

sons, professing the Christian religion." Not until 1851, when Maryland's second Constitution was drafted, were the words "professing the Christian religion" deleted.

The original Article 36 [then 33] also enabled the legislature to "lay a general and equal tax, for the support of the Christian religion. . . ." (*cf.* the pre-1776 enforced contribution to the Church of England). In 1810 any taxation "for the support of any religion" was made unlawful by the General Assembly,¹²¹ and the taxation provisions disappeared in the 1851 Constitution.

However, the 1851 version did add the requirement that witnesses and jurors believe "in the existence of God" or otherwise be disqualified, and this clause has remained in existence to the present day. That the test for jurors, at least, violates the federal Constitution, has been recently decided.¹²²

Article 37

Article 37 (in 1776, 25) originally provided that public officeholders could be subjected to no oath other than that prescribed by the legislature, besides a declaration of belief in Christianity. This clearly discriminated against members of the Jewish faith—but it was a Scotch Presbyterian who led the dramatic, half-century fight to gain full equality for all non-Christians seeking state office.

¹²¹ *Md. Laws of 1809*, ch. 167. NILES, *supra* note 90 at 379. Only one serious effort to enforce a tax was made—and defeated—in 1785. NEVINS, *supra* note 103 at 430, 431.

¹²² *Schowgurow v. Maryland*, 213 A.2d 475 (1966). Also, the opening clause to Article 36 is apparently no longer tenable under *Torcaso v. Watkins*, 367 U.S. 488, 81 S.Ct. 1680 (1961). *Levitsky v. Levitsky*, 231 Md. 388, 397, 190 A.2d 621, 625 (1963). *See generally*, APPENDIX II, VI (notes 3, 4, 10, 14).

Thomas Kennedy was a staunch advocate of religious liberty and equality. In 1817 he was elected a delegate to the General Assembly and headed a committee (created as the result of a resolution made by him) to place Jewish citizens on a footing equal to Christians. In two weeks Kennedy's committee submitted a proposal for an act that "no religious test, declaration or subscription of opinion as to religion, shall be required from any person of the sect called Jews, as a qualification to hold or exercise any office or employment of profit or trust in this state." The bill was twice defeated by a more than 2-1 majority. Kennedy was attacked as "an enemy of Christianity," and called "one half Jew and the other half not a Christian." When he came up for reelection, his bill was the major issue to the opposition's campaign. Benjamin Galloway, running on a so-called "Christian ticket" and openly disclaiming the support of "Jews, Deists, Mohammedans, or Unitarians," won the election. However Kennedy persisted, ran as an independent candidate in the next year's election (1824) and won. His proposal for Jewish equality became something of a national issue, with the press strongly aligned behind Kennedy. A bill similar to the original proposal was finally enacted in 1825.¹²³

In 1851 the present Article 37 (then, Article 34) added the clause:

" . . . and if the party shall profess to be a Jew, the declaration shall be of his belief in a future state of rewards and punishments."

The 1864 Constitution deleted the language, "if the party shall profess to be

¹²³ A. STOKES & L. PFEFFER, *CHURCH AND STATE IN THE UNITED STATES*, 245-48 (1964); E. ALTFELD, *THE JEW'S STRUGGLE FOR RELIGIOUS AND CIVIL LIBERTY IN MARYLAND* (1924); NILES, *supra* note 90 at 383.