

From Test Oath to the Jew Bill

by Jerry Klinger

"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."

- George Washington, 1790 letter to Congregation Yeshuat Israel, Newport, Rhode Island.

The first American Revolution ended with the signing of the Treaty of Paris in 1783. The second American Revolution, later called the American Civil War by the victorious North or the War of Northern Aggression by the defeated South, would not be fought for another 78 years. The second American Revolution ended with the passage of the 14th amendment, 1868, to the U.S. Constitution. The amendment, legally and nationally, established Jewish political and religious freedom. For the first time the U.S. Constitution and the Bill of Rights were to be dominant over "State law and State's Rights."

Jews measure freedom in relative terms. American freedom is measured against European or Muslim treatment of the Jew. The reality of the American Jewish experience was and is, at every stage of life in the New World, significantly better than the old. However, Jews did not suddenly wake up in the morning and discover themselves free, tolerated, equal and loved in America. Rather what America offered was a flexible structure, a process and a struggle that could result in freedom.

The summer day was hot in Philadelphia, Pennsylvania. The windows had to be thrown open to let in the air and light. A young red haired man from Virginia presented a document to representatives from the thirteen American colonies meeting in the tense atmosphere of potential revolution. It was July 4, 1776 and the document that was agreed upon was extraordinary in its ideas and justifications.

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

The document, written by Thomas Jefferson and signed by all the attendees, was the American Declaration of Independence. The thirteen American colonies were now and forever in the future independent States bound together in a great confederation of common cause. At the time there were perhaps 1300 Jews in the thirteen States. Almost 100 young Jews were to fight and some were to die for the new American government. Each State in 1776 could establish a State church, regulate religion, political rights, it's economy, it's property ownership and it's very life. The struggle for true religious freedom and political equality was to be fought on a State by State basis.

Religious test oaths for political office were common in Colonial and early American State governments. The colonial government of Maryland originally founded by Catholics soon established the Anglican Church as the official church. Maryland's legislature quickly passed

laws designed to discriminate against Catholics; laws that were all too familiar to Jews in Europe well into the 19th century. Catholics had to pay extra taxes to support the Anglican Church. Catholics were not allowed to bring in fellow Catholics as indentured servants without double taxation. Catholic parents were subject to having their children forcibly removed and baptized as Protestants if one of the parents died. Catholics were not permitted to vote, hold elected office or become officers of the State such as lawyers.

Jews were rarely the direct focus of legislative discrimination primarily because they were so few in number in 18th century America. State governmental oaths or test requirements reflected the existing values of the people.

Delaware 1776: *"I do profess faith in the God, the Father, and in J C His only son...."*

New Jersey 1776: *"all persons, professing, a belief in the faith of any Protestant sect... shall be capable of being elected into any office...."*

Maryland 1776: *"That no other test or qualification ought to be required... than such oath of support and fidelity to this State.. and a declaration of a belief in the Christian religion."*

South Carolina 1778: *"...no person shall be eligible to a seat in the said legislature unless he be of the Protestant religion.."*

Massachusetts 1780: *"I declare, that I believe the Christian religion and have firm persuasion of its truth..."*

With the adoption of the U.S. Constitution and the Bill of Rights, legal discrimination against Christians became a matter of history. But for Jews the inherent discrimination of the religious test oath was to remain a struggle for another 81 years. In one state, North Carolina, the Christian test oath would not be changed until 1868.

Thomas Jefferson drafted in 1779, the Virginia Statute of Religious Freedom - "that all men shall be free to profess. . . their opinions in matters of religion, and that the same shall in no wise . . . affect their civil capacities." The law was not adopted by Virginia until 1786.

Virginia became the first State to grant religious and political freedom to all. Jefferson frequently quoted John Locke's argument that "neither Pagan nor Mohammedan nor Jew ought to be excluded from the civil rights of the Commonwealth because of his religion."

It wasn't that Jefferson favored Judaism but rather he believed that the free flow of ideas would in time lead to the triumph of Christianity over Judaism. The Constitution of the United States was ratified in 1787 and the Bill of Rights was amended to it in 1791. The issue of religious discrimination for Christians would become moot. Within a few years, one by one the States changed their constitutions.

The Western frontier state of Tennessee's compromise, an affirmation of faith, typified the new, more tolerant standard, "no person who denies the being of God, of future state of rewards and

punishments, shall hold any office in the civil department of State." The very concept of religious test oaths, as the frontier pushed west, became increasingly foreign. They were not incorporated into state constitutions. The flow of new ideas of freedom tended to flow from west to east. One state among the original 13 clung to its old religious test ideals and fought bitterly to keep Jews in particular from elected or State appointed offices – Maryland. The struggle for freedom in Maryland was to be known as the JEW BILL.

The first known Jew came to Maryland in the 1640's, Jacob Lumbrozo. It was not until the middle of the 18th century that Jews began to establish themselves as family units settling primarily in the mercantile community of Baltimore. By the time of the revolution they were integral members of the business community. Baltimore over the next century was to become a major center of Jewish life in America. Reuben Etting, a major supporter of President Thomas Jefferson, was appointed by Jefferson as the U.S. Marshall for Maryland in 1801. Etting was the first Jew to be appointed to a major U.S. governmental position. Yet Etting could not even be elected dog catcher in his own State of Maryland because of the test oath requirements.

A Maryland elected official had to swear upon his faith as a Christian that he would uphold the laws of the State of Maryland. A Jew making that declaration was lying and was automatically excluded from holding office. For a Jew to hold elected office in Maryland the Constitution of the State had to be changed.

As the bombs burst throughout the night in the attack on Fort McHenry during the War of 1812, Frances Scott Key watched. The next morning the American flag still stood tall and proud. Inspired he wrote the American National anthem based upon that scene. Little did he know that within the walls of the Fort were Jews from Baltimore who were defending it.

Seventeen years after the Etting affair, a Scotch Presbyterian immigrant named Thomas Kennedy was elected to the Maryland House of Delegates from Western Maryland. Kennedy an ardent believer in Jeffersonian Republicanism had never known or for that matter had never met a Jew in his life. In the State legislature in Annapolis, Maryland he learned of the political denial of rights to Jews, non – conformist Christians, Quakers, and atheists. He recognized that a denial of rights to one group was a denial of rights to all.

Kennedy dedicated his political career and his political life to changing the law in what became known as the Jew Bill of Maryland. For eight years he began what at first was a lonely struggle. It was soon picked up and championed by other Western Maryland legislators. The ebb and flow of the fight for the Jew Bill was among the single ugliest political struggles in Maryland history. Charges and campaigns of anti-Semitism and anti-Christian cries resounded from one of the State to another.

Kennedy was to be defeated for reelection by his anti-Jewish political enemies. The banner of Jewish freedom fell from Kennedy's hands. It was picked up and carried by another Western delegate from Washington County, Col. Worthington. By the narrowest of margins, one vote, the Jew Bill was passed. In 1826 the Constitution of Maryland was changed. Jews could hold elected office. With the legislature of 1828, Reuben Etting was elected from the city of Baltimore, to the Maryland House of Delegates.

The struggle was the ugliest in Maryland but it was no less a struggle in other States. As late as 1824 Massachusetts refused to do away with its own Christian test oath rather than give Jews the right to hold elected office there. No less than the prestige of the former President of the United States, John Adams was brought to bear in an attempt to change the law, only to be defeated.

After the Jew Bill of Maryland denial of political equality for Jews as the Frontier moved west was a never again a major issue. Jews were still socially and economically discriminated against but never again via the Constitution of a new State.

North Carolina remained the lone holdout for a Protestant religious test oath. The 1868 post war reconstruction government of North Carolina changed the constitution; That same year the first Jewish Congregation in North Carolina was legally organized and received its State Charter for legal existence. That same year the first Jewish Congregation in North Carolina was legally organized and received its State Charter for legal existence. The Jewish community of Wilmington built the first permanent Jewish house of worship in North Carolina, the Temple of Israel, on July 1876.

David Yulee was the first individual of Jewish background to be elected to the U.S. Congress in 1845. To be elected he had to abandon his Jewish roots, change his name from Levy and convert to Christianity. Yulee County, Florida is named after him. The first individual who maintained his Jewish identity to be elected to the U.S. Congress was Judah P. Benjamin from Louisiana. Benjamin's remarkable life and career eventually led him to become the Secretary of War and then the Secretary of State of the Confederate States of America during the American Civil War.

President James Madison appointed the first Jew as a foreign ambassador. Mordechai Emanuel Noah was appointed American Counsel to Tunisia in 1813. He was shamefully recalled when the Muslim government refused his credentials upon learning he was a Jew. Noah, sometimes called the first American Zionist, attempted in later years to establish a Jewish colony on Grand Isle opposite Buffalo, New York. The community named Ararat failed. Noah never forgot his roots.

John Hays, a frontiersman and pioneer, was the first Jew to move to the first permanent settlement in the Illinois territory, Cahokia, Illinois, 1793. Today Cahokia is a small community on the Mississippi river opposite present day St. Louis, Missouri. Hays was to become the first postmaster, first sheriff and first tax collector in territorial Illinois. Not far from his home in Cahokia is the largest Indian mound construction in North America.

The Mound is a world heritage site about 110 feet high covering 14 acres and part of a series of complexes that supported an early American community of 20,000. Cahokia mounds, built by the Mississippian Indian culture, was mysteriously abandoned by the 1300's. Cahokia mounds started as a primitive mound capture about 150 A.D.; eighty years after the second Temple had been destroyed by the Romans. Hays probably did not know what the giant mounds were but if he had, what would this Jewish American frontiersman have thought?

By the time the Jew Bill had passed the Jewish population of the United States was in excess of 10,000. Jews, though still proportionally small in number, were establishing themselves in every State and in every economic endeavor. The Jew was rapidly shedding the baggage of European

life and becoming American. Even the very structure of Jewish life and religious interpretation was changing and would do so manifestly in the next fifty years into an American identity.

For the opportunity of freedom that America offered a price was to be paid. George Washington outlined the price when he wrote to the Jewish community of Newport, Rhode Island in 1790. "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."

Jewish immigrants were gladly willing to pay the price.

Events in Europe, set in motion by the Napoleonic years, would have a major impact on Jews there. It would have an even greater impact on Jews in America. The Germans are coming.