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# Maryland's "Jew Bill"

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On January 5, 1826 after a long and arduous struggle, the Jew Bill, or more formally "An Act to extend to the sect of people professing the Jewish religion, the same rights and privileges enjoyed by Christians," was passed by the Maryland General Assembly. The ultimate victory was the annulment of the test oath in Maryland's Constitution that required state officers to be Christians. This prerequisite to holding a governmental position also prevented Jews from becoming lawyers and commissioned officers in the state militia. Most historians treat the attempt to pass the Jew Bill as an isolated struggle led by Thomas Kennedy and a persistent and enlightened minority against the bigoted and prejudiced majority. In reality, however, the bill was only a part of a greater conflict involving Baltimore and other trading and industrial areas and the politically powerful, yet sparsely populated, agricultural counties. In 1818 not only was the Jew Bill defeated, but also a bill to reapportion representation in the House of Delegates and a bill to popularly elect the governor of the state.<sup>1</sup> *Niles Weekly Register* stated that the existence of many "rotten boroughs" was one reason why the Jew Bill was continuously defeated: "If the free citizens of the state were represented in the legislature, this fragment of the barbarous ages would be strikened from our Constitution."<sup>2</sup> When the Jew Bill was finally passed, *Niles* related the news to the other major "progressive" issues:

The affairs of our state begin to have an improving appearance. A spirit is abroad to favor the making of roads and canals; and the bill which passed the Senate . . . for the political liberation of persons held in servitude for conscience has also passed the house.<sup>3</sup>

In a short article, Benjamin Hartogensis took the issue of the Jew Bill out of historic context and concluded that it was superfluous to nullify the test oath, since it came in conflict with the national con-

<sup>1</sup> *Niles Weekly Register*, XIII (January 31, 1818), 365; XIV (February 28, 1818), 14.

<sup>2</sup> *Ibid.*, XXVII (February 5, 1825).

<sup>3</sup> *Ibid.*, XXIX (January 14, 1826).

stitution.<sup>4</sup> However, during this period the states felt fairly autonomous and believed they could nullify or ignore national laws that they disliked.

Milton Altfeld's *The Jew's Struggle for Religious and Civil Liberty in Maryland* is the only extensive work on the subject, but is at times historically inaccurate and poorly organized. Thus, for example, Altfeld wrote that Kennedy knew no Jews when he introduced the measure in the House of Delegates, but was motivated solely by a love of Jeffersonian principles. The speaker appointed Kennedy, Henry Brakenridge and E. S. Thomas to serve on a committee to investigate the feasibility of granting Jews the same political rights as Christians, and Kennedy convinced these two skeptical people to support the cause. The author neglected to mention that Brakenridge had always supported the idea and that Thomas was a close acquaintance of the leading contemporary Jew in Maryland, Jacob Cohen.<sup>5</sup>

Joseph Blau's article in the *Review of Religion* suffers from many of the same errors. Blau's interpretation is more striking than Altfeld's. He generalizes that all supporters of the Jew Bill were Republicans inspired by Thomas Jefferson. "How the old man in Monticello must have welcomed the news [of the Jew Bill's passing]." While Jefferson was very proud of his work on the Virginia Religious Freedom Statute (1780), no evidence exists to support the claim that the former President was aware of the Jew's struggle in Maryland.<sup>6</sup>

Altfeld and Blau both portray Kennedy as the hero who, after his first election to the House in 1818, immediately called for a committee to consider the bill. However, Kennedy was already a member of the House in 1817, and during that session, did nothing concerning the unjust test provision. In *The Jews of the United States 1790-1840: A Documentary History*, edited by Blau and Baron, the section on the Jew Bill also contains some historically inaccurate statements in the brief introductions to the documents. In describing the early history of the bill (1797-1804), the editors imply that the bill was not brought up between 1804 and 1818 because opposition to it increased as time progressed.<sup>7</sup> In reality the bill's support steadily

<sup>4</sup> Benjamin Hartogensis, "Unequal Religious Rights in Maryland since 1776," *Publication of the American Jewish Historical Society* [= PAJHS], XXV (1917), 98-107.

<sup>5</sup> E. Milton Altfeld, *The Jew's Struggle for Religious and Civil Liberty in Maryland* (Baltimore: 1924), p. 23.

<sup>6</sup> Joseph Blau, "A Footnote to Thomas Jefferson's Work for Freedom of Religion," *Review of Religion*, VIII (March, 1944), 227-39.

<sup>7</sup> Joseph Blau and Salo Baron, *The Jews of the United States, 1790-1840: A Documentary History* (New York: Columbia University Press, 1963).

increased. In 1802 thirty-eight voted against the bill and seventeen for it, while in 1804 the margin of plurality decreased to fifteen. A simpler explanation for the tabling of the bill might be that it was still premature to grant Jews the right to hold office, since it was not until 1809 that all white male Christians had that privilege.<sup>8</sup>

The editors also identify the opposition as members of the Federalist Party. However, no Federalist Party really existed at this time in Maryland and the leader of the opposing slate, Benjamin Galloway, had been listed as a member of the Democratic party in the previous session. Galloway had always been an earnest Democrat, whose favorite topic was not opposition to the Jews, but an assault on banks, which he thought were nothing more than agencies to swindle the public.<sup>9</sup>

A brief review of the ecclesiastical history of Maryland prior to 1776 will give us a better understanding of the conditions surrounding the inclusion of the test oath in the state constitution. George Calvert (Lord Baltimore), a recent convert to Catholicism, started a colony in 1631 that would serve as a place of refuge for persecuted Catholics. Although he spent much money in an attempt to attract Catholic settlers, few came. Seeing that much of the area was unsettled and his financial venture failing, Calvert also invited Protestants to settle in Maryland, and soon the latter formed a majority. In order not to antagonize the Protestant population and the king of England, and still provide a haven for persecuted Catholics, Calvert effected the "Toleration Act" of 1649, whose main section read: "No person or persons professing to believe in Jesus Christ shall henceforth be any ways troubled or discountenanced for or in respect of his or her religion."<sup>10</sup>

During the anti-Catholic period that followed the Revolution of 1689, Lord Baltimore lost the propriety, and Catholics (one-twelfth of the population) were deprived of many political rights. With the reversion of the fourth Lord Baltimore to Anglicanism, the propriety was returned to him, but Catholics were further restricted. In 1716, the franchise was denied Catholics by the imposition of a test oath;

<sup>8</sup> J. K. Pole, *Political Representation in England and the Origins of the American Republic* (London: MacMillan, 1966), p. 318.

<sup>9</sup> Blau and Baron, *op. cit.*, p. 48; *Votes and Proceedings of the House of Delegates of Maryland, 1822 Session* (Annapolis: John Green, 1823), p. 3; Thomas J. C. Williams, *A History of Washington County Maryland* (Hagerstown: John M. Runk and L. R. Titsworth, 1906), p. 198.

<sup>10</sup> W. Theodore Gambrell, *Early Maryland: Civil, Social, Ecclesiastical* (New York: Thomas Whittaker, 1893), p. 124.

and paradoxically, Catholics were more severely persecuted in Maryland, their supposed haven, than in any other colony.<sup>11</sup>

The status of Jews was much worse than that of Catholics. Under the proprietary government, the Jew was without civil rights, legally denied freedom of residence and liable to punishment by death for simply confessing his faith. In 1723 a law was passed which stated: "If any person shall hereafter within this province . . . deny our Savior Jesus Christ to be the Son of God, or shall deny the Holy Trinity . . .," he would be on the first offense, fined, and have his tongue burned; on the second offense, fined and have his hand burned; and on the third offense, burnt to death.<sup>12</sup>

In practice, however, Jews did become landowners, traders, and even citizens. Only one Jew, "ye Jewish doctor," Jacob Lumbrozo, was prosecuted under the blasphemy act of 1723. Since the community needed the doctor's talents, he was acquitted.<sup>13</sup> Jewish sounding names seem to indicate that other Jews lived in the colony, but one can conclude that before 1776 Jews either deliberately avoided settling in Maryland, or openly disavowed the Jewish religion when they did make the colony their home. In 1776, therefore, Maryland contained a disenfranchised Catholic population and apparently no Jewish population. Catholics, such as Charles Carroll, a signer of the Declaration of Independence, could not practice law in their home colony. At the State Constitutional Convention, the 35th article of the Bill of Rights included the test oath that stated that one must declare that he is a Christian if he wished to hold office. Catholics hailed the provision as a great victory, for had the declaration not mentioned the religious question, Catholics had reason to fear from past experience that they would become disenfranchised. One may find further proof of the liberal intent of the constitution in article 33 which states that every man has the duty to worship as he sees fit. It continues in a spirit of amity between Christians rather than a prohibition on Jews: "All persons professing the Christian religion are equally entitled to protection in their religious liberty."<sup>14</sup>

Had there been Jews in Maryland, it is quite likely that the test oath as it stood would not have passed. Conclusive proof can be

<sup>11</sup> *Ibid.*, pp. 124-137, 200-204.

<sup>12</sup> J. H. Hollander, "Civil Status of the Jews of Maryland," *PAJHS*, II (1894), 40.

<sup>13</sup> Matthew Page Andrews, *History of Maryland: Province and State* (New York: Doubleday, Doran, and Company, 1929), p. 96.

<sup>14</sup> *Proceedings of the Conventions of the Province of Maryland — 1774, 1775, 1776* (Annapolis: John Green, 1886), p. 299.

found by the manner in which the delegates handled the Quakers, Dunkers, and Mennonites who lived in northern Maryland. Since these minorities were forbidden by their religion to take the test oaths, the representative from their area proposed that they be allowed simply to attest to the presence of a divine being. The convention's delegates agreed with that solution and the three groups were specifically mentioned in what became the thirty-sixth article of the Bill of Rights, allowing them to refrain from taking the oath.<sup>15</sup>

As noted earlier, one cannot isolate the Jew Bill as simply a religious question. Although it undoubtedly would have taken that form in 1776, in 1818 other factors complicated its passage — the contemporary legislative process in Maryland, the Federal-Republican power struggle, and the plight of Baltimore in its attempts to liberalize parts of the constitution. The State constitution provided that representation in both houses be based on the principle of equality for each county. A special provision for the two most populous areas, Baltimore and Annapolis, was included. The House of Delegates was "popularly" elected, four representatives to a county and two from each special city, the members serving one year terms. An electoral college chose the Senate. The voters elected two members for the college from each county and one from Baltimore and from Annapolis. The senators served five year terms; since they were all elected by the same body, they most often were members of the same political party.<sup>16</sup>

The Constitution also provided for a governor and an executive council, elected by joint ballot of both houses of the legislature. Because the fifteen members of the Senate were generally of the same party and the House's eighty members usually evenly divided between the two major parties, the party that controlled the Senate also controlled the executive branch. The constitution granted the municipal authorities very little power, making the state, in essence, the controller of not only the counties, but also the cities. These responsibilities greatly increased the business the state legislature transacted.<sup>17</sup>

Strife between the Federalists and the Jeffersonian Republicans was always acute from the late 1790's until the early 1820's. The state's Republicans came to power with the popularity of Jefferson

<sup>15</sup> *Ibid.*, pp. 308-09.

<sup>16</sup> George Ball, *Legislative Process in Maryland* (College Park, Maryland: University of Maryland, 1963), p. 11; Matthew Page Andrews, *Tercenary History of Maryland* (Baltimore: S. J. Clarke Publishing Company, 1925), p. 761.

<sup>17</sup> *Proceedings of the Conventions of the Province of Maryland — 1774, 1775, 1776*, pp. 317-321.

in 1800. Believing that they would benefit if they increased suffrage, the Republicans extended voting privileges to all free white citizens over the age of twenty-one who had resided in Maryland for one year. The closeness of competition between the two parties and their desire to win over more voters brought about in 1809 a bipartisan resolution that removed property qualifications as a prerequisite to holding office. The struggle between the parties grew more intense during the war with Britain. Republican enthusiasts in Baltimore destroyed the plant of the *Federal Republican and Commercial Gazette*, a vitriolic Federalist newspaper published by two anti-war advocates. The destroyed press office was rebuilt by Federalist die-hards and then again razed; all that protected the editors and their associates from being stoned was their being put in the city jail. The mob finally broke into the jail and killed General Lingan, an associate of the paper.<sup>18</sup>

Governor Bowie, a Republican, failed to arrest any of the mob's instigators. The Federalists exploited this issue as much as possible, stating that the wild Baltimore "Jacobins" wanted to take over the state government, and made the party competition appear to be a struggle between Baltimore and the counties. The Federalists were successful in their propaganda campaign, rolling up an impressive majority in the House of Delegates. Their continuous effective exploitation of the foreign influence issue led to their overwhelming victory in the very important election of 1816, in which senatorial electors were voted on. The Senate, therefore, would be completely Federal until the next election of electors in 1821, and during this period much progressive legislation was blocked by the Federalist Senate.<sup>19</sup>

Each political party had an area of particular strength. The Federalists usually relied on the well-established agricultural areas of the state; the Republicans congregated in the cities, trade centers, and the frontier settlements. Disproportionate representation was always a problem, a result of equality based on geography rather than population. Of course, had it not been for the conservative nature of much of the state, the local Federalists would have never retained power so long after the national party had been dissolved. The fact that Maryland was the only Federalist state in the area during the War of 1812 was not solely the result of disproportionate representation. The Federalists, Whigs, and Know Nothings of Maryland often played on the natives' fear of the rapid influx of Jews, Irish, or other "different" people to carry them into office.

<sup>18</sup> Andrews, *op. cit.*, pp. 423-40.

<sup>19</sup> J. Thomas Scharf, *History of Maryland* (Baltimore: John Piet, 1879), III, 142.

The dilemma that Baltimore faced grew more acute as time progressed. Between 1790 and 1810 the population of the city increased by 244 per cent. Yet it still had only one-fortieth of the representatives in the House of Delegates, the body that, together with the Senate, assumed control over much of Baltimore's local affairs. By 1818 one-quarter of the legislature's work directly concerned Baltimore. The Federalists, as well as many Republican counties, opposed enlarging the powers of the corporation as well as reapportioning the assembly's seats with population the sole determining factor. The legislators, instead, concerned themselves with the question of whether to grant Baltimore two extra seats. Even this bill did not reach the floor of the Federally-controlled House of Delegates during the 1817 session. In 1818, the Republicans controlled the House, and this time the measure did reach the floor but, like the Jew Bill, was defeated by a conservative Republican-Federal coalition. The two representatives from Baltimore represented a population greater than the aggregate total of eight of the counties. One man in Calvert County was equal in voting power to twenty-eight in Baltimore. In addition, one-fourth of the wealth and two-thirds of the capital of the state was centered in Baltimore.

Another issue indirectly affecting Baltimore in the legislature was the popular election of the Governor. It passed the House because Democratic representatives of the bigger counties believed the bill would directly help their area, but the Federally-controlled Senate resoundingly defeated the measure. The Federalists exploited the issue and often reiterated that if the people elected the governor, the city of Baltimore would, in essence, choose him. A typical propaganda pamphlet stated that Baltimore was one-third foreign, and noted:

The true contest is now between Baltimore and the counties; and the question which every voter when he goes to the polls ought to put to himself is, shall I vote for the men who by effecting the changes which they have proposed and designed will place the great agricultural State of Maryland at the feet of the merchants, the bank speculators, the brokers, the lottery office keepers, the foreigners, and the mob of Baltimore? Or shall I give my support to those who will maintain in opposition to them, the honor, the dignity, and independence of the cultivators of the soil?<sup>20</sup>

The power struggle between the parties ended in 1821 when the Republicans captured the Senate, but the change did not really affect the sentiments of the representatives. Although the bill to popularly

<sup>20</sup> Scharf, *op. cit.*, pp. 148-149.

elect the governor was confirmed in 1821, the legislature still defeated the bills which attempted to increase the representation from Baltimore and grant the Jews political emancipation. By 1823 the Federalists fielded no ticket, since everyone had been absorbed into the Republican party.<sup>21</sup>

Before going directly into the struggle in Maryland, the meaning of political emancipation should be clarified. While the Jews were allowed to vote in Maryland, they could not hold office. In addition, they could not be commissioned as officers in the military or enter the law as a profession, since a lawyer was an officer of the state. One of the first Jewish merchants to arrive in Baltimore was Solomon Etting, who came from York, Pa. in 1791. He was interested in public affairs and a close friend of many government officials. A staunch Republican, Etting submitted a petition to the legislature on December 13, 1797, that because he was a Jew, he was deprived of many rights of citizenship. Jews, he felt, should be treated like Christians. The somewhat nebulous request was assigned to a committee whose members reported that they "thought the petition reasonable . . . but since it involved a constitutional question of considerable importance," delayed action on the measure. With the Republicans in power and universal white male suffrage attained, Etting presented another petition in 1802 specifically stating his grievances. "The Jews," the petition read, "are deprived of holding any office of profit and trust under the constitution and laws of this state." Already a blatant contradiction between the national and state government had appeared. Reuben Etting, Solomon's brother, had joined the Baltimore Independent Blues in 1798 when war with France was thought to be imminent, and he was elected captain. When the state took over the Blues in 1801, Etting was appointed by President Jefferson as the U. S. Marshal of Maryland. Etting, however, could not have qualified to be a lowly constable of the State of Maryland.<sup>22</sup>

The Jew Bill was voted on in 1802 and defeated 38-17. It was reintroduced by the popular and influential delegate William Pinkney in 1804 but again failed, 39-24. A plausible reason for its defeat was that until 1809 not all Christians could hold office. The bill lay dormant, however, until it was reintroduced by Kennedy in 1818.

During this interval many changes occurred in the Jewish community. There was a substantial growth in the material wealth and

<sup>21</sup> Andrews, *op. cit.*, p. 447.

<sup>22</sup> Aaron Baroway, "Solomon Etting," *Maryland Historical Magazine*, XV, 3-7; *Votes and Proceedings of the House of Delegates of Maryland, 1797 Session* (Annapolis: John Green, 1798), p. 71.

the communal influence of the Jews of Baltimore. The Jewish population grew to one hundred. Jacob Cohen established a bank that gained a national reputation for its strength and integrity. Although Mendes I. Cohen, Philip Cohen, and Samuel Etting were commended for their efforts in the defense of Fort McHenry, the War of 1812 pointedly showed the actual hardships many Jews faced. Shortly after the war, in 1818, the "Marion Corps," a volunteer army unit, elected Benjamin Cohen as their captain, not realizing that as a Jew, Cohen could not be given a commission. The group unanimously decided that no new captain would be elected until the fate of the Jew Bill was decided.

The case for the Bill was buoyed when Jacob Henry retained his seat in the North Carolina legislature, although the constitution of North Carolina forbade a Jew from holding office, and Simon Levy was selected as one of the two representatives from Maryland to the first class at West Point. Tragedies such as the one that affected Solomon Etting's son also helped to win the sympathy as well as the understanding of many legislative leaders in Maryland. Etting, the brightest student in his class, winning every first prize in education, could not fulfill his life ambition to practice law because he was Jewish.<sup>23</sup>

Thomas Kennedy, desirous of correcting such injustices, asked the legislature to appoint a committee to investigate the test oath and its implications. The committee, composed of Kennedy, Brakenridge, and Thomas, submitted a unanimous report that delineated logically why the Jews should be granted equal rights. The bill that was proposed to correct the inequity was presented to the House in its specific form; that is, it referred only to Jews. After an attempt by the bill's opponents to table the motion failed, the proposition was defeated 50-24. In the Federally-controlled Senate, the measure was not even voted on.<sup>24</sup>

During the 1819 session the bill was again overwhelmingly defeated in the House 47-20. However, even if it had passed, it would have made little difference, since the Senate was completely Federalist until 1821. During the 1822 session, a new committee com-

<sup>23</sup> A. D. Glushakow, *A Pictorial History of Maryland Jewry* (Baltimore: Jewish Voice Publishing Co., 1955), p. 23. Glushakow wrote that the reason widow Judith Cohen took her family (including Jacob) from Richmond to Baltimore was to enroll her children in Baltimore College, a non-sectarian school. Jacob later became one of the founders of the Baltimore school system. He also served as an agent in the United States for the House of Rothschild; *Governor Worthington's Speech on the Maryland Test Act* (Baltimore: William Wooddy, 1824), pp. 22, 25-36.

<sup>24</sup> *Votes and Proceedings of the House of Delegates of Maryland, 1818 Session* (Annapolis: John Green, 1819), p. 58.

posed of Kennedy, Millard (St. Mary's County), and Wright (Queen Anne's County) unanimously recommended that a universal version of the bill should be passed. Unlike the form that referred specifically to Jews, the new bill stated that it would "extend to all citizens of Maryland the same civil and religious rights and privileges that are enjoyed under the constitution of the United States." This passed 40-33 and subsequently triumphed in the Republican Senate 8-7.<sup>25</sup>

Inasmuch as the Jew Bill was a constitutional amendment, the bill had to pass two successive legislative sessions. During the 1823 session, representatives of the Jews of Maryland addressed the legislators, soliciting support for their claims. In this "Memorial" the Jews pleaded to their "fellow citizens of Maryland" that they only asked for a right everyone else had, not an exclusive privilege. The "Memorial" had little direct consequence, however. Although the Senate passed the measure again 8-6, the House defeated it 44-28. On the last day of the 1824 session (February 26, 1825), the legislature passed (26-25) the bill referring specifically to Jews, giving any Jew the right to hold office as long as he believed in a future state of rewards and punishments. The measure was finally confirmed (45-32) on January 5, 1826. No one in the House spoke in opposition to the bill that the Senate had previously passed almost unanimously.<sup>26</sup>

One should not underestimate the difference between the bill's universal, and the finally passed, specific version. The latter, like the article in the Bill of Rights that helped the Quakers, only attacked an effect rather than the cause of the dilemma. Many advocates of the specific, as well as opponents of both versions, said that if the universal measure were passed, Turks and atheists would rule the country. This argument prompted many House advocates of the universal version to compromise and pass the measure that helped only those directly affected, the Jews. During the 1822 session, the Senate, not handicapped by having to run for reelection annually, first defeated a bill singling out the Jews (9-5) and then passed the universal version (8-7). However, when the members realized that the House would only affirm the specific version, the higher house confirmed it as well.<sup>27</sup>

The presentation of the Memorial in 1823 was the first formal

<sup>25</sup> *Votes . . . Maryland, 1822 Session*, pp. 262, 337.

<sup>26</sup> *Memorial of the Jewish Inhabitants of Maryland to the General Assembly of Maryland*. Mendes Cohen Collection, Box II, Maryland Historical Society; *Niles Weekly Register*, XXV (February 7, 1824), 357; *Votes and Proceedings of the House of Delegates of Maryland, 1824 Session* (Annapolis: John Green, 1825), p. 162.

<sup>27</sup> *Maryland Censor*, January 9, 1823 (Found in Mendes Cohen Collection).

action Jews as a group took since 1802, although influential individuals, like Solomon Etting and Jacob Cohen, continually applied indirect pressure on the legislature. Jews were not so much interested in the universal as in the specific version. In fact, the bill in the Senate abolishing religious tests altogether was made against the Jewish community's expressed wish: "We wanted it by our own special right and no other."<sup>28</sup>

A letter from Cohen to E. S. Thomas in 1818 further shows Cohen's self-interest. In it, Cohen stressed how courageous the Jew was and how much he personally had suffered, not the importance of removing all restrictions between man and his conscience. Cohen also requested that the ayes and nays be taken and placed on the record, and his connections with the legislators should not be underestimated.<sup>29</sup> One historian has written, "It was his personal friends largely out of respect for him who led the successive contests." Cohen also controlled many of the loans that were granted throughout Maryland, and he meticulously wrote down the names of those who voted for or against the bill.<sup>30</sup>

The Democratic-Republican press also carried to all parts of the nation the story of the struggle for the emancipation of the Maryland Jews, regarding the many defeats of the bill as a lessening of the ideal of a free United States. Many compared Maryland's treatment of the Jews with the contemporary persecution of the Jews in Turkey, Russia, Austria and Germany. "In vain did Washington fight," stated one newspaper, "if a state can deny some rights to its citizens." The *National Intelligencer* of Charleston, South Carolina predicted that the next step in Maryland would be an established church.<sup>31</sup> The *Natchez, Mississippi Independent Press* was more caustic in its attack. "We will never see the day when ignorance will lose its adherents and bigotry its disciples." When the Jews died for the American cause in the army, "we Christians" did not ask them what their religion was, and Maryland's prejudice was in fact worse because its

<sup>28</sup> J. I. Cohen to M. N. Noah, Baltimore, February 2, 1819. (Copy of original letter is in Mendes Cohen Collection.)

<sup>29</sup> J. I. Cohen to E. S. Thomas, Baltimore, December 16, 1818. (Copy of original letter is in Mendes Cohen Collection.)

<sup>30</sup> Aaron Baroway, "The Cohens of Maryland," *Maryland Historical Magazine*, XVIII, 365; Evidence for this statement may be found in the Mendes Cohen Collection. Cohen had written down in longhand those who voted for and those who voted against the measure.

<sup>31</sup> Loose, undated newspaper articles in the Mendes Cohen Collection; *National Intelligencer*, February 4, 1819 in *Sketch of Proceedings in the Legislature of Maryland, December, 1818 . . .* (Baltimore: Joseph Robinson, 1819), pp. 84-85.

population contained many Irish Catholics, who had experienced the evil of religious persecution.

The Philadelphia *Franklin Gazette* poetically attacked the charge by opponents of the bill that the Jews, like the Negroes, were inferior:

Be error quick to darkness, hurled  
 No more with hate pursue  
 For He who died to save the world  
 Immanuel — was a Jew!<sup>32</sup>

*Niles* frequently repeated the premise that one cannot talk about democracy when some are prohibited freedom of conscience; one day, it hoped, enlightenment rather than darkness would reign in government. The Philadelphia *Freeman's Journal* and the New York *National Advocate* both offered practical advice, the former pleading with the editors of the newspapers in Maryland to use their influence to further the Jews' cause. The Maryland *Censor* argued that the test oath was a libel on the Christian religion, and emphasized that Jews were responsible and outstanding citizens. The editors challenged the Republicans, who then controlled both houses, to dissolve forever the connections between church and state.<sup>33</sup>

The speeches in the House of Delegates concerning the Jew Bill are our primary source of information as to what the advocates and the opponents thought. Hostile speeches were never published, however, and there is no official record of the debates. The supporters quoted from the Declaration of Independence that all men are created equal, and thereby concluded that since the Jews are men, they are equal. The test oath, however, prevented Jews from achieving equality. The close ties between Christianity and the state and the conscious effort of most of the legislators to act as "good Christians" led many to utilize religious doctrines when defending their cause. Kennedy stated that he proposed the bill as a Christian to show that the gospels supported the ideas of the golden rule and peace and good will to mankind. Christianity taught him not to condemn people who have different opinions from his own. He and others frequently quoted the New Testament to demonstrate that the Bible supported religious freedom. If one propagates religion by the sword (i. e., uses the test oath to bribe people to become Christians), he is offering those that convert a reward on earth, certainly not a Christian doctrine.<sup>34</sup>

<sup>32</sup> *Ibid.*, pp. 71-75, 79.

<sup>33</sup> *Ibid.*, pp. 78, 80; Maryland *Censor*, December 4, 1822.

<sup>34</sup> Speech of Henry Brakenridge reported in *Niles Weekly Register*, XVI (March 29, 1819), 226-33; *Sketch*, pp. 14-45.

Some of the bill's supporters relied more on logic than religion. If the test oath was a means of propagating religion, it was a futile method. The early Christians were the most pure because they were persecuted, while established churches were the most corrupt. Persecution tended to make belief stronger, and to convert Jews, it was best to treat them kindly. Even if one did not accept the view that religious matters were completely between man and God, that there should exist no coercion in matters of religion, that any test to hold office should be political and not religious, and that man should be responsible to government for his actions and not his opinions, he should still realize that a religious test was futile, for the test affected only the good and conscientious, since hypocrites would not scruple to swear falsely. Deists and atheists laughed at the oath, not hesitating to subscribe, and even some Jews had taken the oath that tried to discover the inward thoughts of men. It would therefore appear, stated Brakenridge ironically, that a declaration of belief was held in higher esteem than integrity or virtue.<sup>35</sup>

In 1824 Worthington questioned Solomon Etting concerning the number of Jews and their material wealth. Etting replied that there were one hundred and fifty Jews in Maryland whose total wealth was estimated at one-half million dollars. This response brought with it two additional arguments to support the bill. One noted that whatever faults Jews have are the result of persecution. Liberty, as evidenced by life in the United States, bestowed energy and dignity on the Jewish character. And secondly, by the test oath Marylanders were discouraging these rich and prosperous citizens from entering Maryland. Maryland needed these worthy men of enterprise and capital to develop her natural seaports, but they would go to a neighboring state rather than live under the persecution they must endure in Maryland.

Perhaps the most powerful arguments for the bill were of a political nature. Its leading proponent was Henry Brakenridge, a staunch nationalist, who had served as the United States Judge of West Florida in 1817. The national constitution and particularly the first amendment granted freedom of worship, a freedom violated when a citizen was politically restricted because of his religion. Removing the religious oath did not, therefore, grant the Jews a special right, but their religious freedom. In addition, Article VI of the constitution specifically prohibited religious tests for offices. Although this argument was utilized by others, Brakenridge's position was unique in asserting the primacy of the federal over the state constitution.

<sup>35</sup> *Niles Weekly Register*, XVI (May 29, 1819), 228, 230.

The constitution, unlike the Articles of Confederation, was entered into by all citizens of the state with each other in their individual capacity.<sup>36</sup>

Worthington argued that a religious restriction was both contrary to the federal constitution and the spirit of the Maryland constitution, for the Maryland Declaration of Rights stated "that it is the duty of every man to worship God as he thinks most acceptable to him . . ." If the Maryland constitution had been written at the time of the national constitution, he asserted, it would never have contained a test oath. The nation's policy was based on the premise of meting out to the weak the same rights as to the strong. Disqualifications and persecution could only bring about disunion and hate, while toleration and equal rights would bring good will and peace.

Pan-Marylandism was also apparent in some arguments. Why should Maryland, part of the vanguard of the struggle for religious freedom and founded because Virginians persecuted Catholics, be the last state to annul test oaths. Although Massachusetts still deprived Jews of higher state offices in 1818, by 1825, when the Maryland bill was passed, no other state had a religious restriction.

The measure's advocates often also referred to the views of American political leaders and religious authorities. The first four presidents, it was pointed out, had all supported the idea of religious freedom. Washington had received with pride many honors from synagogues and had often stated his wish that the American Jews "continue to merit and enjoy the good will of the other inhabitants." Adams in a response to a letter from a delegate wrote that he had transacted business with Jews and had found them as good as any other sect.<sup>37</sup>

Only occasionally used were arguments that attacked the pragmatic tendencies of most of the legislators. Thomas McMahan (Allegany County) said a delegate had two interests: 1) the people in his district, 2) everyone in Maryland. On a constitutional question, one must be above petty specialization. Worthington was less dogmatic in countering the argument that a delegate was for the bill but pledged, and therefore obligated, to vote against it. On a constitutional question, one should never pledge himself. If a representative had pledged himself and his opinions had not changed,

<sup>36</sup> *Speeches on the Jew Bill in the House of Delegates of Maryland* by H. M. Brakenridge, Col. W. G. D. Worthington, and John Tyson (Philadelphia: 1829), pp. 112-15; *Niles Weekly Register*, pp. 227-28.

<sup>37</sup> Worthington, pp. 20-32. Committee report on bill in *Sketch*, pp. 6-12; Direct replies to inquiries made by advocates of the measure concerning Adam's, Jefferson's, and Madison's position on the Jew Bill are in *Sketch*, pp. 81-84.

he should vote with the pledge; if his opinions had changed, he should vote with his sentiments.<sup>38</sup> Despite these arguments *Niles* reported the defeat of the Jew Bill in 1823:

It is believed that it would have passed if a considerable number of the members had not previously pledged themselves to vote against it, to gratify the prejudices of their constituents.<sup>39</sup>

Since there were in reality two "Jew Bills," one universal and one specific, there were arguments that could be used against one version and not the other. The existence of an integral church-state relationship and protection from the Jewish menace were employed in both instances. However, the fear of all minorities could only be used against the universal bill. Many attacked this version by stating that if one repealed the test oath, the Turks, Jews, and other infidels would rule and promote measures to extinguish Christianity.

In 1824, when the debate centered around the universal version, an opposition propaganda pamphlet was placed on the desk of every legislator. It was signed "Orthodox" and asserted that the test oath was an absolute necessity in Maryland. Orthodox made deliberate errors in his references to religious discrimination elsewhere: "The Christian religion is expressly recognized and established in many states." Although it had no bearing on the question, Orthodox wrote that President Washington had preferred one religion to another. He then offered the blatant lie that the Jews were not interested in the bill because they had not agitated for it. "The truth appears to be that the most zealous advocates of the proposal care nothing about the Jews; it is pagan idolators and heathens."<sup>40</sup> Generally, however, the opposition attacked the Jews directly, especially when the specific version was being considered. Forrest, of Montgomery County, argued that Jews would migrate to Maryland in substantial numbers, implying a Jewish dominated state as the final result.<sup>41</sup>

The Protestant religious journals were probably the most hostile towards the bill, describing the legislative struggle as the death battle between the orthodox religious views of the old constitution and Kennedy's Unitarianism. Justification for the belief that the Jews should not be granted equal rights occurred on many levels. The

<sup>38</sup> *Remarks of John McMahon in the House of Delegates of Maryland on 28th January 1824 on the Religious Test* (Hagerstown: W. D. Bell, 1824), p. 13; *Worthington*, pp. 36-90.

<sup>39</sup> *Niles Weekly Register*, XXV (February 7, 1824), 357.

<sup>40</sup> Reference to Orthodox appeared in many post 1823 speeches. Of the existing speeches, *Worthington* describes the pamphlet in the greatest detail. See pp. 11-20.

<sup>41</sup> *Speech of Thomas Kennedy, Esq. in the Legislature of Maryland on Bill Respecting Civil Rights and Religious Privileges* (Annapolis: 1820), pp. 13-15.

familiar argument was again used that the Jews killed Jesus and God wants them to suffer. To this Thomas Kennedy replied:

We all feel the force of political prejudice, but religious prejudice is even stronger, since it has been passed from father to son for eighteen hundred years.<sup>42</sup>

Kennedy also noted the fact that Christ and most of the apostles were Jews, and predicted that the chosen people would be restored to their former greatness. McMahan argued that it was in fact the bigotry of the church that was responsible for the populace's reasoning that since Judas killed their savior, all Jews were evil. He concluded by noting that we continually crucify innocent Jews by charging them with being the "descendants of crucifiers." LeCompte of Montgomery County rationalized his opposition by stating that the Jews were a "separate people" that did not want to integrate with Marylanders. Defenders of the bill, however, pointed out that Jews in Maryland socialized with and attended the same schools as Christians. Except that they went to a different church, the Jews were essentially the same free Americans as their fellow Christians.<sup>43</sup>

Myths concerning various Jewish characteristics were widespread. Many believed that most Jews in the United States were bankers and merchants. And in this, even people staunchly advocating the bill had reservations concerning Jewish nonconformity. *Niles* argued that if it were a question of good and bad, many Christians should be denied the right to hold office. The proposition was, therefore, not whether the Jews were evil, but rather whether they were men. *Niles* accepted the popular notions about Jews, and in one editorial pointed out that Jews were just consumers who created nothing. They will not work, "preferring to live by wit in dealing and acting as if they had a home nowhere." Although there are "honorable exceptions," the Jews did not usually identify their interests with those of the "community in which they live."<sup>44</sup>

Orthodox rural Protestants generally opposed the bill. Unitarian and most low church Protestants, especially Baptists, who emphasized the need for separation of church and state, were generally in favor of the proposal. The Quakers and other pacifist groups seemed to favor the universal version. In fact, they continually opposed the specific version, perhaps a result of one of Kennedy's arguments when defending the rights of the Jews, that if any people should be deprived of the privilege of holding office, it was the Quakers. Since

<sup>42</sup> *Sketch*, pp. 16-17.

<sup>43</sup> *McMahon*, p. 47; *Niles Weekly Register*, XVI (May 29, 1819), 230.

<sup>44</sup> *Niles Weekly Register*, XIX (October 20, 1820), 114.

Quakers refused military service, they could not complain if civil offices were denied them.<sup>45</sup>

The New York *National Advocate* charged that the Catholics of Maryland were responsible for the bill's defeat. It probably came to this conclusion from a speech of Worthington's, in which the delegate expressed his fear that "monkish superstitions" were a characteristic of the opposition. Jacob Cohen quickly wrote to Mordecai Noah, the paper's editor, that Catholics were, in fact, some of the strongest supporters of the bill, and cited as evidence Catholic Roger Taney, one of the Senate's most avid advocates of the measure. Cohen added that in Baltimore, an archbishopric, every newspaper editor supported the bill.<sup>46</sup>

As has been pointed out, the Federalists' last stand centered around opposition to a combination of liberal causes including doubling the representation of Baltimore and granting the Jews political equality. When the Jew Bill was defeated during the 1818 session by 50-24, two Federalists voted for the bill while thirty-three voted against it. The Republicans, meanwhile, voted twenty-two to seventeen in its favor. During the 1819 session, the Federalists voted 19-4 against, while the Republicans voted 28-16 against. One could conclude from the above facts that the Federalists generally opposed the bill. The Republicans seem also to have been against the measure. Jacob Cohen appears, therefore, to have been mistaken in his assessment of the results when he wrote to Mordecai Noah in 1819 that the Federalists were the reason for the bill's rejection since a unified Republican front could have overruled the Federalist opposition.<sup>47</sup>

The Republican Party's antagonism to the measure can be explained by its desire to maintain power rather than risking defeat by voting for the Jew Bill. The electors for the Senate were to be voted on in the 1821 election. The Jew Bill, to become law, would have to be reaffirmed in the 1820 session. The Federalists might very easily retain control in the Senate if they could show that the Republican Party advocated passage of the Jew Bill. By voting

<sup>45</sup> *Sketch*, pp. 32-40.

<sup>46</sup> New York *National Advocate*, February 2, 1819; in the Mendes Cohen Collection a card is inserted in a copy of Worthington's speech. It was signed by Charles Carroll, the distinguished Catholic from Carrollton. Carroll stated that Worthington meant by "Monkish Superstition no more than I would by Cameronian Bigotry or Vandal Opression." The card contained Worthington's own apology, where he stated that he "never meant the slightest irreverence of your (Roman Catholic) venerable church, its head, or any of its members."; Jacob Cohen to Mordecai Noah, Baltimore, February 2, 1819, Mendes Cohen Collection.

<sup>47</sup> Jacob I. Cohen to M. N. Noah, Baltimore, February 2, 1819, Mendes Cohen Collection.

version of the bill. It was only when he realized that this would not pass that he agreed to support the specific version. The bill, a result of Kennedy's constant efforts, was nicknamed "Kennedy's Jew Baby," a fact often repeated by his opposition in election campaigns. One cannot doubt Kennedy's sincerity when he, in 1826, proudly stated:

I have seen the first of my wishes as a public servant gratified by seeing the principles of civil and religious liberty established in the United States.<sup>61</sup>

During the dramatic 1823 election, the only delegate from Washington County who voted against the measure in the 1822 ballot, Benjamin Galloway, led what was to be popularly called the "Christian ticket" against Kennedy's slate or the "Jew ticket." A staunch Republican, Galloway was greatly respected throughout the county. His intentions cannot be questioned when he said that if Kennedy would be reelected, "he (Kennedy) would renew his shameful attack upon the Christian religion."<sup>62</sup>

Galloway's campaign, as many across the state during the election, effectively stirred up religious hatred. On August 15, 1823, the Hagerstown *Herald* published an election handbill written by Galloway and addressed "To the Christian voters of Washington County." In it, Galloway stated that he had planned to retire after serving during the 1822 session, but he could not desert the cause to defeat this "highly exceptional act . . . which (is) an attempt to undervalue and, by so doing, to bring into popular contempt, the Christian religion." Galloway concluded that he preferred Christianity to "Judaism, Deism, Unitarianism, or any other sort of new fangled ism."<sup>63</sup> In a debate between the two tickets at Cold Springs, Galloway charged that the father of the bill (Kennedy) was a native of Scotland (rather than Maryland), a country where infidelity had made the most progress.

The Hagerstown *Torchlight* carried in one issue fourteen different articles attacking the bill. One typical essay signed by a "Christian voter" questioned:

Should we strike from our Constitution the last clause which declares our belief to Christianity? . . . [the bill's passage] would sap the foundation of all we hold dear.<sup>64</sup>

<sup>61</sup> Altfeld, *op. cit.*, p. 15.

<sup>62</sup> *Hagerston Herald* of August 18, 1823 reprinted in *Niles Weekly Register* (September 6, 1823), 6.

<sup>63</sup> *Niles Weekly Register*, XXV (September 6, 1823), 6.

<sup>64</sup> Williams, *op. cit.*, pp. 169, 189.

Kennedy and the rest of his ticket were defeated by more than a two to one margin. However, an increase in sympathy for the bill and Kennedy's constant reasoning to the voters eventually paid off, since in the 1825 election he thwarted Galloway's challenge and won, although he carried no supporters on his coattails.

Washington County was not the only county where a delegate was likely to be defeated for reelection if he voted for the bill. Queen Anne's County was always staunchly Republican. In 1818, when the bill was first voted on, all its delegates cast affirmative ballots. Two of the representatives decided to run for reelection; the Federalists did not even submit an opposition slate. In 1822, however, delegates who voted in favor of the measure risked political defeat. In reality, there no longer were political parties and seven "Republicans" ran for the four seats. During the previous session, three representatives had voted in favor while one voted against the bill. In the 1823 election, only the latter delegate was reelected. During the succeeding session all of Queen Anne's representatives cast negative ballots.<sup>55</sup>

If voting for the Jew bill usually brought a representative misfortune, why was it passed? Since the Senate was Republican and elected indirectly every five years, one can understand why it continuously passed the measure after 1821. However, members of the House, subjected to direct annual election, had little of the freedom of a senator. The real cause for the bill's passage stemmed from the affluence of the Baltimore Jews. Worthington's speech concerning the relative wealth of the Jews and Maryland's need for these rich settlers convinced the skeptical of the need for the abrogation of the test oath; the Jews were not poor Irish Catholic immigrants, but rich merchants and traders. In the end, it was the utility argument that proved decisive.

The final results of the bill's message were not as gratifying as many might expect. While it is true that in 1826 two Jews, Cohen and Etting, were elected to the Baltimore City Council, and Cohen was later elected President of the Council, the bill requiring a special oath by Jews of a belief in a future state of rewards and punishments, was not religious freedom. A non-conforming Jew or Christian, Deists, and atheists were still excluded from holding office. Even the Maryland Constitution of 1867, while omitting all religious references, still required an office holder to believe in God.

Legal discrimination against the Jews also continued. In 1830,

<sup>55</sup> Frederic Emery, *Queen Anne's County, Maryland* (Baltimore: Maryland Historical Society, 1950), pp. 443-453.

the legislature threw out an application of a Hebrew congregation for a charter simply because it was Jewish. Although the Jewish population continued to grow, a Jew could not be legally married outside the church until 1927.<sup>56</sup>

A study of the Jew Bill, therefore, brings to light many characteristics of the American political tradition. In the struggle, one can see the weakening of the previously close church-state relationship and the beginnings of the urban-rural conflict; and in essence, the years of effort do not reflect either side's preoccupation with justice, but rather a concern with selfish interest. Even the Jews opposed the passage of the universal version.

<sup>56</sup> Hartogensis, *loc. cit.*, pp. 98-100.