returned to England, where he published several law books. But in 1811 he relocated to Philadelphia, where he practiced law and became the first Jew to publish a law book in the United States. By this time numerous Jewish Americans had been successfully practicing law,[43] but in England it would take until 1833 for the first Jewish barrister to be admitted, when Lincoln's Inn allowed Francis Goldsmid to omit the final words of the oath of abjuration: "upon the true faith of a Christian."[44]

The American Contrast with British Practice

As we have noted, at the time of the Revolution, Jews in the mother country were barred from numerous civic, educational, and professional endeavors, and could not vote, sit on juries, serve in Parliament, be military officers, attend a university, engage in some businesses, become barristers, or practice some other professions. In addition, immigrant Jews could not become naturalized British citizens.

This history contrasts with the United States, where Jews voted under every new state constitution,[45] could hold office in some states,

42 Nathan Dorn, "Joshua Montefiore, First Jewish Author to Publish a Law Book in America," Library of Congress, Law Library, 24 May 2022, https://blogs.loc.gov/law/2022/05/joshua-montefiore-first-jewish-author-to-publish-a-law-book-in-america/#:~:text=%E2%80%9CJoshua%20Montefiore%20of%20St.,December%2C%201950)%2C%20pp.

43 Ibid; Leon Hühner, "Jews in the Legal and Medical Profession in America Prior to 1800," *Publications of the American Jewish Historical Society* 22 (1914): 153–154 (hereafter *PAJHS*).

44 Henriques, *Jews and the English Law*, 204.

45 Rhode Island did not adopt a constitution at this time, but in 1798 the state enfranchised all freemen of the state, including Jews. The law contained no religious test for officeholding, and the oath of office had no reference to God or religion. "An Act regulating

and after the Revolution could naturalize in most states. Once the U.S. Constitution was in force, naturalization was entirely under the authority of Congress,[46] and the first Congress passed the Naturalization Act of 1790, which had no religious limitations but significantly only allowed the naturalization of a "free white person."[47] That no one ever challenged the right of Jews to naturalize suggests that from the beginning of the nation they were considered equal to all other European immigrants, naturalized citizens, and native-born citizens.[48] This would be true even after World War I, when new immigration laws dramatically curtailed Jewish immigration but never suggested that Jews should not be naturalized.

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the Manner of admitting Freemen, and directing the Method of electing Officers, in this State," *The Public Laws of the State of Rhode Island and Providence Plantations* (Providence: Carter and Wilkinson, 1798), 114. See also *Newport Historical Society, Rhode Island Suffrage Timeline* https://newporthistory.org/resource-center/know-your-history/suffrage-and-civic-engagement/. Connecticut had no constitution until 1818, but Jews could vote in the state before then, as could Blacks before 1814. Robert P. Forbes, "Grating the Nutmeg: Slavery and Racism in Connecticut from the Colonial Era to the Civil War," *Connecticut History* 52 (2013): 170, 182; and Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000), 20. The legislature first disenfranchised Blacks in 1814, and this continued in the state's first constitution, in 1818, which provided that "Every white male citizen of the United States, who shall have gained a settlement in this State, attained the age of twenty-one years, and resided in the town in which he may offer himself to be admitted to the privilege of an elector." Connecticut Constitution, 1818, Art. VI, Sec. 2. The constitution also eliminated any religious test for office. Ibid., Art. X, Sec. 1; Ibid., Art. VI, Sec. 4.

46 "The Congress shall have the power … to establish a uniform Rule of Naturalization," U.S. Constitution, Art. I, Sec. 8, Cl. 4.

47 An Act to Establish a Uniform Rule of Naturalization, 1 Stat. 103 (26 March 1790). For a full discussion of this see Chin and Finkelman, "The 'Free White Persons' Clause of the Naturalization Act of 1790."

48 Karen Brodkin, *How Jews Became White Folks and What That Says about Race in America* (New Brunswick, NJ: Rutgers University Press, 1998), argues that Jews in the United States were not "white." Brodkin, an anthropologist, ignores almost all the history of Jews in the United States before 1900, focuses mostly on the period from 1920 to 1970, and says nothing about naturalization law and other laws that in fact did not "regulate" Jews as a separate race, but considered them "white" from 1790 until the term was removed from the naturalization act. Immigration and Nationality Act of 1952, 66 Stat.163, 239, § 311.

Unlike many European nations, which made it difficult or impossible for Jewish immigrants to naturalize well into the twentieth century, the United States offered the opportunity for Jews to become citizens from its earliest days—via state laws immediately after the Revolution and federal laws beginning in 1790 and continuing until today. From the Revolution until today, Jews have taken advantage of American naturalization law to become citizens.

Thus, the American Revolution led to a true revolution in citizenship and legal rules for Jews, leading Jewish Americans to actively participate in political, legal, civic, military, and economic culture. The changes coming out of the Revolution also set the stage for American religious liberty for Jews and other religious minorities.

Pre-Revolutionary Activities and Jewish Political Participation

Starting in the 1760s Jewish merchants signed petitions and were active in protesting British policies. In 1765 ten Jewish merchants in New York City, including Hayman Levy, Jonas Phillips, and Sampson Simson, signed a nonimportation agreement along with nearly two hundred other men in the city.[49] In 1770 six Jews, including Phillips, Levy, and Isaac Seixas, signed another petition urging the continuation of the boycott of British goods.[50] In Philadelphia Jewish merchants, including Michael Gratz, Bernard Gratz, and Matthias Bush, signed nonimportation agreements along with their Christian neighbors. One of Bush's sons, Lewis, would later serve as a captain in the Revolutionary War, dying in combat, while another son, Solomon, would rise to become a lieutenant colonel in the Pennsylvania militia. In Newport, Rhode Island, Isaac Mendes Seixas signed a nonimportation agreement along with other Jewish merchants. Haym Salomon joined the Sons of Liberty before the Revolution. Unlike many Protestant ministers in New York, Rev. Gershom Mendes Seixas—the spiritual leader of Shearith Israel, the first synagogue in what would become the United States—actively supported the patriot cause; he fled when the city fell to the British. He was

49 Howard B. Rock, *Haven of Liberty: New York Jews in the New World, 1654–1865* (New York: New York University Press, 2012), 72.
50 Pencak, *Jews & Gentiles*, 62.

the son of Newport's Isaac Mendes Seixas, who had signed anti-British documents.[51] As the Revolution came to an end, ten Philadelphia Jews joined hundreds of their Christian neighbors in petitioning Congress to return to Philadelphia.[52] This petition once again underscores the level of comfort Jews had in participating in politics and the open acceptance of such from their Christian neighbors.[53] This Jewish activism dramatically contrasts with the lack of public debate by Jews in England during the controversy of the Jew Bill in 1753.[54]

These early Revolutionary-era activities by Jews in the colonies and new states illustrate three critical aspects of Jewish life in the emerging

51 As we have noted above, another son of Isaac Mendes Seixas, Moses Mendes Seixas, would later write to President Washington, setting the stage for Washington's famous letter denouncing religious bigotry and persecution.

52 Pencak, *Jews & Gentiles*, 72. "Philadelphia Citizens to the Continental Congress," July 1783, in Schappes, *Documentary History of Jews in the United States*, 61–63. Wolf and Whiteman, *Jews of Philadelphia*, 146.

53 Library of Congress, "Religion and the Founding of the American Republic," https://www.loc.gov/exhibits/religion/rel03.html. Some Jews were loyalists. Cecil Roth, "Some Jewish Loyalists in the War of American Independence," *PAJHS* 38 (1948): 81, details some of the better-known Jewish loyalists, as well as some lesser-known ones. The most famous loyalist was David Franks (not to be confused with the American military officer and diplomat, David Salisbury Franks). In 1765, David Franks supported the growing opposition to the Crown, joining some 375 Philadelphia merchants, including at least nine other Jews, in signing a nonimportation agreement. Schappes, *Documentary History of Jews in the United States*, 38–41. However, during the war he was accused of being a loyalist, which he clearly was, jailed and then exiled to New York City, which was under British control. He went to England with the British army in 1782, when the British evacuated New York. Parliament gave him some compensation for his losses. Jacob Rader Marcus, *American Jewry: Documents Eighteenth Century* (Cincinnati: Hebrew Union College Press), 289–292. The Hart family of Newport and the Lucena family in Savannah were also loyalists. Wallace Brown, *The Good Americans: The Loyalists in the American Revolution* (New York: William Morrow, 1969) 245; Maya Jasanoff, *Liberty's Exiles: American Loyalists in the Revolutionary World* (New York: Alfred A. Knopf, 2011), 255–256 notes that Israel Mendes, a Tory from New York City, moved "with his family of eight," to Kingston, Jamaica when the war ended.

54 Katz, *Jews in the History of England,* 240–283. Katz's thorough discussion of the Jew Bill controversy does not offer any examples of Jews publicly defending their rights. Jews in mid-eighteenth-century Britain seem to have kept quiet, as they remained disfranchised and ineligible for naturalization.

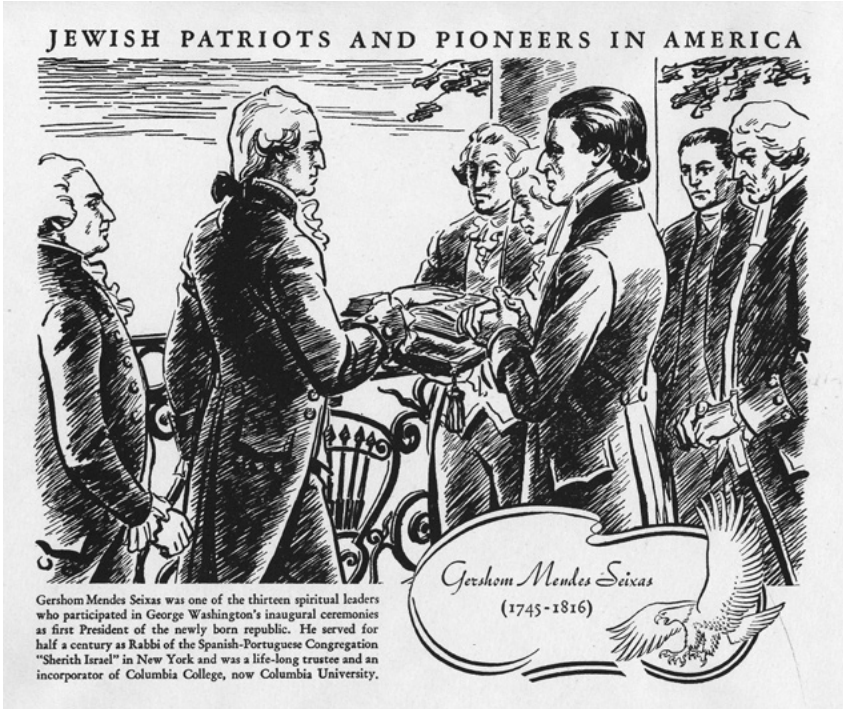


Illustration of Washington's inauguration featuring Gershom Mendes Seixas.
(Courtesy American Jewish Archives)

nation. First, they show that Jews were comfortable participating in the political community. Second, they show that Christians were willing to accept Jews as equal partners in civic activities. Third, they show that discrimination against Jews simply did not take hold at the political level. The active participation of Jews in the Revolutionary mix helped secure their rights. Indeed, Jews were far more active in the Revolution than some Protestants, including many Anglicans who remained loyal to the Church of England, and Quakers, who were both pacifists and more likely to be Tories than most other groups.[55] At this time most Jews lived in New York, Philadelphia, Newport, Charleston, and Savannah—where the Revolution was brewing. Many Jews joined the cause early and, as

55 Library of Congress, "Religion and the Founding of the American Republic."

such, earned their right to political equality. "Jews were predominately Patriots,"[56] but of course, not all Jews joined the Patriot cause; some tried to remain neutral, and others were loyalists. Significantly, we have found no evidence of antisemitic attacks by patriots because some Jews were loyalists.

As the independence movement started and the colonies began to organize politically, Jewish patriotism and opposition to the Crown led to civic gains. When the colonies began to organize politically, Jews were in the mix. In 1774, just one year after he had arrived in the colonies, Francis Salvador, a slaveholding planter, won a seat in South Carolina's Provincial Congress. He was reelected in 1776 and then elected to the newly formed General Assembly, in the new state of South Carolina, thus becoming the first Jew elected to a legislature in both the new United States and the Atlantic world. He served until he was killed in battle that August. Henry Laurens, the patriot leader in South Carolina wrote his son that "Mr. Salvador, a Gentleman whose Death is universally regretted was killed" in a battle against a combined force of Tories and Cherokee.[57]

Jewish Participation in the War

During the Revolution a few Jews served as officers in the patriot armies. Some of them certainly faced antisemitism.[58] For example, Maj. David

56 George Frazer, *God against the Revolution: The Loyalist Clergy's Case against the American Revolution* (Lawrence, KS: University of Kansas Press, 2018), 5, 6.

57 Henry Laurens to John Laurens, 14 August 1776, *The Papers of Henry Laurens*, *Volume Eleven: Jan. 5, 1776–Nov. 1, 1777*, ed. David R. Chesnutt and C. James Taylor (Columbia, SC: University of South Carolina Press, 1988), 11: 222, at 230, 230n. Laurens's use of the capitalized term "Gentleman," suggests the lack of even social antisemitism among some of the most elite members of South Carolina society. Barnett A. Elzas, *The Jews of South Carolina, from the Earliest Times to the Present Day* (Philadelphia: J.B. Lippincott, 1905), 73. Salvador appears to be the first Jewish fatality in the war.

58 This was true during the period after the Revolution as well. Most famously, Uriah P. Levy struggled with antisemitic attacks throughout his career. He vigorously responded and as a result was court-martialed six times and once demoted from the rank of captain, the highest rank in the Navy at that time, although he later gained that rank back. Similarly, he was twice dismissed from the Navy but subsequently reinstated. In 1855 he

Salisbury Franks was arrested three times during the war but was ultimately exonerated by a board of inquiry. It seems likely his faith exacerbated his troubles. By the end of the war, he was a lieutenant colonel in the regular army and was sent to France and Morocco as a diplomat while the war was winding down. He later served as Thomas Jefferson's trusted courier in Europe and the United States and then held a patronage position under President Washington in the first Bank of the United States.[59]

Other Jewish officers in state militias and the Continental Line fared better with their Christian comrades.[60] Mordecai Sheftall, a merchant and the leader of the Jewish community in Savannah, Georgia before the war, rose to the rank of full colonel, which was the third-highest rank in the Army.[61] Solomon Bush rose to the rank of major while serving in combat, and in 1777, after being wounded, the Pennsylvania government appointed him the deputy adjutant-general of the state militia. By the end of the war, he was a lieutenant colonel. His younger brother, Lewis, was a captain when he died in combat. New Yorker Abraham Mendes Seixas served as a captain in the Continental Army. In 1781 Congress commissioned Isaac Franks as an ensign (the equivalent of a second lieutenant) in a Massachusetts regiment.[62] In the 1790s Isaac

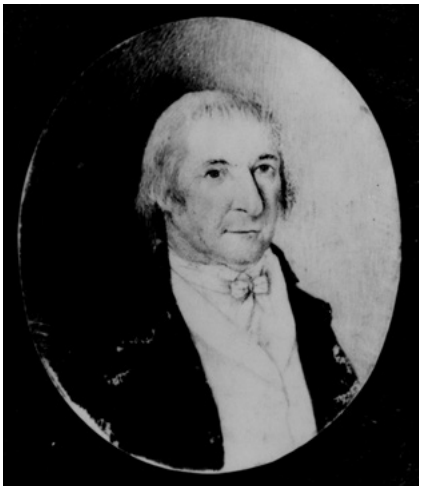
successfully defended his conduct before a court of inquiry and was restored to his former position. Melvin Urofsky, *The Levy Family and Monticello 1834–1923* (Monticello: Thomas Jefferson Foundation, 2001), 45, 51–54. Ira Dye, *Uriah Levy: Reformer of the Antebellum Navy* (Gainesville: University Press of Florida, 2006).

59 While beyond the scope of this article, the experiences of Lt. Col. Franks during the Revolution and Capt. Levy in the Navy contrast with the French army's persecution of Capt. Alfred Dreyfus, who was the victim of a massive antisemitic conspiracy in late-nineteenth-century France.

60 The difficult job of sorting out all the Jewish officers in the Revolutionary armies has never been completely done. The best place to start is Simon Wolf, *The American Jew as Patriot, Soldier and Citizen* (New York: Brentano's, 1895), 44–66; however, Wolf makes some mistakes both through inclusion and omission.

61 The highest rank in the army was major general (two stars). Below that was brigadier general, and below that, colonel. After his presidency Washington was given the rank of lieutenant general (three stars).

62 https://loebjewishportraits.com/biography/colonel-isaac-franks/.



Mordecai Sheftall
(Courtesy American Jewish Archives)

Franks would become a lieutenant colonel in the Pennsylvania militia.[63] Numerous Jews served as officers in the South Carolina militia, and a few were officers in the Continental line in the South.[64]

Although few, the role of these Jewish officers was extraordinarily significant. They helped to eliminate formal antisemitism in the new nation by establishing acceptance of Jews having positions of authority in the military chain of command, and thus having power over Christian enlisted men and lower-ranking officers. The presence of these officers says much about Jewish patriotic commitment, but it also says much about the egalitarian values of their Christian neighbors and comrades in arms. At the level of civic engagement, military leadership, and political activity, there were no formal barriers to Jewish participation. Informal barriers based on individual prejudices surely existed, but at its core the patriot movement was open to equal opportunity for Jews, and Jews took advantage of this to push equality further along. This was a uniquely American phenomenon at the time.[65] Jewish military officers were simply unprecedented in Atlantic culture.[66] As Harvard historian Derek Penslar concluded, in

63 Ibid.

64 Abraham Seixas, a captain in the Charleston militia apparently served as a lieutenant under General Benjamin Lincoln in Georgia. Elzas, *The Jews of South Carolina*, 92–96.

65 Antisemitism would be far more important, and dangerous, in the American military in the twentieth century. See, for example, Jospeh W. Bendersky, *The Jewish Threat: Anti-Semitic Politics in the U.S. Army* (New York: Basic Books, 2002).

66 Because of the substantial Jewish population in colonial Suriname, Jews had some civic responsibilities. Two Jewish men served as captains in the local militia in the mid-eighteenth century, but this unique status seems to reflect a private militia organized by Jewish slave-owners and other settlers in the colony, rather than Dutch policy. Derek J. Penslar, *Jews and*

Western Europe "before the French Revolution—Jews did not want to serve in armies and armies did not want Jews."[67] But in the American Revolution Jews were not only enlisted men but high-ranking officers, which led to a real change in status for the Jewish *citizens* of the new nation. Their service also probably undermined some social antisemitism and alleviated some fears or anxieties of Christians who had never met a Jew before the war, but then served with them as comrades in arms.

The ability to serve as officers is also significant in light of political limitations Jews faced in the first state constitutions. There were Jewish officers in the militias in South Carolina, Georgia, Pennsylvania, and Massachusetts, even though, as we discuss below, the early constitutions of those states limited officeholding to Protestants or Christians. These limitations could have been applied to Jewish military officers on the grounds that the military was under the executive branch. But there appears to have been no official discussions in the Continental Congress or the state legislatures of the propriety—or impropriety—of commissioning Jewish officers, and there was no formal opposition to the practice.[68] Thus, from the beginning of the Revolution and throughout the war, a small number of Jewish officers gave orders to Christian soldiers. This stands in marked contrast to the British and all other European armies, where no Jews served as officers.[69]

After the war, Jews continued to serve as military officers. In the 1790s Isaac Franks, the former ensign in Massachusetts, was commissioned as a lieutenant colonel in the Pennsylvania militia. In 1802 the first class at the United States Military Academy (West Point) consisted of two cadets, one of whom—Simon M. Levy—was a practicing Jew

the Military: A History (Princeton: Princeton University Press, 2011), 27.

67 Ibid.

68 While Catholics faced greater open hostility than Jews in the mid-nineteenth century, they also faced less legal discrimination in the United States and the Atlantic world. Obviously, for example, some foreign Catholic officers fought for the American cause, most notably Maj. Gen. Marie Joseph Paul Yves Roch Gilbert du Motier, Marquis de Lafayette from France, and two Polish officers, Brig. Gen. Tadeusz Kościuszko and Brig. Gen. Casimir Pulaski.

69 There had been Jewish officers in the Ptolemaic and Seleucid empires, in Christendom until the sixth century C.E., and in the Muslim world in the Middle Ages. Penslar, *Jews in the Military*, 22.

born in Philadelphia on the eve of the Revolution.[70] In 1807 Samuel Noah, a cousin of the New York political leader Mordecai M. Noah, graduated from West Point, while in 1809 Mordecai himself was elected as "a major in the Pennsylvania militia. Forever after, he was known as 'Major Noah.'"[71] From the end of the Revolution through the War of 1812, Jews served as New York militia officers at various ranks, including colonel and lieutenant colonel. Haym Salomon, the son of the Revolutionary activist with the same name, served as a captain in a New York regiment; there were also Jewish officers in the regular army as well as in militia units from Pennsylvania, Maryland, South Carolina, and Georgia.[72] Their enemy, the British army, would not allow Jews to be officers for another decade and a half. After the War of 1812 Uriah Phillips Levy began to rise in the ranks of the Navy, eventually becoming a captain (the highest rank in the Navy before the Civil War) and the commodore of a squadron. These Jewish military officers reflected the way Jewish participation in the Revolution had truly made the United States different than any nations in Western Europe.[73] Jews had been expelled from Spain and Portugal, and religious requirements prevented them from becoming officers in Britain or France. Britain's Royal Military College (Sandhurst) was founded in 1801; it is impossible to even imagine a Jew there in its early years, since Jews were not allowed to serve as officers in the British army until 1829.

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70 https://penelope.uchicago.edu/Thayer/E/Gazetteer/Places/America/United_States/Army/USMA/Cullums_Register/Classes/1802.html.

71 Leon Hühner, "Jews in the War of 1812," *PAJHS* 26 (1918): 173, 180. Jonathan D. Sarna, *Jacksonian Jew: The Two Worlds of Mordecai Noah* (New York: Holmes and Meier, 1981), 5.

72 Rock, *Haven of Liberty*, 99. Hühner, "Jews in the War," 174–180; Wolf, *The American Jew as Patriot*, 69–72; Marcus, *Early American Jewry*, 2:327 (noting Maj. Mordecai Myers of Georgia writing about the War of 1812).

73 Some sources assert that Alexander Zuntz, who came to New York with a Hessian regiment, was an officer, but as Cecil Roth correctly noted, he was a "commissary, not officer, with the Hessian forces—a purely civilian appointment." Roth, "Some Jewish Loyalists," 83. Illustrating the argument that the United States offered Jews greater protection and liberty than anywhere in Europe, Zuntz remained in New York when the British and Hessians evacuated. He later became the *parnas* at Congregation Shearith Israel in New York.

The first law authorizing employment of military chaplains did not limit who could serve in such a role,[74] but in a nation that was more than 90 percent Protestant, it is hardly surprising that before 1861 no Jews served in such a role. Indeed, until the Civil War there was never any discussion or demand for military rabbis.[75]

The Emergence of Jewish Political Rights at the National Level

As we noted above, in 1774 Francis Salvador won a seat in South Carolina's Provincial Congress.[76] While some people were probably uncertain about a Jew serving in the new legislature, he was reelected in 1776 in what had become the independent state of South Carolina

74 An Act for raising and adding another regiment to the military establishment of the United States, and for making further provision for the protection of the frontiers, Ch. 28, 1st Congress, Public Law 1–28, 1 Stat. 222, Secs. 5 and 6 (3 March 1791). Chaplains were paid the handsome sum at the time of $50 a month, which was slightly more than half of what a brigadier general earned.

75 Act to authorize the Employment of Volunteers to aid in enforcing the Law and Protecting Private Property, 12 Stat. 268, Sec. 9 (22 July 1861) authorized the appointment of "a regularly ordained minister of a Christian denomination" as the chaplain in every army regiment. Shortly thereafter, Congress reaffirmed this by passing the Act for the better Organizing of the Military Establishment, 12 Stat. 287, Sec. 7 (3 August 1861). Jewish leaders and organizations petitioned members of Congress and President Lincoln to change the law. Korn, *American Jewry,* 56. They succeeded in July 1862, as a new law explained that the laws of 1861 "shall hereafter be construed to read as follows: That no person shall be appointed a chaplain in the United States army who is not a regularly ordained minister of some religious denomination, and who does not present testimonials of his present good standing as such minister, with a recommendation for his appointment as an army chaplain from some authorized ecclesiastical body, or not less than five accredited ministers belonging to said religious denomination." An Act to define the Pay and Emoluments of certain Officers of the Army, and for other purposes, 12 Stat. 594, Sec. 8 (17 July 1862). In September 1862 Rabbi Jacob Frankel became the first Jewish chaplain in the U.S. Army. See also Myer S. Isaacs, "A Jewish Army Chaplain," *PAJHS* 12 (1904): 127.

76 Some Jews in the colonial period had held appointive offices—including one as the sheriff in New York City—but these were not elected positions. However, in the late colonial period, Jews in pre-Revolutionary New York were elected to minor positions as assessor and collector of taxes. Rock, *Haven of Liberty*, 67–68. In 1767, Isaac Moses, a New York City shoemaker, was elected as a constable, which was a minor office. Pencak, *Jews & Gentiles*, 66.

and actively served until he died in combat in August 1776. This makes him the first Jew to be elected to public office in the new United States. As best we can determine, he was also the first Jew to ever be elected to a legislative office in the English-speaking world or the Atlantic world. All of this was during a time when Jews could not even vote in Great Britain. As late as 1858—three-quarters of a century after the American Revolution—English Jews could not serve in Parliament, nor could they hold office or even vote in Britain's other colonies for much of this period. Before 1831 members of the thriving Jewish communities in Barbados and Jamaica could neither vote nor hold office.[77]

In 1787, in one of its last acts before the proposed Constitution was sent to the states, Congress, operating under the Articles of Confederation, passed the Northwest Ordinance, which was the forerunner of all subsequent laws regulating the settlement of western territories and the creation of new states.[78] Most of the Ordinance dealt with land distribution and the creation of territorial governments. It famously banned slavery north of the Ohio River, and debates over slavery in the territories would continue until the Civil War finally settled the question.[79] However, two clauses dealt with religion, setting the stage for religious liberty and equality in the federal territories.

The Ordinance provided for "extending the fundamental principles of civil and religious liberty" in the national territories, guaranteeing 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."[80] Written before the Constitution and

77 Laura Arnold Leibman, *Once We Were Slaves: The Extraordinary Journey of a Multiracial Jewish Family* (New York: Oxford University Press, 2021), 51, 96–97, 97n.14. After the French Revolution, which was of course well after the American Revolution, Jews would gain basic legal and political rights in France.

78 An Act to Provide for the Government of the Territory Northwest of the river Ohio (13 July 1787), reenacted 7 August 1789, codified as Ch. VIII, 1 Stat. 50.

79 Ibid., Art. VI. On the implementation of this clause, see Paul Finkelman, *Slavery and the Founders: Race and Liberty in the Age of Jefferson*, 3rd ed. (New York: Routledge, 2014), 46–101.

80 Ibid., Art. I.

the Bill of Rights were in place, this was the first formal guarantee of free exercise of religion in the Atlantic world at the national level. This is one example of the "radical" transformation of the nation that Gary Nash writes about. At the same time the Ordinance provided that "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."[81] This set the stage for the possibility of some established church or churches in the area, but after the adoption of the First Amendment in 1791 this could not have happened at the territorial level, and it never happened at the state level. Most importantly, for our purposes, these clauses were not faith specific and clearly protected Jewish religious liberty.

By 1787 nine states had written constitutions that prevented Jews from holding public office, even though few if any Jews lived in some of these states, such as New Hampshire and Delaware. A few state constitutions also prohibited Catholics from holding office. Thus, a statute guaranteeing full religious freedom at the national level was a significant change. In a legislature where no Jews had yet served, and where only a few Catholics had ever served, it would have been perfectly reasonable for the Confederation Congress to establish some kind of nondenominational Protestantism. But the Congress did no such thing. Significantly, starting with the first federal census in 1790 and subsequent state and local censuses—and in stark contrast to European practice—the questionnaires did *not* ask about religion. While this hampers historical knowledge of the size of the early Jewish population, it likely gave Jewish Americans a sense of security that the government did not care about their religion or keep track of members of their faith. More importantly, unlike in Europe, the government did not count Jews, identify them, or even take note of where they lived. In the context of centuries of often-violent attacks on Jews and Jewish communities in Europe, this is enormously significant. In 1850, the census would count religious buildings—churches and synagogues—but never ask about the faith of individuals or the size of the congregations.

81 Ibid., Art. III.

American Jews never faced religious discrimination under the federal Constitution of 1787, which prohibited any religious test for officeholding at the federal level. This, too, was unique in the Atlantic world and unheard of anywhere in Europe. Every other European nation had an established church, or at least a preferred faith. But the United States did not. With the ratification of the Constitution, Jews could hold federal offices everywhere in the country, even where they could not hold office under existing state constitutions. Thus, in 1801 President Thomas Jefferson appointed Reuben Etting to be the U.S. marshal in Maryland, even though he would not have been allowed to hold a similar state office under the Maryland Constitution. This underscored the acceptance of Jews by the new Democratic-Republican president, just as Jews such as David S. Franks had been accepted under the previous Federalist administrations.

In 1797 Israel Israel won a seat in the Pennsylvania Senate, although he soon lost it in a special election after the first result was disputed. Israel, the son of a Jewish man and an Anglican woman, had been baptized at the age of two but was always seen as a Jew, and he faced vicious antisemitic attacks from Federalists.[82] In the hotly contested politics of the age, most Jews in Philadelphia were Jeffersonians, including men like Israel and Moses Levy, who were ethnically but not halakhically Jewish. In New York a number of practicing Jews were prominent in the Democratic Society and in Tammany Hall. Starting in 1794 Solomon Simson, the former president of Shearith Israel, won two consecutive terms as the assessor for New York City.[83] After 1801, under Jefferson and Madison, Joel Hart and Mordecai Manuel Noah served as diplomats. Major Noah was later the sheriff of New York City, became the "boss" of Tammany Hall, which controlled the city's Democratic Party, and then served as a judge.[84]

While the Constitution prohibited a religious test for officeholding, the new document did not address voter qualifications in any meaningful way. Instead, the national constitution left the entire issue of voting

82 Pencak, *Jews & Gentiles*, 233–237.

83 Ibid., 75.

84 Sarna, *Jacksonian Jew*, 37, 41, 44–47, 85–86, 143–51.

to the states.[85] Significantly, this had no deleterious effect on Jews or any other religious group.

Protections of Jewish Rights in State Constitutions

Jews were enfranchised under every state constitution during and after the Revolution. At various times they had been able to vote, or not vote, in the New York colony, which was the most ethnically and religiously heterogeneous New World settlement. Jews voted in New York shortly after the British seized New Netherland from the Dutch. The complex heterogeneity of the colony worked to the advantage of Jews, and for most of the period under British rule Jews "possessed nearly the same political and religious freedom as their Christian neighbors did."[86] In 1737 the New York Assembly disenfranchised Jews as a result of the contentious politics surrounding the corrupt governor William Cosby, whose administration also led to the famous seditious libel trial of John Peter Zenger.[87] The proponents of this disenfranchisement successfully argued that because Jews could not vote for members of Parliament in England, they should not be able vote in New York. Thus, the colonial legislature declared: "That it not appearing to this House, that Persons of the Jewish Religion have a Right to be admitted to vote for Parliament Men, in Great Britain, it is the Unanimous Opinion of this House, that they ought not to be admitted to vote for Representatives in this Colony."[88] However, after the passage of the Plantation Act in 1740,

85 U.S. Constitution, Art. I, Sec 2, Cl. 1: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

86 Rock, *Haven of Liberty*, 68. On the evolution of religious liberty in colonial New York, see Paul Finkelman, "Toleration and Diversity in New Netherland and the Duke's Colony: The Roots of America's First Disestablishment," in *No Establishment of Religion: America's Original Contribution to Religious Liberty*, ed. T. Jeremy Gunn and John Witte, Jr. (New York: Oxford University Press, 2012), 125–157.

87 Paul Finkelman, "Zenger's Case: Prototype of a Political Trial," in *American Political Trials*, ed. Michal Belknap (Westport, CT: Greenwood, 1994), 21–42.

88 Max J. Kohler, "Civil Status of Jews in Colonial New York," *PAJHS* 6 (1897): 81, 98. On the Zenger trial, see the introduction to Paul Finkelman, ed., *A Brief Narrative of the*

Jews voted on the same basis as everyone else in New York.[89] Jews in pre-Revolutionary New York City were elected to positions as assessor, constable, and tax collector.[90] The state's 1777 constitution reaffirmed this, with no religious test for voting or officeholding.

In 1769 Virginia enfranchised all adult White men based on residence and property ownership, but *not* religion. The state's 1776 constitution adopted this policy.[91] Georgia's first constitution similarly enfranchised "All male white inhabitants" on the basis of age, property ownership, and residence, but not religion.[92] North Carolina enfranchised "all Freemen of the Age of twenty-one Years" who met residency and property requirements.[93] Under this clause free Blacks, as well as Jews, were able to vote until a state constitutional amendment disenfranchised Blacks in 1835.[94]

Pennsylvania enfranchised all adult males, Black and White, subject to residency and property requirements.[95] Massachusetts was equally expansive, giving the franchise and the right to hold office to "every male inhabitant" subject to residency and property requirements. However, as we note in the next section, a Jew who was an "inhabitant" and could vote could not be "elected into any office" in the state.[96] Other states had similar rules. States differed on whether free Blacks could vote—most

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Case and Tryal of John Peter Zenger (Clark, NJ: The Lawbook Exchange, 2000).

89 Rock, *Haven of Liberty*, 67–68.

90 Ibid., 66.

91 Virginia Constitution, 1776, Art. VII; and "An Act for Regulating the Election of Burgesses," (November 1769), Hening, *The Statutes at Large*, 8: 305–308.

92 Georgia Constitution, 1777, Art. IX.

93 North Carolina Constitution, 1776, Sec. VII.

94 "No free negro, free mulatto, or free person of mixed blood, descended from negro ancestors to the fourth generation inclusive (though one ancestor of each generation may have been a white person,) shall vote for members of the senate or house of commons." Amendments to the Constitution of 1776, Art. I, Sec. 3, Par. 3 (ratified 1835). For a discussion of this change, see John Hope Franklin, *The Free Negro in North Carolina, 1790–1860* (Chapel Hill: University of North Carolina Press, 1943), 109–120.

95 Pennsylvania Constitution, 1776, Plan or Frame of Government for the Commonwealth or State of Pennsylvania, Section 6 and Section 9.

96 Massachusetts Constitution, 1780, Art. II, Par. 1.

allowing them to vote but some not—or on property requirements for voting.[97] All the state constitutions allowed adult Jewish men to vote, provided they met the same residential, property, and other requirements that applied to all voters. In 1798 Connecticut and Rhode Island had not yet written constitutions, but both states enfranchised Jews.[98] New Jersey, uniquely, enfranchised "all inhabitants," subject to property and residence requirements. Thus, Jews, Blacks, and women could vote, although Blacks and women later lost that right through legislative action.[99]

Discriminations Against Jews in State Constitutions

While Jews could vote on the same basis as all other citizens under all the new state constitutions, most of the first state constitutions contained religious tests for officeholding that discriminated against Jews. Of the eleven states that wrote constitutions during the Revolution,[100] only Virginia and New York did not have a religious test for office holding. Initially, all the other states (as well as the fourteenth state, Vermont) had such tests, which excluded Jews from holding office.[101] Although

97 See Paul Finkelman, "The First Civil Rights Movement: Black Rights in the Age of the Revolution and Chief Justice Taney's Originalism in Dred Scott," *University of Pennsylvania Journal of Constitutional Law* 24 (2022): 676, at 676–79, 685, 711–712 and *passim*.

98 Theoretically there might have been a few free men of mixed Black and Jewish ancestry who could not have voted in Georgia, South Carolina, Virginia, and Rhode Island in this period. But the disfranchisement would have been based on race, not religion. When some Jews who were of mixed ancestry moved to the new nation, they were accepted as "White." Leibman, *Once We Were Slaves*.

99 New Jersey Constitution, 1776, Sec. IV. A Supplement to the act entitled "An act to regulate the election of members of the legislative council and general assembly, sheriffs and coroners in this state," (16 November 1787), *New Jersey Laws, 1807*, 14.

100 Connecticut did not adopt a constitution until 1818 and Rhode Island did so in 1843.

101 While Catholics faced greater open hostility than Jews in the mid-nineteenth century, they faced fewer legal restrictions in the United States and the Atlantic world. Obviously, for example, many Catholic officers fought for the American cause in the French Army, most notably Maj. Gen. Gilbert du Motier, Marquis de Lafayette. But there were also other foreign Catholic officers, including Brig. Gens. Casimir Pulaski and Tadeusz Kościuszko. Charles Carroll of Maryland signed the Declaration of Independence, and Daniel Carroll and Thomas Fitzsimons signed the Constitution; all were Catholics. While some early

they were considered voters and citizens, religious tests for officeholding barred Jews from holding some or any state offices and thus denied them political equality. In addition, a few states retained state-established churches or special state benefits for some churches. State establishments and aid to some religions did not deny Jews religious liberty or legal rights, but they made Jews (and members of other non-favored faiths) less than equal. Most of these discriminatory provisions disappeared as states rewrote their constitutions after the U.S. Constitution went into effect. However, some states—such as Massachusetts and New Hampshire—either never rewrote their constitution or did not do so for a very long time. New Hampshire kept its requirement that officeholders be Protestants until after the Civil War.[102] New Jersey's 1776 constitution, which had a Protestant test for officeholding, remained in place until 1844, when the new state constitution simply declared: "There shall be no establishment of one religious sect in preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right merely on account of his religious principles."[103]

Delaware's 1776 constitution required every member of the state legislature and "all officers" of the state to take an oath asserting "I … 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."[104] This clause would have applied to Jews, Unitarians, and presumably deists, such as Benjamin Franklin and Thomas Jefferson. However, the state's 1792 constitution, adopted after the federal Constitution and First Amendment were in effect, explicitly rejected the earlier requirement that public officials profess a religious belief, providing: "No religious test shall be required as a qualification

state constitutions limited officeholding to Protestants, most of the new states allowed all Christians—including Catholics—but not Jews to hold office.

102 New Hampshire, Constitution, 1792, Part Second, Secs. XIV, XXIX, XLII.

103 New Jersey Constitution, 1844, Art. I, Cl. 4.

104 Delaware Constitution, 1776, Art. 22.

to any office, or public trust, under this State."[105] It is hard to imagine a more dramatic turnaround in public policy.

South Carolina's 1778 constitution allowed Jews to vote and form congregations, but it limited service in the legislature or executive branch to men of "the Protestant religion." The constitution further declared that "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." South Carolina explicitly tolerated other faiths, declaring 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."[106] This was clearly directed at the state's important and growing Jewish community because it had no reference to Christianity or the New Testament. It also aided Catholics, but this could easily have been accomplished by simply declaring religious toleration for all "Christians." Indeed, given the great intolerance of Catholics in much of the nation, it seems likely that the importance of Jews in the Revolution and in the growth of Charleston was the motivation for this clause, which also benefited Catholics. South Carolina's 1790 constitution had no religious test for voting or office-holding, although it did limit both to White property owners.[107] The new constitution reaffirmed the state's commitment to "free exercise and enjoyment of religious profession and worship, without discrimination or preference."[108] For Jews, this was a remarkable change from the state's first constitution which had declared the Protestant faith to be the official religion of the state.

We know the state would never apply its bold language on freedom of worship to the religious beliefs and practices of slaves or free Blacks.

105 Delaware Constitution, 1792, Art. VIII, Sec. 9.

106 South Carolina Constitution, 1778, Art. XXXVI.

107 South Carolina Constitution, 1790, Art. I, Sec. 4, Sec. 6.

108 Ibid., Art. VII, Sec. 1. Sec. 2 of this article further declared that all "civil and religious societies and of corporate bodies, shall remain as if the constitution of this state had not been altered or amended."

This issue may have been the reason for a clause limiting religious liberty: "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."[109] From the perspective of White South Carolinians, churches attended by free Blacks and slaves, with services led by Black preachers, clearly threatened the "peace or safety" of the state and were thus carefully monitored and regulated until the Civil War demolished slavery. While free Blacks operated a church for a few years in Charlestown, after 1822 any religious gathering of Blacks had to be led by White clergymen and have Whites present in the pews, as had been the case for all but a few years of the state's history.[110]

Georgia's Constitution of 1777 required that all members of the legislature "shall be of the Protestent [*sic*] religion, and of the age of twenty-one years, and shall be possessed in their own right of two hundred and fifty acres of land, or some property to the amount of two hundred and fifty pounds."[111] The document also provided that "All persons whatever shall have the free exercise of their religion; provided it be not repugnant to the peace and safety of the State; and shall not, unless by consent, support any teacher or teachers except those of their own profession."[112] The constitution also prohibited any member of the clergy, of any faith,

109 Ibid., Art. VII, Sec. 1.

110 In 1818 the substantial free Black population in Charleston, led by Morris Brown, a wealthy free Black, established an African Methodist Episcopal Church, but "Charleston authorities harassed the black congregation and finally closed the Church in 1821." Michael P. Johnson and James L. Roark, *Black Masters: A Free Family of Color in the Old South* (New York: W.W. Norton, 1984), 38. After the Vesey conspiracy in 1822, the city council ordered the that the church be demolished, and Brown was forced to leave the state. See also Ira Berlin, *Slaves Without Masters: The Free Negro in the Antebellum South* (New York: Pantheon, 1974), 290. In 1849 Episcopalians in Charleston began construction of a church to provide services and religious instruction for free Blacks and slaves in the city. Slaveowners would also attend services, led by a White preacher, and all instruction would be by Whites as well. Robert F. Durden, "The Establishment of Calvary Protestant Episcopal Church for Negroes in Charlestown," *The South Carolina Historical Magazine* 65, no. 2 (1964): 63.

111 Georgia Constitution, 1777, Art. VI.

112 Ibid., Art. LVI.

from serving in the legislature.[113] Like its more populous and prosperous neighbor to the North, Georgia allowed Jews to worship freely while denying them the right to hold an elective office, and provided the same disability for Christian ministers. The constitution provided language that could be used to prevent free Blacks or slaves from worshipping in their own congregations.

Georgia's 1789 constitution continued the prohibition on clergymen serving in the legislature, allowed government officials to "swear (or affirm, as the case may be)" their oath of office, and provided an emphatic right to free exercise of Religion: "All persons shall have the free exercise of religion, without being obliged to contribute to the support of any religious profession but their own," but otherwise the new Constitution had nothing to say about religion.[114] Jews could and did hold office in the state after this.

In its 1780 constitution Massachusetts emphatically supported religious freedom: "It is the right as well as the duty of all men in society, publicly, and at stated seasons to worship the Supreme Being" and promised that "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 or sentiments."[115] However, the Massachusetts Constitution also promised public funds for Protestant teachers, guaranteed that "every denomination of Christians" would be "under the protection of the law," required that public officials be "of the Christian religion," and required leaders of the executive branch and all members of the legislature to take an oath asserting they "believe in the Christian religion."[116] The constitution guaranteed that Harvard College would support the "Christian religion" and be governed by the "ministers of the Congregational churches"

113 Ibid., Art. LXII.

114 Georgia Constitution, 1789, Art. I, Sec. 18; Art. I, Sec. 15, and Art. IV, Sec 5.

115 Massachusetts Constitution, 1780, Part the First, Art. II. This followed a clause designed to end slavery, which was Article I of the Commonwealth's Declaration of Rights.

116 Massachusetts Constitution, 1780, Part the First, Art. III.; Ch. II, Sec. I, Art. II; Sec II, Art. I; Ch. IV, Art. I.

from Boston and elsewhere.[117] While granting Jewish citizens complete religious freedom and the right to vote, the Bay State's constitution clearly made them, at best, second-class citizens in a state that favored the Congregational Church, Protestants in general, and Christians.

Massachusetts never wrote a new constitution, but gradually, through amendments, the state disestablished the church, and by the 1830s it provided equality to Jews, other non-Christians, and non-Protestants. Massachusetts ended its religious test for officeholding through a complicated amendment process in 1833.[118] However, full separation of church and state would be not added to the constitution until 1974.[119]

Vermont, the fourteenth state, admitted in 1791 before the ratification of the Bill of Rights, guaranteed 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 minister, contrary to the dictates of his conscience."[120] However, immediately following this provision the constitution declared "nor can any man who professes the protestant [*sic*] religion, be justly deprived or abridged of any civil right, as a citizen, on account of his religious sentiments, or peculiar mode of religious worship."[121] At this time there were few if any Jews in the state, although there may very well have been some Catholics. A subsequent clause required that all legislators or any other "civil officer or magistrate" swear: "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."[122]

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117 Massachusetts Constitution, 1780, Ch. V, Sec. I, Arts I–III.

118 Borden, *Jews, Turks, and Infidels*, 30.

119 Massachusetts Constitution, 1780, Amendment CIII (5 November 1974).

120 Vermont Constitution, 1786, Ch. 1, Art. III. Written in 1786, before the rest of the United States accepted Vermont's demand to be a state, this became Vermont's first constitution when it was admitted as state in 1791.

121 Ibid.

122 Vermont Constitution, 1786, Ch. II, Sec. XII.

In 1793 Vermont adopted a new constitution that had no meaningful religious tests. Officeholders swore to uphold the constitution, with a pro forma ending "so help me God" or "under the pains and penalties of perjury" if the person, such as a Quaker, refused to take an oath.[123] Anyone could now hold office in Vermont without regard to their faith. The constitution strongly guaranteed that "[no] 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."[124] The closest the constitution came to endorsing a particular faith was a final section of this clause asserting that "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."[125] This last clause seems to be unique in the history of state constitutions. It can be read as an admonition or an enforceable requirement, but it only applied to Christians. This might be the one clause in early state constitutions that could have burdened Christians or their churches but not affected Jews.

Rhode Island did not adopt a constitution until 1843. After the Revolution it operated under its 1663 charter, which established a "Christian" colony but also allowed freedom of worship. This led to a vibrant Jewish community in Newport. But, while free to worship as they wished, Jews appear to have had no political rights. Under the Plantation Act in 1740 some Rhode Island Jews were naturalized, but in 1762 colonial officials infamously denied naturalization to two prominent merchants, Aaron Lopez and Isaac Elizer, who went to Massachusetts and New York, respectively, to naturalize.[126] Jews in the colony were active

123 Vermont Constitution, 1793, Ch. II, Sec. XXIX.

124 Vermont Constitution, 1793, Ch. I, Art. III. The actual text of the provision is this: "You _____ do solemnly swear (or affirm) that you will be true to the State of Vermont, and that you will not, directly or indirectly, do any act or thing injurious to the Constitution or Government thereof, as established by Convention. (If an oath,) so help you God, (if an affirmation,) under the pains and penalties of perjury." The person taking the oath or affirmation would substitute "I" for "you" at the ceremony.

125 Ibid.

126 Sarna and Dalin, *Religion and the State*, 51–59.

in other civic affairs, including donating to help establish what became Brown University, signing nonimportation agreements, and serving in the patriot armies. In the aftermath of the Revolutionary War, there was the famous exchange of letters between President Washington and the Jewish community of Newport in which Washington declared that the Constitution created a government "which gives to bigotry no sanction, to persecution no assistance." [127] This exchange of letters took place in 1790, shortly after Rhode Island became the thirteenth state to ratify the Constitution. The political status of Jews in this period was unclear, but in 1798 Rhode Island caught up with other states, enfranchising Jews on the same basis as other freemen in the state and allowing them to hold public office. Somewhat more unusual, that year the state exempted Jews from its law prohibiting people from working on Sunday. The statute provided that "all the professors of the Sabbatarian Faith, or Jewish religion, throughout this state … shall be permitted to labour in their respective professions or vocations on the first day of the week; and that they shall have liberty quietly and peaceably to pass and repass on foot or horseback about their ordinary business."[128] This Sunday closing law appears to be the only statute in American history that exempted Jews (as well as other unnamed Sabbatarians) from a law that harmed them because of the requirements of their faith.

Pennsylvania's first constitution, adopted in 1776, has a complex history. The original document required that all members of the state legislature take a Christian test oath: "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." Benjamin

127 George Washington to The Hebrew Congregation in Newport Rhode Island, 18 August 1790, available at https://founders.archives.gov/?q=Volume%3AWashington-05-06&s=1511311112&r=136.

128 An Act regulating the Manner of admitting Freemen, and directing the Method of electing Officers, in this State; and An Act prohibiting Sports and Labour on the First Day of the Week. *The Public Laws of the State of Rhode Island and Providence Plantations* (Providence: Carter and Wilkinson, 1798), 114 and 577. We are indebted to Linda Tashbook, law librarian at the University of Pittsburgh School of Law, for finding these laws.

Franklin opposed any religious tests for officeholding, and in part to placate him, immediately following this provision, the constitution asserted "no further or other religious test shall ever hereafter be required of any civil officer or magistrate in this State."[129] This of course meant that Jews could not serve in the state's unicameral legislature or be civil officers unless they proclaimed that both their Bible and the Christian Bible were the result of "Divine inspiration." Plausibly a Jew could "acknowledge" the Divine inspiration of the New Testament without actually believing in it; however, Jews in the Keystone State never considered this as a possible option. They fully understood the discriminatory language for what it was. Unsurprisingly, Pennsylvania's Jews protested this clause.

In 1781 the U.S. Congress authorized the publication of a compilation of all existing state constitutions. A committee from Philadelphia's Congregation Mikveh Israel studied and annotated this 226-page book, noting where Jews faced discrimination.[130] Their annotations were often unsophisticated, and the Mikveh Israel committee missed some forms of discrimination. But the project might be seen as a very early example of civil rights activism, and a precursor of both the Anti-Defamation League (ADL) and the NAACP's Legal Defense and Education Fund. In late 1783 a group of Philadelphia Jewish leaders, including Gershom Seixas (who had not yet returned to his congregation in New York after fleeing the British occupation of that city), Bernard Gratz, and Haym Salomon sent a detailed petition to the Pennsylvania Council of Censors—an odd creation of the state's 1776 constitution, which met every seventh year to review existing laws and constitutional provisions—asking for a change in the state constitution.[131] The petition to

129 Pennsylvania Constitution, 1776, Sec. 10. Wolf and Whiteman, *Jews of Philadelphia,* 82, noting Franklin's opposition.

130 *The Constitutions of the Several Independent States of America, The Declaration of Independence … Published by Order of Congress*. (Philadelphia: Francis Bailey, 1781). The Rosenbach Museum & Library in Philadelphia owns this annotated copy of the book, and it is currently on loan to the Museum of the American Revolution. We thank both institutions for giving us access to it. There is no scholarly agreement on who served on the committee or wrote the comments in the book.

131 "Petition for Equal Rights, Dec. 23, 1783," in Schappes, *Documentary History of Jews in the United States*, 63.

the council reflects the comfort of Jews in post-Revolutionary America to actively participate in politics. Such participation was unheard of in Europe.

In addition to petitioning the Council of Censors, the Mikveh Israel committee sent copies of the petition to three Philadelphia newspapers, all of which published it. Eleazar Oswald, the very radical editor of the *Independent Gazetteer and Freedom's Journal,* sided with the Jewish petitioners, editorializing that it was "an absurdity, too glaring and inconsistent to find a single advocate, to say a man, or a society, is Free, without possessing and exercising a right to elect and to be elected." Others, all identifying themselves as Christians, also endorsed the petition.[132]

The council never even acknowledged receipt of the petition. However, its publication in local newspapers and public support for it may have contributed to changes a few years later, when Pennsylvania adopted a new constitution in 1790 that eliminated the Christian test for office holding.

In the intervening period between the petition and Pennsylvania's 1790 constitution, the Federal Convention met in Philadelphia in 1787 and wrote what became the United States Constitution when it was ratified in 1788. On 7 September 1787, just ten days before the convention would finish its work, Jonas Phillips, as a representative of Congregation Mikveh Israel, wrote to George Washington, asking that the convention protect the political rights of Jews.[133] Phillips, an early supporter of American liberty, was the ideal person to write to the former commander-in-chief. In 1776 he moved to Philadelphia after the British occupied New York City. In 1778, at age forty-two, he enlisted in the Pennsylvania militia. The letter he wrote had no effect, because

132 *Freeman's Journal of The North-American Intelligencer* (Philadelphia), 21 January 1784; *Independent Gazetteer, or the Chronicle of Freedom*, 17 January 1784; and *Pennsylvania Packet*, 17 January 1784. Wolf and Whiteman, *Jews of Philadelphia*, 148–149.

133 Jonas Phillips to the president and members of the convention, 7 September 1787, reprinted in Max Farrand, *The Records of the Federal Convention of 1787*, vol. 3 (New Haven: Yale University Press, 1966), 78–79. Phillips was the grandfather of the Jewish naval captain, Uriah Phillips Levy. His great-great grandson, Franklin Israel Moses Jr., would be a Republican governor of South Carolina during Reconstruction.

by this time the convention had already agreed to prohibit religious tests for officeholding. However, the willingness of Philadelphia Jews to petition the Constitutional Convention to protect Jewish rights further shows that Jews felt comfortable in the political world of Revolutionary America. The petition to the Council of Censors, the publications in local papers, and the letter to Washington underscore the collective behavior of Jews to assert their rights to equality.

There is no "smoking gun" for the actual impact of Jewish protests against the Pennsylvania constitution of 1776, but it seems likely they had an effect. In 1790 the state's new constitution provided:

> 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 of right 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 establishments or modes of worship.

Instead of a Christian test for officeholding, the new constitution declared: "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."[134] This could possibly have prevented deists or atheists such as Benjamin Franklin, Benjamin Rush, and Thomas Paine from holding office, but it allowed Jews to hold office. In 1828 Zalegman Phillips, a prominent Philadelphia lawyer, sought, but did not win, a nomination to Congress as a Jacksonian Democrat. He had support within the Democratic Party, but another candidate had already been chosen.[135] However, in 1844 Pennsylvanian Lewis Charles Levin became the first Jew elected to Congress.[136]

134 Pennsylvania Constitution, 1790, Art. IX, Secs. 3 and 4.

135 Wolf and Whiteman, *Jews of Philadelphia*, 302.

136 Ironically, Levin was a nativist opposed to Catholic immigration and a founder of the American Party, which was a precursor of the Know-Nothing Party of the 1850s.

Discrimination Against Jews in State Constitutions Beyond the Revolutionary Period

While new constitutions eliminated religious tests for officeholding, religious preferences, and established churches, not all states rewrote their constitutions in this period. Maryland, Massachusetts, New Jersey, North Carolina, and New Hampshire maintained their discriminatory constitutions well into the nineteenth century.

Maryland continued its ban on Jewish officeholding until 1826, when the state passed a law, commonly known as the Jew Bill, which allowed Jews to hold office. Shortly thereafter two Jews, Solomon Etting and Jacob I. Cohen, were elected to the Baltimore City Council. In 1843 Rhode Island finally adopted a constitution, which ended religious tests for officeholding.[137]

New Jersey's first constitution, written in 1776, had provided full freedom of worship; prohibited use of taxes for the support of any churches, religions, or ministers; and emphatically "asserted there shall be no establishment of any one religious sect in this Province, in preference to another."[138] However, it limited officeholding to "persons, professing a belief in the faith of any Protestant sect."[139] This restriction continued until a new constitution, written in 1844, declared: "There shall be no establishment of one religious sect in preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right merely on account of his religious principles."[140]

North Carolina and New Hampshire continued to maintain a Christian test for officeholding until after the Civil War. These two outlier states illustrate the complexities of federalism. While the rest of the nation had long abandoned constitutionalized antisemitism and religious tests for officeholding, these two states continued it.

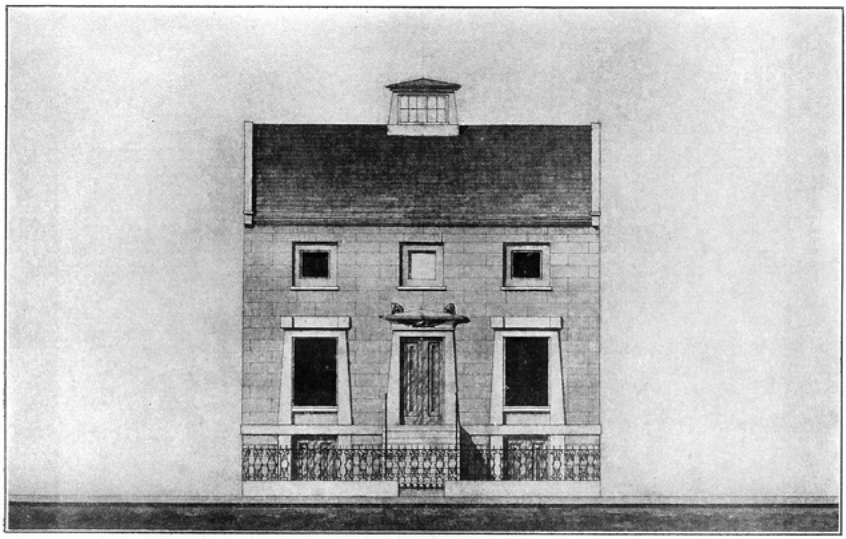
North Carolina finally ended its anti-Jewish policy in 1868, after the defeat of the Confederacy and the establishment of a pro-Union

137 Rhode Island Constitution, 1843.

138 New Jersey Constitution, 1776, Arts. XVIII and XIX.

139 Ibid., Art. XIX.

140 New Jersey Constitution, 1844, Art. I, Cl. 4.



The second building of Mikveh Israel, 1825.
(Courtesy American Jewish Archives)

government that supported civil rights and Black freedom. The constitution's preamble noted that the people of the state were "grateful to Almighty God, the sovereign ruler of nations, for the preservation of the American Union and the existence of our civil, political, and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the more certain security thereof and for the better government of this State, ordain and establish this constitution."[141] The constitution provided that "All men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority should, in any case whatever, control or interfere with the right of conscience."[142] It also contained a few clauses supporting the private creation of religious institutions. After nearly a century, North Carolina abandoned its religious tests for officeholding. However, the constitution "disqualified for office: first, all persons who shall deny the

141 North Carolina Constitution, 1868, Preamble.
142 North Carolina Constitution, 1868, Art. I, Sec. 26.

being of Almighty God."[143] With the 1868 constitution, Jews could now hold office in North Carolina—but atheists could not.[144]

143 Ibid., Art. VI, Sec. 5.

144 Eric Eisner, "'Hebrews in Favor of the South': Jews, Race, and the North Carolina State Convention of 1861–1862," *Southern Jewish History* 24 (2021): 1, 2, asserts, incorrectly we argue, that North Carolina allowed Jews to hold office through an amendment to the constitution passed by an 1861 state convention that met after secession. The convention passed this resolution: "No person who shall deny the being of God or the divine authority of both the Old and New Testaments, or who shall hold religious opinions incompatible with the freedom or safety of the State, shall be capable of holding any office or place of trust or profit in the civil department of this State." An Ordinance to Amend the Second Section of the Fourth Article of the Amendments to the Constitution, No. 13, Act of 6 December 1861, Ordinances and Resolutions Passed by the State Convention of North Carolina. Second Session in November and December, 1861 (Raleigh: John W. Syme, 1862). https://docsouth.unc.edu/imls/ncconven/ncconven.html. Eisner vigorously argues that because "Jews denied the New Testament but accepted the Old Testament; therefore, by virtue of not denying both, Jews could be eligible for office under the new wording." Eisner, 1, 2.

We are unpersuaded by this analysis. First, this "amendment" to the constitution may never in fact have been part of the constitution because the proposal was neither approved by the legislature nor sent to the voters for ratification. It was a resolution, not a constitutional amendment. Eisner concedes that many people argued this at the time. Eisner, 19–22. Furthermore, under *Texas v. White*, 74 U.S. 700 (1868), any Confederate changes to the North Carolina Constitution were clearly illegal and void. Thus, whatever people may have believed in 1861, the alleged government in North Carolina was illegal, and nothing it pretended to pass was legal.

Even if we ignore these constitutional issues—at both the state and the federal level—Eisner's argument strikes us as inconsistent with any legitimate analysis of the clause. While poorly drafted, it seems to require that officeholders accept "both" the New Testament as well as the Old. It is, in the end, a Christian test for officeholding.

Eisner points out some Jews did hold minor local public offices in Confederate North Carolina during the war but also notes, as we do earlier in this article, North Carolina's inconsistent implementation of its early bans on Jewish officeholding, as in the case of Jacob Henry. That North Carolina, in the midst of war, relaxed its antisemitism, perhaps to gain unity within the state, does not mean it had actually made Jews equal with Christians. In the aftermath of the Civil War, leading Jewish activists and newspapers agreed that this clause never provided equality for Jews. Thus, Eisner writes: "in 1866, the *Occident*, the *Jewish Messenger* (New York), and the *Israelite* all reported that the new wording had done nothing to alter Jewish disabilities." Eisner, 3–4. He notes that shortly after the amendment was written some Jewish leaders argued it emancipated Jews, but in the context of the beginning of the Civil War, this may have reflected a desire to help protect coreligionists from their

In 1877 New Hampshire became the last state to allow Jews to hold office, although as Morton Borden has noted, the state's constitution retained a reference to Christianity until 1968.[145] Two years after that change, in 1970, Warren Rudman would become New Hampshire's first Jewish attorney general, and a decade later the state's first Jewish U.S. Senator.

Conclusion

The history presented here illustrates the complexity of the intersection of antisemitism and law in the United States. As we have argued, the Revolution created a new and unique political regime for Jews. Their active participation in the Revolutionary era—from the first protests against English polices, to the military conflict, to the creation of a vibrant democratic republic—led to previously unheard-of political and legal opportunities for Jews. In the century from the end of the Seven Years War to the end of the American Civil War, Jews were extraordinarily active in politics and society, holding positions in Congress, the military, and public life that were truly unprecedented. At the same time, in a few places, such as North Carolina and New Hampshire, they still faced constitutionally sanctioned bigotry; and in many other places in the nation, social and sometimes extralegal bigotry remained.

Christian neighbors. His main evidence for his claim that in 1861 leading Jews praised the change comes from two suspect sources, the notoriously anti-abolitionist Rabbi Isaac Mayer Wise, an outspoken Copperhead Democrat during the Civil War who sympathized with the South, and from Isaac Leeser, whose biographer asserts that he "probably was more sympathetic toward the South than the North," and that most of the subscribers to his paper were Southern. Sussman, *Isaac Leeser*, 219. Thus, the cheerful evaluations of Wise and Leeser of what was happening in North Carolina at the beginning of the war must be viewed with some skepticism.

The alleged Confederate state constitutional change, which still referenced the New Testament and still created a religious test for officeholding, illustrates the willingness of a few states to hold onto a Christian preference within their government, even as they somehow thought they were "tolerating" Jewish officeholding. Other than this article, scholars of this issue, including Borden, *Jews, Turks, and Infidels*, 46; Leonard Rogoff, *Down Home: Jewish Life in North Carolina* (Chapel Hill: University of North Carolina Press, 2010), 71; and Anton Hieke, *Jewish Identity in the Reconstruction South: Ambivalence and Adaptation* (Berlin: De Gruyter, 2013), 177–178, do not see this Confederate ordinance as changing anything.

145 Borden, *Jews, Turks, and Infidels*, 36.

On the whole, however, the Jewish involvement in the Revolution and its aftermath helped create the extraordinary religious liberty found in most of the nation and helped to actualize many of the precepts of the American Enlightenment with regard to religious liberty. This liberty, as is well known, was never fully defended or enforced. Outbursts of bigotry—sometimes against Jews but also against Catholics, Mormons, Buddhists, Jehovah's Witnesses, Muslims, and others—litter American history and offer shameful examples of policy-making and law from Congress, the Supreme Court, the White House, state legislatures, governors, and local political bodies. The rights of Jews at the state level have often been threatened by whole categories of legislation, such as Sunday closing laws, readings from the King James Bible and recitation of the Lord's Prayer in public schools, and courts that have sometimes been unwilling to accept that observant Jews cannot do many things—such as serve on a jury, vote in an election, or testify in court—on Saturdays. It is important to note, however, that these laws were rarely directed at Jews per se. They more often reflected majoritarian culture and a general insensitivity to minority faiths. In the late nineteenth century Sunday closing laws were also tied to the struggles of working people to obtain a six-day work week and were a convenient vehicle for labor activists to gain support from a wide spectrum of Christian churches and leaders. On the flip side, before the Revolution, even in the New York colony where Jews could sometimes vote, they never served on juries.[146]

Formal legal equality, which emerged during and shortly after the Revolution and shaped American liberty, did not, however, translate into social equality. American history is replete with ugly examples of religious bigotry, sometimes supported by opportunistic or bigoted political leaders. This bigotry also extended to the marketplace, in the form of restrictive covenants in housing, conscious discrimination by real estate brokers and developers, and hotels and restaurants that discouraged or flat-out rejected Jewish patronage. Private organizations, such as country clubs, which often function more like public entities, were able to hide behind their "private" status to discriminate. Colleges and universities could and did do the same.[147]

146 Hershkowitz, "Some Aspects," 13.

147 Tevis, "'Jews Not Admitted,'" argues that such behavior violated the 14th Amendment

At times this bigotry led to legal and political persecution and as well as vigilantism against Mormons, Jehovah's Witnesses, Muslims, and Jews—most famously in the outrageously unfair trial of Leo Frank and his subsequent lynching in 1915 and in the rise of white nationalist terrorism and violence against Jews and attacks on synagogues since 2017. But the formal rules that have protected religious liberty since the Revolution matter, and they matter a great deal. They provide the tools and the arguments for religious liberty. In this sense the Revolutionary experience is a key moment in the development of American liberty. It is bolstered by the argument set out clearly in George Washington's 1790 letter to the Jewish community of Newport, Rhode Island, asserting that "the Government of the United States … gives to bigotry no sanction, to persecution no assistance." Washington's letter addressed both the challenges of social discrimination and legalized antisemitism. The letter and this history still matter.

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and the Civil Rights Act of 1875, but of course the Supreme Court had struck that act down in 1883.