

Church-State Dilemmas of American Jews

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“The government of the United States of America is not in any sense founded on the Christian religion.” This statement, found in Article 11 of a 1797 treaty between the United States and the Bey and subjects of Tripoli, encapsulates what may safely be seen as a near-unanimous Jewish view on the relationship of church and state in America. It is a manifestly negative view, a statement of what America is not. It also turns out to be somewhat misleading, for although the English-language version of the treaty was ratified by Congress, the Arabic original omits the controversial statement concerning “the Christian religion”—a fact discovered only some 133 years later. It is, however, a classic text, “cited hundreds of times in numerous court cases and in political debates whenever the issue of church-state relations arose”¹ to reassure the faithful that *no* religion obtains special treatment in America. However much Christianity might be the law of the land in other countries, in America, Jews have insisted, religious liberty is guaranteed by the Constitution itself.

But what does religious liberty mean? How are those who adhere to the religion of the majority, those who adhere to the religion of the minority, and those who adhere to no religion at all supposed to

interrelate? If America is not a Christian society, what kind of society is it and what is the relationship of that society to the state? Elsewhere, David Dalin and I have shown that American Jews “have never been of one mind” concerning these questions. Indeed, “over the long span of American Jewish history there has been far less communal consensus on the subject than generally assumed.”² Here, I will extend this conclusion by focusing on two major themes: First, in response to claims that America should be a “Christian nation,” Jews have put forth two alternative and in many respects contradictory models of religion-state relations in the United States, one that points to the equality of all faiths under the Constitution, and the other that stresses church-state separation. Second, in so doing, Jews have confronted three central dilemmas, posed here as questions, that remain both difficult and nettlesome: (1) Are Jewish interests better served under a system that guarantees equality to *all* religions or one that mandates complete state separation from any religion? (2) Should Jews, in defense of their minority religious interests, ally themselves only with other minority faiths, or also with atheists? (3) Should Jewish organizational policies on questions of religion and state privilege broad national goals, like church-state separation, or be directed instead toward the promotion of Jewish group interests, as determined by constituents?

I

The great fear of the American Jewish community—well reflected in their frequent invocations of the treaty with Tripoli—was that America would someday officially define itself in Christian terms, thereby reducing Jews to the level of a tolerated minority and second-class citizenship. True, George Washington had promised the Jewish community of Newport in his famous letter of 1790 that “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.”³ Nevertheless, Jews knew that the conception of America as a Christian country—a tolerant one—lay deeply rooted in both American history and culture. The earliest charter of an English settlement in America, the First Charter of Virginia (1606), granted by King James I, associated the settlement with missionary work, the “propagating of Christian religion.” Connecticut’s Fundamental Orders (1639), the first to be drawn up by the colonists themselves, pledged to “maintain and preserve the lib-

erty and purity of the gospel of our Lord Jesus which we now profess." Maryland, in a special act concerning religion that actually became known as the Toleration Act (1649) owing to its path-breaking effort to guarantee tolerance for minority Catholics, forbade blasphemy, religious epithets, and profaning of the Sabbath, and explicitly promised freedom of religion without fear of molestation or disrespect—but, again, only to those "professing to believe in Jesus Christ."⁴

Nor was Christian triumphalism confined to the colonial period. "For more than three centuries," Robert Handy has shown, "Protestants drew direction and inspiration from the vision of a Christian America. It provided a common orientation that cut across denominational differences, and furnished goals toward which all could work, each in his own style and manner."⁵ The Constitution and the Bill of Rights (which, of course, applied only at the federal level, and did not become binding upon the states until the twentieth century) did not dampen the ardor of those who embraced this Christian America ideal, for they interpreted these documents narrowly. Their reading—and whether it was correct or not is less important than the fact that they believed it to be so—was summed up by Justice Joseph Story in his famous *Commentaries on the Constitution* (1833): "The real object of the amendment was, not to countenance, much less to advance Mahometanism, or Judaism, or infidelity, by prostrating Christianity; but to exclude all rivalry among Christian sects, and to prevent any ecclesiastical establishment, which should give to an hierarchy the exclusive patronage of the national government."⁶

Story's view was buttressed by a long string of court decisions which, in accordance with British precedent, assumed that "the Christian religion is recognized as constituting a part of the common law."⁷ Chancellor James Kent, chief justice of New York's highest court, held in 1811 that religious freedom and church-state separation did not stand in the way of a common law indictment for malicious blasphemy, for "We are a christian people and the morality of the country is deeply ingrafted upon christianity." Justice David Brewer, writing for a unanimous Supreme Court in 1892 (*Church of the Holy Trinity v. United States*), ruled that "we find everywhere a clear recognition of the same truth: . . . this is a Christian nation." In 1931, the Supreme Court (*U.S. v. Macintosh*) described Americans just as Chancellor Kent had, as "a Christian people." Eight years later, the Georgia Supreme Court, upholding a Sunday closing law, reiterated the same point—that America is "a Christian nation."⁸

Individual Americans have been even more outspoken in associating the state with the religion of the majority. Daniel Webster, for example, argued eloquently before the Supreme Court in the case of *Vidal v. Girard's Executors* (1844) that "the preservation of Christianity is one of the main ends of government." He claimed that a school "derogatory to the Christian religion," or even a school "for the teaching of the Jewish religion" should "not be regarded as a charity," and that "All, all, proclaim that Christianity . . . is the law of the land." He lost his case, but won cheers from members of the Whig Party. Furthermore, his views with regard to the illegitimacy of schools "for the propagation of Judaism" won support from the Court, even as it rejected his claims on other grounds.⁹ Webster may well have changed his mind later on.¹⁰ Still, the views he expressed in this case clearly reflected the sentiments of a significant minority of Americans in his day. At the end of the nineteenth century, a similar view was put forth by the Presbyterian minister Isaac A. Cornelison, who described America as "a state without a church but not without a religion." Even as he endorsed church-state separation, he argued that "Christianity in a proper sense is the established religion of this nation; established, not by statute law, it is true, but by a law equally valid, the law in the nature of things, the law of necessity, which law will remain in force so long as the great mass of the people are Christian."¹¹

II

American Jews have, broadly speaking, offered two meaningful alternatives to these kinds of "Christian America" claims. Both are historically well grounded, both appeal to American constitutional ideals, and both claim to promote American and Jewish interests. Yet they are very different. One stresses the broadly religious (as opposed to narrowly Christian) character of the American people, the other stresses church-state separation and the attendant secular nature of the American government. Each reflects a different reading of history, involves Jews with different kinds of friends and allies, and translates into radically different policy positions.

The first alternative conjures up an image of Americans as a religious people, committed to no religion in particular but certain that some kind of religion is necessary for the well-being of all citizens. This idea finds its most important early legislative expression in the Northwest Ordinance of 1787, in which "religion, morality and

knowledge”—not further defined—are termed “necessary to good government and the happiness of mankind.” Leading Americans from Benjamin Franklin (who proposed that nondenominational prayers be recited at the Constitutional Convention) to Dwight D. Eisenhower (“Our form of government has no sense unless it is founded in a deeply felt religious faith, and I don’t care what it is”) have championed similar views, as have some proponents of what is now known as civil religion.¹² The concept is somewhat nebulous, and means different things to different people. What is important here, however, is the existence of an ongoing tradition, dating back to the early days of the republic, that links Americans to religion without entering into any particulars. It is a tradition that counts Judaism in among all other American faiths, Christian and non-Christian alike.

This tradition, although rarely appealed to by American Jews today, forms the basis for almost every important American Jewish call for religious freedom in the early decades following independence. A 1783 Jewish petition to the Council of Censors in Pennsylvania, for example, attacked a test oath demanding belief in the divinity “of the old and new Testament,” on the grounds that it conflicted with the state’s own declaration of rights—“that no man *who acknowledges the being of a God* can be justly deprived or abridged of any civil rights as a citizen, on account of his religious sentiments.” That this declaration of rights, while inclusive of Jews, allied the state with theism did not trouble Jews at all. Similarly, the German-Jewish merchant Jonas Phillips, in the only petition on the subject of religious liberty sent to the Constitutional Convention meeting in Philadelphia in 1787, declared that “the Israelites will think themselves [sic] happy to live under a government where all Religious societies are on an Equal footing.” He too offered no brief for those outside the pale of religion. Indeed, when Pennsylvania adopted a new constitution in 1790 that qualified for office all who acknowledged “the being of a God, and a future state of rewards and punishments,” the Jewish community raised no objections and was satisfied. As a rule, early American Jews sought religious equality, not a state divorced from religion altogether. Jacob Henry of North Carolina, when efforts were made in 1809 to deny him his seat in the state legislature for refusing to subscribe to a Christian test oath, underscored this point: “If a man fulfills the duties of that religion which his education or his conscience has pointed to him as the true one; no person, I hold, in this our land of liberty has a right to arraign him at the bar of any inquisition.”¹³

Nowhere in any of these statements do Jews suggest that their rights should stand on an equal basis with those of nonbelievers. Nor did Jews protest when Maryland, in its famous "Jew Bill" of 1826, specifically accorded them rights that nonbelievers were denied.¹⁴ Instead, most early American Jews accepted religious freedom as a right rooted within a religious context. They defined it, in the words of Mordecai Noah, perhaps the leading Jewish figure of the day, as "a mere abolition of all religious disabilities." Jews, as a rule, did not mind that America firmly committed itself to religion. Their concern was mainly to ensure that this commitment carried with it a guarantee to them that, as Noah put it, "You are free to worship God in any manner you please; and this liberty of conscience cannot be violated."¹⁵

Jewish support for this essentially pro-religion position remained strong throughout the first two-thirds of the nineteenth century. One well-versed student of the subject, Shlomith Yahalom, concludes that American Jews during this period were concerned with "freedom of religion and not freedom from religion." Rather than siding with the demands of antireligious organizations, she writes, many Jews supported "impartial aid to *all* religions."¹⁶ A prime example of this may be seen in the Civil War when, in connection with the mustering of troops, Congress provided for the appointment of chaplains to the armed forces. Previously, only Protestants had served as military chaplains, but Congress, under the sway of "Christian America" proponents and Catholics, broadened the qualifications somewhat to embrace any "regularly ordained minister of some Christian denomination." Voting down a proposal to widen the qualifications more broadly, Congress consciously ignored the interests of the "large body of men in this country . . . of the Hebrew faith." When, as a result of this law, the soldiers in a heavily Jewish regiment were denied the right to hire a member of their own faith as their chaplain, the outraged Jewish community responded with vigorous protests and an extensive campaign of lobbying. What most Jewish leaders of the day sought, however, was not total abolition of the military chaplaincy, which a secularist interpretation of America's religious tradition might have demanded, but only religious equality. Once Congress amended the chaplaincy law so that the word "Christian" was construed to mean "religious," allowing chaplains of the Jewish faith to be appointed, the Jewish community pronounced itself satisfied.¹⁷ Nor was this a unique case. As Professor Naomi Cohen explains in her study of German Jews in the United States:

The Jewish pioneers for religious equality generally asked for government neutrality on matters of religion . . . a neutral-to-all-religions rather than a divorced-from-religion state. Indeed, the latter concept, which in the climate of the nineteenth century was tantamount to an anti-religion stance, was as abhorrent to Jews as it was to most Americans. Rabbis, long the most influential leaders of the community, taught that religion was a vital component of the good life and, like Christian clergymen, inveighed against the inroads of secularization.¹⁸

While this response to the challenge of “Christian America” never completely lost its appeal, Jews in the last third of the nineteenth century found to their dismay that calls for religious equality fell more and more on deaf ears. The spiritual crisis and internal divisions that plagued Protestant America during this period—a period that confronted all American religious groups with the staggering implications of Darwinism, biblical criticism, and burgeoning agnosticism—drove evangelicals and liberals alike to renew their particularistic calls for a “Christian America.” Evangelical leaders championed antimodernist legislation to protect the “Christian Sabbath,” to institute “Christian temperance,” to reintroduce Christianity into the schoolroom, and to write Christian morality into American law codes.¹⁹ The National Reform Association, founded by Conservative Evangelicals in 1863, for example, defined its objectives in 1888 as follows:

The object of this Society shall be to maintain existing Christian features in the American Government; to promote needed reforms in the action of government touching the Sabbath, the institution of the Family, the religious element in Education, the Oath, and Public morality as affected by the liquor-traffic and other kindred evils; and to secure such an amendment to the Constitution of the United States as will declare the nation’s allegiance to Jesus Christ and its acceptance of the moral laws of the Christian religion, and so indicate that this is a Christian nation.²⁰

Liberal Christians may have been somewhat more circumspect in their public pronouncements, but as Robert Handy indicates, their goal too was “in many respects a spiritualized and idealized re-statement of the search for a specifically Christian society in an age of freedom and progress.” The liberal Congregationalist minister Washington Gladden, for example, looked forward to the day when “every department of human life—the families, the schools, amusements, art, business, politics, industry, national politics, interna-

tional relations—will be governed by the Christian law and controlled by Christian influences.”²¹

For Jews, the frightening implications of this renewed Protestant hope for a “Christian America” were candidly spelled out as early as 1867 by a writer in the *American Presbyterian and Theological Review*. Instead of placing all religious Americans on an “equal footing,” as Jews had hoped, the article insisted that non-Protestants in America could never win full acceptance as equals:

This is a Christian Republic, our Christianity being of the Protestant type. People who are not Christians, and people called Christians, but who are not Protestants dwell among us, but they did not build this house. We have never shut our doors against them, but if they come, they must take up such accommodations as we have. . . . If any one, coming among us finds that this arrangement is uncomfortable, perhaps he will do well to try some other country. The world is wide; there is more land to be possessed; let him go and make a beginning for himself as our fathers did for us; as for this land, we have taken possession of it in the name of the Lord Jesus Christ; and if he will give us grace to do it, we mean to hold it for him till he comes.²²

The National Reform Association’s proposed “Christian Amendment,” designed to write “the Lord Jesus Christ” and the “Christian” basis of national life into the text of the U.S. Constitution, attempted to ensure that these aims would be speedily and unambiguously satisfied.²³

Jews, new to America and all too familiar with the anti-Jewish rhetoric of Christian romantics in Europe, were understandably alarmed by these efforts. As in the Old World so in the New, they thought, proponents of religion were allying themselves with the forces of reaction. “The Protestants come now and say defiantly that this is a Protestant country,” Rabbi Max Lilienthal warned in a celebrated public address in 1870. “When I left Europe I came to this country because I believed it to be free.”²⁴ In search of a safe haven, many Jews now settled down firmly in the freethinking liberal camp; it seemed far more hospitable to Jewish interests. Jews also turned increasingly toward a more radical alternative to “Christian America”—the doctrine of strict separation.

III

Church-state separation is, of course, an old idea in America; its roots lie deeply imbedded in colonial and European thought. The idea was warmly embraced by Thomas Jefferson and James Madison who believed that the state should be utterly secular, religion being purely a matter of personal preference. "The legitimate powers of government," Jefferson wrote in his *Notes on Virginia*, extend to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods or no God."²⁵ While certainly not hostile to religion, Jefferson and Madison believed that religious divisions were salutary and that religious truth would be most likely to flourish in a completely non-coercive atmosphere. "While we assert for ourselves a freedom to embrace, to profess, and to observe the religion which we believe to be of divine origin," Madison wrote in his *Memorial and Remonstrance* (1785), "we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us." Jefferson refused to proclaim so much as a Thanksgiving Day, lest he "indirectly assume to the United States an authority over religious exercises." We owe to him the famous interpretation of the First Amendment as "a wall of separation between church and state."²⁶ Jefferson and Madison's view was, to be sure, a decidedly minority opinion that fell into disfavor with the revival of national religious fervor early in the nineteenth century. But later, in the post-Civil War era and as a response to "Christian America" agitation, its message of "strict separation" attracted a whole new school of adherents, Jews prominently among them.

It is by no means clear when Jews first began to express support for this model of "secular government." In the election of 1800, a majority of the few thousand Jews in the country supported Jefferson, but his religious views were not the reason why. Indeed, Benjamin Nones, a Philadelphia Jewish merchant and broker, pointed out in his public endorsement of Jefferson that the future president "in his very introduction to the Declaration of Independence, declared all men equal, and implores a Divine Providence"—a clear indication of where Nones's own priorities lay.²⁷ Isaac Leeser, the most important Jewish religious leader of the pre-Civil War period, stood much closer to the radical Jeffersonian view. He repeatedly invoked the principle of church-state separation in defense of Jewish rights, took an active role in the battle for Jewish equality on the state level, and was vigilant in his opposition to such alleged Chris-

tian intrusions into American public life as Sunday closing laws, Christian pronouncements in Thanksgiving proclamations, official references to Christianity in state and federal laws, and Christian prayers and Bible readings in the public schools. Even Leeser, however, was primarily motivated by a desire to assure Jews equal rights and to prevent their assimilation into the mainstream. While he was more wary of religious intrusions into public life than were some of his Jewish contemporaries, he by no means advocated a secular government. "The laws of the country know nothing of any religious profession, and leave every man to pursue whatever religion he pleases," he insisted. "Nevertheless it is not an atheistical country."²⁸

It was, then, only in the post-Civil War era, with the revival of efforts to create a "Christian America" and the resulting ties between Jews and advocates of religious radicalism and free thought (themselves on the rise during this period), that American Jews began unequivocally to speak out for a government free of any religious influence. Leading Jews participated in such groups as the Free Religious Association and the National Liberal League, both dedicated to complete church-state separation, and many Jews, among them such notable Reform Jewish leaders as Rabbis Isaac Mayer Wise, Bernhard Felsenthal, and Max Schlesinger, as well as the Jewish leader Moritz Ellinger, embraced the separationist agenda spelled out in *The Index*, edited by Francis Abbot. As Professor Benny Kraut has pointed out, during this period "the issue of church-state relations precipitated a natural, pragmatic alliance uniting Jews, liberal Christians, religious free thinkers, and secularists in common bond, their religious and theological differences notwithstanding."²⁹ The result, particularly in terms of Reform Jewish thought, was a clear shift away from emphasis on Americans as a religious people, and toward greater stress on government as a secular institution. Thus, in 1868, Rabbi Max Lillenthal elevated total church-state separation to one of the central tenets of American Judaism:

[W]e are going to lay our cornerstone with the sublime motto, "Eternal separation of state and church!" For this reason we shall never favor or ask any support for our various benevolent institutions by the state; and if offered, we should not only refuse, but reject it with scorn and indignation, for those measures are the first sophistical, well-premeditated steps for a future union of church and state. Sectarian institutions must be supported by their sectarian followers; the public purse and treasure dares not be filled, taxed and emptied for sectarian purposes.³⁰

Lilienthal's Cincinnati colleague, Rabbi Isaac Mayer Wise, proclaimed a year later that "the State has no religion. . . . Having no religion, it can not impose any religious instruction on the citizen, adult or child."³¹ Rabbi Bernhard Felsenthal of Chicago, in an 1875 polemic written to prove that "ours is not a Christian civilization," went even further:

God be praised that church and state are separated in our country! God be praised that the constitution of the United States and of the single states are now all freed from this danger-breeding idea! God be praised that they are "atheistical," as they have been accused of being by some over-zealous, dark warriors who desire to overcome the nineteenth century and to restore again the fourteenth century. God be praised that this has been accomplished in our Union and may our constitutions and state institutions remain "atheistical" just as our manufactories, our banks, and our commerce are.³²

This soon became the predominant American Jewish position on church-state questions. During the latter decades of the nineteenth century, the organized Jewish community consistently opposed "religious legislation" in any form, and, in one case, applauded liberal efforts "to secularize the State completely."³³ Although, as we shall see, the early decades of the twentieth century witnessed some significant debates over the wisdom of this policy, Jewish organizations later in the century, especially following World War II, generally lined up behind what came to be known as the "separationist agenda," taking their lead from Leo Pfeffer, general counsel of the American Jewish Congress, and "America's foremost author, scholar, and jurist of church-state relations," who famously argued that "complete separation of church and state is best for the church and best for the state, and secures freedom for both."³⁴ Pfeffer won significant Supreme Court victories on behalf of the position that he espoused, and he assembled a powerful coalition of secular and liberal Protestant organizations that associated themselves with him. By the 1950s, separationism became for many Jews a critical plank of the liberal agenda that they took up in the postwar era. Just as they opposed all forms of discrimination, and allied themselves with supporters of civil rights and civil liberties, so they advocated an end to prayers and Bible readings in the public schools and to other religious practices that, they felt, placed members of minority faiths (like themselves), as well as nonbelievers, in the position of second class citizens.³⁵ A "high wall of separation" between church and state, they believed, would help to bring about "liberty and justice

for all.” Indeed, into the 1960s, one study indicates, “American Jews under the leadership of their defense organizations went on record time after time in significant court cases on behalf of separation. . . . For the most part they eschewed completely the idea of equal government recognition of all religions or of non-denominational religious practices, and they called for non-recognition of any form of religion.”³⁶

In the waning decades of the twentieth century, the separationist consensus within the American Jewish community came under increasing pressure. A few critics, notably the Jewish thinker Will Herberg, spoke out as early as the 1950s against the community’s “secularist presupposition” on questions of religion and state. In March 1961, according to the *American Jewish Year Book*, “unexpectedly strong support” for federal aid to religious schools “appeared within the Jewish community, especially among the Orthodox.” Several Orthodox Jewish organizations publicly supported congressional proposals favoring state aid to parochial schools, and a leading Conservative Jewish leader, Charles H. Silver, declared that any plan of “federal aid that excludes nonpublic schools” would “tend to . . . do a disservice to our country.” In the hope of obtaining funds for Jewish day schools, these Jews argued (as Catholics had before them) that education in a religious setting benefited not only members of their own faith but also the nation as a whole, and that funds used to support secular studies at these schools should not be denied just because the schools happened to teach religious subjects on the side. They also cast doubt on the whole Jewish separationist approach to the problem of church and state, terming it “robot-like” and “unthinking.” By 1965, according to the *Year Book*, “these groups began to challenge the non-Orthodox hegemony in Jewish communal life and to lobby independently for their interests.” They also established the National Jewish Commission on Law and Public Affairs (COLPA) to promote the rights and interests of the “observant Jewish community” concerning church-state questions. In the 1970s, the Habad (Lubavitch) organization joined the fray, arguing for the controversial right to construct privately funded Hanukkah menorahs (candelabra) on public property, a right that Rabbi Menachem Schneerson privately linked with state aid to parochial schools. At the close of the twentieth century, the “separationist” and “accommodationist” camps within the American Jewish community were again crossing swords, this time over the highly controversial church-state issue of vouchers, a proposal aimed at providing parents with tuition vouchers redeemable at the public, private, or parochial school of their choice.³⁷

IV

The breakdown of the twentieth-century American Jewish consensus on the subject of church and state should come as no surprise. If anything, the fact that the consensus lasted as long as it did is a surprise, for it effectively masked the three agonizing dilemmas on the question of religion and state with which we began. Having summarized the two alternative models of church-state interaction that Jews put forth in response to Christian America claims, we can now return to these dilemmas to see how they played out over time.

Taking them up in reverse order, we begin with the question of group interests, specifically: *Should Jewish organizational policies on questions of religion and state privilege broad national goals, like church-state separation, or be directed instead toward the promotion of Jewish group interests, as determined by constituents?* In a sense, this question is a subspecies of one that lies at the heart of all minority group politics, pitting “universalists” against “particularists.” Under universalism, Murray Friedman has observed, Jews “helped shape the ‘good society,’ in which they saw the fulfillment of Judaism’s prophetic ideals. Those drawn to particularism, on the other hand, have argued that as a small and historically detested minority, Jews must frame their public policy positions on the basis of self-interest.”³⁸ For some time, American Jews insisted that there was no dichotomy here at all: promoting universalistic ideals, they believed, was the very essence of Jewish self-interest. Thorny church-state issues (among other things), however, called this comforting assumption into question.³⁹

Where secular advocates of the doctrine of church-state separation, for example, advocated taxation of church property, elimination of chaplains from the public payroll, abolition of court and inaugural oaths, and removal of the phrase “In God We Trust” from the currency, not one of these causes found significant support within the Jewish community. All these causes clashed with Jewish group interests that were, in the final analysis, not totally secular at all.⁴⁰ Indeed, in the late 1960s, the leadership of the American Jewish Congress specifically *refused* to challenge the principle of tax exemption for religious institutions (including synagogues), over the objections of Leo Pfeffer (who ultimately ghost-wrote an amicus brief on the subject for the American Civil Liberties Union).⁴¹ In an earlier case involving Pfeffer, in 1956, the American Jewish Congress heeded the concerns expressed by local Jewish communal leaders and withdrew from a challenge to the constitutionality of a

Tennessee law mandating Bible reading in the public schools.⁴² In both cases, internal Jewish interests, however parochial, overrode the more universalistic "separationist" goal to which so many within the Jewish community supposedly subscribed.

On the other hand, one can also point to cases where the goal of separationism overrode Jewish group interests. In Indianapolis, for example, the Jewish Community Relations Council and the Indiana Civil Liberties Union came out, in 1976, in opposition to a Christmas manger scene erected at public expense by the city government. A firestorm of anti-Semitism resulted, and some within the Jewish community felt that the issue should not have been made a priority, especially given the damage done to local Jewish interests. Others, however, including the community's leading rabbi, insisted that the constitutional principle involved—the goal of maintaining a high wall of separation between church and state—overrode these parochial interests, and they ultimately won the day.⁴³

Disputes surrounding the display of Hanukkah menorahs on publicly owned land resulted in similar clashes between those who put "national interests" first, and those who made Jewish group interests their highest priority. In every city where the issue arose, the Jewish community divided internally between those who opposed the menorah on broad constitutional grounds, citing church-state separation (an argument that the Supreme Court in *County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter* [1989] did not ultimately vindicate), and those who supported the menorah on Jewish grounds, as a symbol of ethnic pride and as an appropriate counterpart to publicly funded Christmas displays. Admittedly, supporters of the menorah advanced constitutional arguments on behalf of its public display, and opponents insisted that Jewish interests, ultimately, were better served by "strict separation" than by "accommodation." Underlying the dispute, however, was a basic dilemma that we have seen played out repeatedly in American Jewish life: a clash between those who ranked church-state separation at the top of their list of priorities and those who insisted that the Jewish community's primary goal should be to advance its own group interests—first and foremost.⁴⁴

A second dilemma that American Jews have faced in their long history of involvement in church-state questions is *whether, in defense of their minority religious interests, they should ally themselves only with other minority faiths, or also with atheists?* Historically, as far back as the Middle Ages, persecuted Jews allied themselves from time to time with a variety of "heretics." Eighteenth-century Jews made similar unofficial alliances with deists.⁴⁵

In America, as early as 1820, the Jewish community seems tacitly to have sponsored a pamphlet by a radical freethinker named George Houston entitled *Israel Vindicated*, aimed at refuting "calumnies propagated respecting the Jewish nation," and specifically the "objects and views" of a missionary society designed to convert Jews to Christianity (the author's name was hidden behind the moniker "An Israelite"). Probably American Jews were motivated in their support of this radical freethinker by the same impulse that motivated Jews in previous eras: self-interest. Adversity, they understood, sometimes makes for strange bedfellows.⁴⁶

Publicly, however, Jews rarely supported atheists at that time. Indeed, as we have seen, Jews in several states, including Pennsylvania and Maryland, won rights that nonbelievers were denied. Rather than allying themselves with the small freethinking minority that was without faith, nineteenth-century Jews, at least until late in the century, generally preferred to claim equality ("equal footing") with the Christian majority that took its faith seriously.⁴⁷

In the early twentieth century, the question of whether or not to ally with the forces of irreligion arose anew in conjunction with the Jewish debate over the "Gary Plan," a scheme initiated in Gary, Indiana, in 1913 that permitted released time during the public school day for moral and religious instruction outside of school property. In the debate over the plan before the Central Conference of American Rabbis, one rabbi strongly urged his colleagues to line up with the "Free Thinking Society" in total opposition to the "released time" plan. But Rabbi Samuel Schulman, a leading Reform rabbi in New York, explained publicly, and then even more clearly in a private letter, why he felt that such a course of action would be a mistake:

In America, we have a unique and, therefore, very delicate problem. We, of course, want to keep religion, Bible reading, hymn singing out of the public schools. At the same time we know that there is not enough efficient moral and religious education in the country. . . . Jews make a mistake in thinking only of themselves and assuming always a negative and critical attitude. They must supplement that negative attitude with a constructive policy. Otherwise, they will soon be classed in the minds of the Christian men and women in this country with the free-thinkers and with those who have no interest in the religious education of the youth. That, of course, is undesirable.⁴⁸

In the end, the Central Conference of American Rabbis compromised, agreeing to a plan that shortened the school day in order to

make religious instruction outside of school possible. The dilemma over whether or not Jews should lend their support to freethinking atheists, however, remained unresolved. It surfaced anew just after World War II in the well-known case of *McCollum v. Board of Education*. Vashti McCollum, the appellant in the case, challenged an Illinois “released time” law that permitted religious groups to use public school classrooms during school hours to teach religion. An avowed atheist, she depicted religion as an opiate of the masses and as a virus injected into the minds of public school children. She called for the prohibition of all religious education within the public schools of her district. Faced with this antireligious rhetoric, the question for Jewish leaders was whether to support McCollum as a means of ending a series of well-documented abuses that had turned many “released time” programs into forums for promoting state-sponsored Christianity, or whether to sit out the case for fear of being associated with a “Communist attempt to do away with religious instruction.” As Gregg Ivers has shown, Jewish organizations are divided on the question: The American Jewish Congress was eager to support McCollum’s case, while the American Jewish Committee and the Anti-Defamation League of B’nai B’rith felt that it was not in the best interests of American Jews “to be perceived as rushing to support a professed atheist’s attack on the well-established practices of the Protestant and Catholic majorities in the public schools.” In the end, all of the Jewish organizations agreed to support the amicus (friend of the court) brief written by the American Jewish Congress’s Leo Pfeffer, and he specifically disassociated Jews from McCollum’s antireligious sentiments, insisting that the church-state principle involved in the case was so significant that Jews had to overcome their “natural reluctance” to participate in it. “The importance of the issues to Jews,” he explained, “requires intercession regardless of the risk of defamation.”⁴⁹

The court’s verdict in the McCollum case, which declared released-time programs unconstitutional, by no means resolved the Jewish community’s dilemma over whether or not to ally itself with atheists. Indeed, in 1959 both the Anti-Defamation League and the American Jewish Committee refused to become involved in the case of a nonbeliever who, under Maryland law (which required a religious test oath), was denied the right to become a notary public. “An interference in the case might be misconstrued as an ungodly attitude and, therefore, be inadvisable,” a Washington-area ADL executive committee member explained.⁵⁰ The central question—with whom American Jews should ally themselves on church-state issues and what the implications of such alliances were—remained a

significant bone of contention into the 1960s, and it has not been fully resolved to this day.

As important as that question has been, however, it pales in comparison with the most important church-state dilemma facing American Jews: the central policy question of *whether, in fact, Jewish interests are better served under a system that guarantees equality to all religions or one that mandates complete state separation from any religion?* As we have seen, over the long span of American Jewish history the American Jewish community has been of two views concerning this question: some have emphasized “equal footing,” others “church-state separation.” The majority of American Jews today support the separationist approach, but the dilemma has by no means been conclusively resolved—and for good reason. Persuasive historical arguments buttress both sides in the debate.

On the one hand, history teaches Jews to favor strict church-state separation as the only defense against a Christian-dominated state. Those who emphasize this reading of history think that sooner or later “so-called non-denominational religious exercises” inevitably acquire “sectarian additions and deviations,” and that “non-denominational” then becomes the majority’s term for what the minority views as decidedly partisan. They fear that calls for religion in American life, given the record of the past, will likely turn into calls for a “Christian America.” To prevent this, they argue for “a fence around the law so as to avoid approaches to transgression as well as actual transgression.” They understandably worry that once religion gains entry into the public square, majority rule will come trampling down over minority rights, Christianizing everything in its path.⁵¹

On the other hand, history also teaches Jews to oppose secularization as a force leading to assimilation, social decay, and sometimes to persecution of all religions, Judaism included. Those who emphasize this reading of history welcome appropriate manifestations of religion in American life, and they propose a less absolutist approach to church-state separation—freedom *for* religion rather than from it. They insist that “support for religion is basic to the American system,” and they fear that completely divorcing religion from national life will result in “a jungle where brute force, cunning, and unbridled passion rule supreme.” Only the idea “that wrongdoing is an offense against the divine authority and order,” they argue, can protect society against delinquency and crime. They also point out that Jews, as a small and often persecuted minority, should be wary of setting themselves too far apart from the majority lest anti-Semitism result.⁵²

What then of Jews in the American public square? They are caught, repeatedly, on the horns of agonizing dilemmas, faced with multiple arguments that are, at once, historically legitimate, ideologically convincing, and fraught with dangers. Experience has taught Jews conflicting lessons, for, historically, those who have focused on "principles" and those who have focused on "group interests" have at different times both been right. So have those who have made common cause with nonbelievers and those who have sought alliances only among the faithful. As for those who have held aloft the banner of religion and those who have trampled down upon it, both groups, we know, have over the course of time proven friendly to Jews, but only sometimes, and sometimes they have not proven friendly at all. In their dreams, most Jews long for an America where they and their neighbors can live as equals, safe from the fire and brimstone of the Christian state and the desolate barrenness of the secular one. How best to achieve such a society, however, remains an unsolved riddle.

Notes

* This is an expanded and revised version of an article that appeared originally in *Jews in Unsecular America*, Richard, J. Neuhaus, ed. (Grand Rapids, Mich.: Eerdmans, 1987); see also my introduction to Jonathan D. Sarna and David G. Dalin, *Religion and State in the American Jewish Experience* (Notre Dame, Ind.: University of Notre Dame Press, 1997).

1. Morton Borden, *Jews, Turks, and Infidels* (Chapel Hill: University of North Carolina Press, 1984), 76-79.

2. Sarna and Dalin, *Religion and State in the American Jewish Experience*, 29-30. The standard chronological history is Naomi W. Cohen, *Jews in Christian America: The Pursuit of Religious Equality* (New York: Oxford University Press, 1992).

3. A facsimile of Washington's letter is reproduced in Morris A. Gutstein, *To Bigotry No Sanction: A Jewish Shrine in America* (New York: Bloch Publishing, 1958), 91-92.

4. Sarna and Dalin, *Religion and State*, 45-50.

5. Robert Handy, *A Christian America* (New York: Oxford University Press, 1971), viii.

6. Reprinted in Sarna and Dalin, *Religion and State*, 101.

7. *Shover v. The State*, 5 Eng. 259, as quoted in Bernard J. Meislin, "Jewish Law in America," in Bernard S. Jackson, ed., *Jewish Law in Legal History and the Modern World* (Leiden: Brill, 1980), 159; cf. Borden, *Jews, Turks, and Infidels*, 97-129.

8. *People v. Ruggles*, 8 Johns Re (N.Y.) 294 (1811); *Church of the Holy Trinity v. United States*, 143 U.S. 457 (1892); *U.S. v. Macintosh*, 283 U.S. 605 (1931); *Rogers v. State*, 60 Ga. A722; cf. John Webb Pratt, *Religion, Politics and Diversity* (Ithaca, N.Y.: Cornell University Press, 1967), 138, 142; Leonard W. Levy, *Treason against God* (New York: Schocken, 1981), 34; Meislin, "Jewish Law in America," 159.

9. *The Works of Daniel Webster* (Boston: Little, Brown, 1851), 6, 166, 175-76; cf. Anson Stokes and Leo Pfeffer, *Church and State in the United States*, rev. ed. (New York: Harper & Row, 1964), 105; and Borden, *Jews, Turks and Infidels*, 102-3.

10. See Ferenc M. Szasz, "Daniel Webster—Architect of America's 'Civil Religion,'" *Historical New Hampshire* 34 (1979): 223-43; and Max J. Kohler, "Daniel Webster and the Jews," *Publications of the American Jewish Historical Society* 11 (1903): 186-87.

11. Isaac A. Cornelison, *The Relation of Religion to Civil Religion in the United States of America: A State without a Church but Not without a Religion* (1895; reprint, New York: Da Capo Press, 1970), 362, as quoted in Robert T. Handy, *Undermined Establishment: Church-State Relations in America 1880-1920* (Princeton, N.J.: Princeton University Press, 1991), 11.

12. Sarna and Dalin, *Religion and State*, 3, 85, 254; Benjamin Franklin "Motion for Prayers in the Philadelphia Convention," in N. G. Goodman, ed., *A Benjamin Franklin Reader* (New York: Thomas Y. Crowell, 1945), 242; Patrick Henry, "'And I Don't Care What It Is': The Tradition-History of a Civil Religion Proof-Text," *Journal of the American Academy of Religion* 49 (1981): 41; cf. Russell E. Richey and Donald G. Jones, eds., *American Civil Religion* (New York: Harper & Row, 1974); John F. Wilson, *Public Religion in American Culture* (Philadelphia: Temple University Press, 1979); Martin Marty, "A Sort of Republican Banquet," *Journal of Religion* 59 (October 1979): 383-405.

13. All of these documents are reprinted in Sarna and Dalin, *Religion and State*, 69-74, 82-85 (italics added); see also Edwin Wolf 2nd and Maxwell Whiteman, *The History of the Jews of Philadelphia from Colonial Times to the Age of Jackson* (Philadelphia: Jewish Publication Society, 1975), 146-52.

14. Edward Eitches, "Maryland's 'Jew Bill,'" *American Jewish Historical Quarterly* 60 (March 1971): esp. 267, 277, 279. The distinction between Jews and unbelievers lasted in Maryland until 1961 when the Supreme Court overturned it in *Torcaso v. Watkins*. Jewish organizations were initially divided over their support for the atheist appellant in this case; see below at n. 50.

15. Morris U. Schappes, *A Documentary History of the Jews in the United States, 1654-1875* (New York: Schocken, 1971), 281; Jonathan D. Sarna, *Jacksonian Jew: The Two Worlds of Mordecai Noah* (New York: Holmes & Meier, 1981), 132-35.

16. Shlomith Yahalom, "American Judaism and the Question of Separation between Church and State," Ph.D. dissertation, Hebrew University, 1981, English section, 14; Hebrew section, 260.

17. Sarna and Dalin, *Religion and State*, 129-31; Bertram W. Korn, *American Jewry and the Civil War* (New York: Atheneum, 1970), 56-97.

18. Naomi W. Cohen, *Encounter with Emancipation: The German Jews in the United States, 1830-1914* (Philadelphia: Jewish Publication Society, 1984), 77.

19. James Turner, *Without God, without Creed: The Origins of Unbelief in America* (Baltimore: Johns Hopkins University Press, 1985); Ferenc M. Szasz, "Protestantism and the Search for Stability: Liberal and Conservative Quests for a Christian America, 1875-1925," in *Building the Organizational Society*, ed. Jerry Israel (New York: Free Press, 1972), 88-102; Paul A. Carter, *The Spiritual Crisis of the Gilded Age* (DeKalb, Ill.: University of Illinois Press, 1971); Jackson Lears, *No Place of Grace: Antimodernism and the Transformation of American Culture, 1880-1920* (New York: Pantheon, 1981).

20. Quoted in Handy, *Undermined Establishment*, 25-56; see also Cohen, *Jews in Christian America*, 69-72.

21. Handy, *A Christian America*, 101, 161-62.

22. *American Presbyterian and Theological Review* 5 (July 1867): 390-91.

23. Borden, *Jews, Turks and Infidels*, 62-74; Cohen, *Encounter with Emancipation*, 254-56.

24. David Philipson, *Max Lilienthal* (New York: Bloch Publishing, 1915), 121.

25. Quoted in Anson Phelps Stokes and Leo Pfeffer, *Church and State in the United States* (New York: Harper & Row, 1964), 53.

26. James Madison, "A Memorial and Remonstrance to the Honorable the General Assembly of the Commonwealth of Virginia" (1785), and "Thomas Jefferson to the Rev. Mr. Millar" (1808), both reprinted in John F. Wilson and Donald L. Drakeman, *Church and State in American History* (Boston: Beacon Press, 1987), 69, 79; see Robert M. Healey, "Jefferson on Judaism and the Jews: 'Divided We Stand, United We Fall!'" *American Jewish History* 73 (June 1984): 359-74; and more broadly, William Lee Miller, *The First Liberty: Religion and the American Republic* (New York: Knopf, 1986), 5-150.

27. Wolf and Whiteman, *History of the Jews of Philadelphia*, 213. On Jewish support for Jefferson in 1800, see Jonathan D. Sarna, "American Jewish Political Conservatism in Historical Perspective," *American Jewish History* 87 (1999): 118-19.

28. Sarna and Dalin, *Religion and State*, 103; Lance J. Sussman, *Isaac Leeser and the Making of American Judaism* (Detroit: Wayne State University Press, 1995), 147-49; 225-27; Cohen, *Jews in Christian America*, 50; Maxine S. Seller, "Isaac Leeser, Architect of the American Jewish Community," Ph.D. dissertation, University of Pennsylvania, 1965, 136-

75; Borden, *Jews, Turks and Infidels*; see Isaac Leeser, *The Claims of the Jews to an Equality of Rights* (Philadelphia: C. Sherman, 1841).

29. Benny Kraut, "Frances E. Abbot: Perceptions of a Nineteenth Century Religious Radical on Jews and Judaism," in *Studies in the American Jewish Experience*, ed. J. R. Marcus and A. J. Peck (Cincinnati: American Jewish Archives, 1981), 99-101.

30. Reprinted in Philipson, *Max Lilienthal*, 456-57, cf. 109-25.

31. Reprinted in Sarna and Dalin, *Religion and State*, 188.

32. Reprinted in Emma Felsenthal, *Bernhard Felsenthal: Teacher in Israel* (New York: Oxford University Press, 1924), 267-68.

33. Sarna and Dalin, *Religion and State*, 173.

34. James E. Wood, Jr., "Preface," *Religion and the State: Essays in Honor of Leo Pfeffer*, ed. J. E. Wood, Jr. (Waco, Tex.: Baylor University Press, 1985), ix-x; the quotation is from the concluding words of Pfeffer's *Church, State and Freedom* (Boston: Beacon Press, 1967).

35. Arthur A. Goren, "A 'Golden Decade' for American Jews: 1945-1955," *Studies in Contemporary Jewry* 8 (1992): 3-20, esp. 7-10; Stuart Svonkin, *Jews against Prejudice: American Jews and the Fight for Civil Liberties* (New York: Columbia University, 1997), esp. 79-112.

36. Naomi W. Cohen, "Schools, Religion and Government—Recent American Jewish Opinions," *Michael* 3 (1975): 343-44.

37. Sarna and Dalin, *Religion and State*, 25-29, 245-69, 292-94; *American Jewish Year Book* 63 (Philadelphia: Jewish Publication Society, 1962), 176-77; 67 (1966), 128-29; Marshall J. Breger and David M. Gordis, eds., *Vouchers for School Choice: Challenge or Opportunity? An American Jewish Reappraisal* (Boston: Wilstein Institute, 1998).

38. Friedman, *Utopian Dilemma*, 97-98.

39. Of course, other issues challenged this assumption as well. The 1976 "Centennial Perspective" of American Reform Judaism makes this point explicitly: "Until the recent past our obligations to the Jewish people and to all humanity seemed congruent. At times now these two imperatives appear to conflict." See the text and Eugene Borowitz's commentary in his *Reform Judaism Today* (New York: Behrman House, 1977), xxiv; and part III, 128-36. More broadly, see Jonathan D. Sarna, "The Cult of Synthesis in American Jewish Culture," *Jewish Social Studies*, new series, 5 (1998-99): 52-79.

40. Cf. Yahalom, "American Judaism and the Question of Separation between Church and State," esp. 257-64; Anson Phelps Stokes, *Church and State in the United States*, 3 vols. (New York: Harper's, 1950), 3:592-95.

41. Gregg Ivers, *To Build A Wall: American Jews and the Separation of Church and State* (Charlottesville: University of Virginia, 1995), 165-68.

42. Ivers, *To Build a Wall*, 127-28.

43. Gerald Houseman, "Antisemitism in City Politics: The Separation Clause and the Indianapolis Nativity Scene Controversy," *Jewish Social Studies* 42 (winter 1980): 21-36, esp. 32-33.

44. Sarna and Dalin, *Religion and State*, 288-300.

45. David Berger, "Christian Heresy and Jewish Polemic in the Twelfth and Thirteenth Centuries," *Harvard Theological Review* 68 (1975): 287-303; Daniel J. Lasker, *Jewish Philosophical Polemics against Christianity in the Middle Ages* (New York: Ktav, 1978): 164-65; Isaac Bazilay, "The Treatment of the Jewish Religion in the Literature of the Berlin Haskalah," *Proceedings of the American Academy for Jewish Research* 24 (1955): 39-68, esp. 49-50; Moshe Pelli, "The Impact of Deism on the Hebrew Literature of the Enlightenment in Germany," *Journal of Jewish Studies* 24 (1973): 127-46; Shmuel Ettinger, "Jews and Judaism in the Eyes of British Deists in the Eighteenth Century," *Zion* 29 (1964): 182-207.

46. Jonathan D. Sarna, "The Freethinker, the Jews, and the Missionaries: George Houston and the Mystery of Israel Vindicated," *AJS Review* 5 (1980): 101-4.

47. See, for example, Mordecai Noah's comments on the death of the self-professed atheist Charles C. C. Cohen, reprinted in Morris Schappes, *A Documentary History of the Jews in the United States 1654-1875* (New York: Schocken, 1971), 192-94.

48. Sarna and Dalin, *Religion and State*, 19-20, 203-8.

49. Quotations are all from Ivers, *To Build a Wall*, 75-80.

50. The American Jewish Congress did intervene in the case, and in 1961, in the case of *Torcaso v. Watkins*, the Supreme Court unanimously overturned the Maryland requirement. By then, both AJC and ADL had altered their positions and filed amicus briefs with the court. See Ivers, *To Build a Wall*, 107-12, esp. 109.

51. Quoted material is drawn from Cohen, "Schools, Religion and Government," 354, 345.

52. Quoted material is drawn from Alvin I. Schiff, *The Jewish Day School in America* (New York: Jewish Education Committee Press, 1966), 177; and Cohen, "Schools, Religion and Government," 364.