

Bill of Rights

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The United States Bill of Rights of 1791, or more specifically the First Amendment, transformed the status of the Jews in America from toleration to freedom on the national level. By allowing the free exercise of religion to all, it secured liberty and freedom to the Jews and affirmed their inherent natural rights to liberty of conscience and immunities of citizenship.

I. Meaning of the First Amendment

The Bill of Rights of 1791, or the first ten amendments to the United States Constitution (1789), secured many spheres of liberty and freedom for the citizens of the newly created American Republic. Afraid that the Constitution would open the way to tyranny by the central government, many people demanded a bill of rights that would spell out the immunities of individual citizens. They believed that “a bill of rights should bridle the new national government.” The Bill of Rights did just that: “it was a bill of restraints on the United States” [Levy, *Origins of the Bill of Rights*, 12]. Among these rights was freedom of religion as stipulated in the First Amendment: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof” [Bill of Rights, 1791]. The First Amendment aimed to secure the right of conscience against federal action. Along with Article VI section 3 of the Constitution, which stipulated that “no religious test shall ever be required as a qualification to any office or public trust under the United States” [*The Constitution of the United States*, 1789], the First Amendment revealed that the new federal government neither recognized nor ranked the different faiths and religions. Despite the barriers to full equality imposed and maintained by many states until after the Civil War, in the eyes of the Federal Government Jews were equal citizens.

After the Declaration of Independence in 1776, the newly established states had placed various restrictions on the Jews, as well as on Catholics and others, with regard to assuming public office, such as religious tests and Christian oaths for state officeholders. The Bill of Rights and the Constitution removed restrictions on the Federal level with regard to religious qualifications for office-holding, and allowed the free exercise of religion. By doing so the Constitution set an example for four states which, between 1789 and 1792, altered their constitutions to correspond to the federal government – Delaware abandoned its requirement of a Trinitarian oath; Pennsylvania removed its references to the New Testament, permitted Jews to hold office while continued to bar atheists, and South Carolina and Georgia struck out all religious requirements. Eight states refused to make any changes for many decades.

American Jews hailed the new Federal Constitution, since it provided them with both religious equality and equality as citizens. While some states still imposed barriers to full equality, Jewish liberties and freedom were expanded significantly under the Constitution. In the eyes of the Constitution Jews and other non-Christians were considered equal citizens. President Thomas Jefferson, for example, appointed the Jew Reuben Etting as United States marshal for Maryland in 1801, twenty-five years before that state removed its office-holding disability in 1826. Yet, because the First Amendment affected congressional legislation only, the states remained free to engage in religious discrimination until the Supreme Court ruled otherwise in 1940. By 1840 Jews enjoyed formal political equality in twenty-one of the twenty-six states.

II. Bill of Rights and Jewish Emancipation – Historical Context

The first Jews in North America settled in New Amsterdam, 1654, which was part of the New Netherlands colony. By the time of the American Revolution (1775-1789) about 2000 Jews lived in British North America. For them, as for other non-Christians, the Revolution hastened the process of acculturation and social integration. In colonial British America non-Christians were considered

less than equal. Never expecting to achieve complete religious equality, Jews suffered disabilities during the seventeenth and eighteenth centuries. As late as 1760s, or until the era of the American Revolution, no colony in British America offered political equality to non-Christians.

The story of colonial American Jews is the story of the gradual acquisition of freedom -- from the right of settlement to the right of free worship. Although the Jews were not accepted as political equals in the colonies, they enjoyed nonetheless freedom of conscience and basic economic rights. After the Declaration of Independence (1776) many states enacted new liberal constitutions, yet religious tests and other restrictive measures remained in effect. Thus, although the Declaration of Independence promised equality to all men, barriers to full equality persisted. New Jersey's constitution (1776) disqualified non-Protestants, claiming "all persons, professing a belief in any Protestant sect ... shall be capable of being elected into any office" [Borden, *Jews, Turks, and Infidels*, 11]. Likewise, North Carolina's new constitution (1776) stipulated that "no person who shall deny the being of God or the truth of the Protestant Religion ... shall be capable of holding any office or place of trust or profit in civil department within the state" [Sarna & Dalin, *Religion and State in the American Jewish Experience*, 2]. Citizenship in the thirteen states established after 1776 stopped short of full equality. The great promise of the Declaration of Independence was not fulfilled on the state level for about a century because of the existence of these religious oaths and tests for state officeholders.

The first state to give Jews full rights was New York, the most religiously pluralistic of the states. Its 1777 constitution stipulated that "the free exercise of and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed, within this state, to all mankind." [Marcus, *Jews in the American World*, 96]. The last state to recognize religious freedom was New Hampshire in 1876-1877, where Article V of the state constitution declared: "Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason; and no subject shall be hurt, molested,

or restrained in his person, liberty or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession, sentiments, or persuasion.” [*New Hampshire Constitution, 1876-77*].

Jewish liberties and freedom expanded significantly, however, during the American Revolution. The “Virginia Act for Establishing Religious Freedom” (1786), which Jefferson proposed in 1779, widened religious freedom. It proclaimed “That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burdened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief” [*Virginia Act for Establishing Religious Freedom, 1786*]. The “Northwest Ordinance,” adopted by the Continental Congress in 1787 extended religious freedom into territories acquired by the Peace of Paris of 1783 north of the Ohio River, declaring 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” [*Northwest Ordinance, 1787*]. The civil rights provisions of the Ordinance foreshadowed the Constitution and the Bill of Rights. Finally, the Constitution and the First Amendment further extended religious liberty and freedom by banning a religious test as a qualification for office on the federal level as well as the establishment of religion by the federal government, and put no limitations on the free exercise of religion. On the level of the federal government, Jews, along with other non-Christian people, received full religious and political rights.

The Jewish experience in America was radically different from that of the Jews in Europe at that time. In contrast to Europe, where Jews were recognized as a discrete corporate group and fought for their emancipation as a specific ethnic and religious entity, the Jews in America had no reason to fight for separate emancipation as a group. They gained their religious and political rights as individuals along with everybody else. Despite barriers to full equality imposed and maintained by some states, therefore, the Jews in America were accepted as individual citizens into the body

politic and permitted freedom of religion and basic economic rights. This is the reason why in America Jews never suffered enforced ghettoizing or other restrictions imposed by an entrenched guild. On the other hand, in terms of recognition of Jewish rights as equal citizens and the formal granting of citizenship to individuals, Jewish emancipation in Europe took place gradually between the late eighteenth century and the early twentieth century – France in 1791, United Kingdom in 1856, Italy in 1861, Habsburg Empire in 1867, Germany in 1871. In some places, as was the case in France, it was accompanied by years of much heated debate. In America the picture was radically different since equality and freedom of religion were not given specifically to the Jews, as was the case in Europe, but to other non-English and non-Christian ethnic and religious groups as well. Hence public attention in America to the issue of Jewish rights was minimal.

Freedom, equality and natural rights, were given in America to individuals on the basis of the rationalist principles of the Enlightenment. These were embodied in the Declaration of Independence which claims “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” [*Declaration of Independence*, 1776]. Human beings’ place in the natural order thus led to the principle of human equality. This is the reason why the heated drama and long struggle of Jewish emancipation in Europe were never played out in America. In France and England the emancipation of the Jews as a distinct group came after many years of strife and debates. The difference can be attributed also to the adherence in America to Enlightenment principles which emphasized God-given natural rights and equality. The Bill of Rights therefore did not emancipate the Jews as a specific ethnic or religious group because it was directed to all people, except blacks. President Washington’s letter to the Jewish congregation of Newport, Rhode Island, in 1790 only affirmed these Enlightenment “inherent natural rights” to “liberty of conscience and immunities of citizenship” which all citizens of the United States enjoyed. This inherent natural right of liberty of conscience, as Washington explained, was radically different from the religious “toleration” the

Jews enjoyed at that time in much of enlightened Europe [Marcus, *Jews and the American Revolution*, 256].

III. The Founding Fathers' Attitude toward the Jews

The Founding Fathers' attitudes toward the Jews were based mainly on Enlightenment principles as reflected in the Declaration of Independence and later incorporated in the Constitution and the Bill of Rights. Justifying the colonists' independence from England on the ground of natural rights theory, the Declaration of Independence began with the individual's inalienable natural rights – life, liberty and the pursuit of happiness – and stipulated essential equality among humans. Enlightenment tenets of individualism and universalism, human rights and equality, constituted the ideological context of the American Revolution. Religious liberty was thus a nearly universal sentiment of the American public. The Constitution “puts all sects on the same footing” explained Edmund Randolph who served as the Governor of Virginia, Secretary of State and first United States Attorney General. “A man of abilities and character, of any sect whatever, may be admitted to any office of public trust under the United States” [Borden. *Jews, Turks, and Infidels*, 16-17]. For the Jews, as for other non-Christians, the American Revolution therefore hastened the process of acculturation and social integration.

The Founding Fathers, such as James Madison, Thomas Jefferson, George Washington, Edmund Randolph, and many others, indicated that they considered the rights of the Jews in this broader context of natural, universal law. The “Virginia Act for Establishing Religious Freedom” (1786), as Jefferson wrote, was aimed “to protect the Jews and Gentile, the Christian and Mahometan, the Hindu and Infidel of every denomination” [Cohen, *Jews in Christian America*, 25]. In 1790 president George Washington assured the Jews of Newport, Rhode Island, that they, like all the “citizens of the United States of America have a right to applaud themselves for having given to

mankind an example of an enlarged and liberal policy,” namely, that all “possess alike liberty of conscience and immunities of citizenship” [Marcus, *Jews and the American Revolution*, 256].

No wonder that the words “all men are created equal” of the Declaration of Independence resonated in other texts of the American Revolution. They appeared in the New York Constitution of 1777, which provided free exercise of religion “to all mankind,” as well as in “The Virginia Act For Establishing Religious Freedom” (1786), which promised “that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion.” Later on they appeared in the “Northwest Ordinance,” which declared that no person ‘shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.’ Likewise, Article VI, section 3 of the Constitution states: ‘No religious test shall ever be required as a qualification to any office or public trust under the United States.’ The First Amendment, then, was the epitome of the Enlightenment credo to which the Founding Fathers subscribed. James Madison of Virginia, the “Father of the Constitution,” defended this clause because it legitimated religious pluralism. Many religious sects, like many secular interest groups, as Madison wrote in the *Federalist* (1787-88), would guard against tyranny by any religious or political faction.

IV. Significance of First Amendment and its Easy Passage

During the Constitutional convention of 1787, it was the accepted view that religious matters belonged to the states. Hence the religious-free debates at the Federal Convention and the easy passage of the First Amendment. This means, among others, that the new nation was electing to be nonreligious in its civic life.

V. First Amendment and the Real Situation in the States

The Bill of Rights ensured religious liberty and freedom of worship only on the Federal level. In the states the situation was radically different. Following the recommendation of the Continental

Congress in 1775, eleven of the thirteen original states drew up constitutions before 1787. Massachusetts and New Hampshire acknowledged freedom of worship but mandated public support of Protestant institutions and limited office-holding to Protestants. New Jersey, North Carolina and Georgia affirmed right of religious freedom yet stipulated that only Protestants could hold office. Pennsylvania's constitution required a religious oath for officeholders. Delaware also specified a religious oath that included the belief in the Trinity. South Carolina limited the franchise and office-holding to Protestants. And Maryland not only excluded non-Christians from holding office but offered religious liberty only to Christians. Article 33 of the Maryland Constitution of 1776 stated: "All persons, professing the Christian religion, are equally entitled to protection in their religious liberty," and Article 35 stipulated that "a declaration of a belief in the Christian religion" is prerequisite to "admission to any office" [Marcus, *Jews in the American World*, 95-96]. In the nine newly formed states mentioned above, therefore, only Christians or Protestants enjoyed full political rights.

New York, which had a long history of religious pluralism and was also the home of the largest Jewish settlement, expanded in its constitution of 1777, under Article 38, "the free exercise and enjoyment [the original draft said "toleration"] of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed, within this State, to all mankind." [Marcus, *Jews in the American World*, 96]. Jews now had the right to hold office. This was a milestone in the history of American Jewry since for the first time they were incorporated into the polity as full and equal citizens. Later on, "The Virginia Act for Establishing Religious Freedom," was an important victory in the Jews' long striving for equality before the law. Written by Thomas Jefferson and called one of the great charters of human liberty, this statute declared "that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in nowise diminish, enlarge, or affect their civil capacities" [*Virginia Act for*

Establishing Religious Freedom, 1786]. Two year later, in 1788, the first Jew ever was elected to a municipal office in Richmond, Virginia.

The Revolution did not lead to the salvation of American Jews but greatly contributed to major legal changes which affected the relationship between religion and state in America. It enlarged the notion of religious freedom and freedom of worship; it opposed any coercion in regard to religion and worship, and denied that religion be a prerequisite to holding an office. For the Jews, these legal transformations meant greater involvement in society, and more opportunities for the exercise of their religion and worship. Here lay an important difference between the situation of the Jews in Europe and that of the Jews in the USA: in Europe Jews obtained their religious rights as a group, which marked them as different from others in a given society, while in America the Jews achieved their religious rights as individuals, as was the case with other immigrants. As the Jews from Newport wrote to the new elected president George Washington in 1790, the Federal Government gave to all “liberty of conscience and civil immunity.” Washington replied by affirming that the USA federal government “gives to bigotry no sanction, to persecution no assistance” Following Jefferson and other Founding Fathers, he too considered religious freedom or “liberty of conscience” among the “inherent natural rights” [Marcus, *Jews and the American Revolution*, 255-56].

The Federal Constitution and the Bill of Rights laid down principles which freed and protected all citizens, except blacks; Americans were given the right to worship as they saw fit without loss of political and civil rights; moreover, any connection between religion and holding office in the federal government was rejected. Following the Federal Constitution and directly influenced by its ideas and spirit, South Carolina (1790), Delaware (1792), and Georgia (1798) permitted Jews to hold office. Vermont, the fourteenth state, abolished religious disabilities in 1793.

Other states followed through in the first half of the nineteenth century. Only in North Carolina and New Hampshire were Jews not given political equality until after the Civil War.

Bibliography

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