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TITLE "Church, State, and the Schools: A Jewish Perspective"

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CHURCH, STATE, AND THE SCHOOLS:

A JEWISH PERSPECTIVE

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## DIGEST

The history of the Jews living in the Diaspora has been largely determined by the relationship of the governments under which the Jews have lived to the Church, usually the Roman Catholic Church. Church-state relations assume great importance in our history, development, and fate. This thesis, in examining the relationship between the church and state and their connection with the concomitant principles of religious liberty and freedom, attempts to come to grips with some of the questions involved in church-state relations and their effect on the Jews.

Throughout the text of this thesis there is a concentration on the historical aspects of church-state relations, ranging from the philosophy of the prophet Jeremiah, through the early post-Biblical times, the Middle Ages, and finally extending to the latest developments of today's contemporary world. There is particular interest and study about the relationship of church and state in the United States. The final chapter, entitled "Public Aid for Non-Public Schools," wrestles with one particular problem of church and state in the United States today. With one eye on the historical consequences of the past and another on the trends in evidence today, certain conclusions are reached at the end of the text culled from the research which went into the composition of this thesis.

DIGEST - 2

Taken from our experiences from the past as a People set aside from the other peoples of the world by custom, tradition and belief, it is generally concluded that any interconnection between the policies of the state and the affairs of the church is harmful on two accounts: (1) A close relationship between church and state or a relationship in which one is dependent upon the other is detrimental to the general climate and philosophy which promotes religious liberty and freedom, and (2) from our historical study, this closer relationship between church and state has had nothing but a negative impact upon the Jewish People and its fate.

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Dedicated To:

FERN

whose constant support aids  
me in all I do

## INTRODUCTION

As long as there is such a phenomenon as Diaspora Judaism, the question of church-state relationships remains at the heart of the fate of the Jewish people. Throughout the ages, the relationship of the state governments to the churches, the juncture of these two disparate elements, and the relationship between the state and the Jewish People have been as variable as the history of the Jews. Sometimes in hostile environs, other times in neutral areas, and occasionally in friendly surroundings, the Jews have alternatively suffered and prospered, been downtrodden only to rise again.

This thesis examines the church-state relationship and its interconnection with religious liberty on three levels, these ~~Chapters~~ being reflected in the 3 major chapters.

Chapter One deals in a general way with the principles of separation of church and state as found in the history of the United States. Ranging from the early colonial period through the formulation of the doctrines of the relationship of church and state in the Constitution, we attempt here to uncover the historical roots of religious liberty and church-state separation in the United States and to discuss their significance in the overall picture of liberty and freedom as it is evidenced in American political theory.

Chapter Two becomes more specific in its approach and deals with one particular group, the Jews. In the second chapter we deal with the relationship Jews have had with the state and the church throughout the ages. Beginning with the Old World and continuing through the American scene, with particular emphasis on the latter, we see the effect of the different approaches to church, state and religious liberty on the Jewish People.

Chapter Three becomes even more specific and deals with one particular problem of the church-state question, public aid for non-public, religiously-affiliated schools. In relation to this problem, we see it from many different vantage points, from the general arguments of support and opposition through the complicated legal issues at stake and finally reaching the Jewish viewpoints on this question of public monies being used for private, church-related schools. The issues involved are discussed and debated throughout the chapter.

This thesis, then, begins with the general question of church-state relationships and religious liberty and builds from the general to one specific issue and its meaning to the Jews of America. A brief summary and conclusions culled from the research done for this thesis conclude the text.

The questions posed are live questions, the problems involved are real problems. Hoping to learn from the



historical consequences of our past, while reacting to our own circumstances of today, it is my hope that some contribution to the study and discussion of church-state relations and religious liberty has been made in this thesis.

## CHAPTER ONE

### PRINCIPLES OF RELIGIOUS FREEDOM AND CHURCH-STATE SEPARATION: AN HISTORICAL SURVEY

It all began somewhat before the discovery of America in 1492. The year was 1486 when Christopher Columbus was granted an audience with the Queen of Spain, Isabella. Because of this Queen's complete and utter devotion to the Roman Catholic Church, it was only natural that, among the avenues of patronage Columbus might seek, he would petition the Catholic Queen. After all, scientific questions of those centuries were often couched in religious terms. Though many simply asked if other lands existed and how one could get to them, others asked these same questions in another way: If other lands exist, did they share in Adam's fall and in Christ's redemption? Did Christ appear in these other lands as he did in the Mediterranean world? If not, what was the church's responsibility concerning the question of missionary activity?<sup>1</sup>

When the project which Columbus suggested was finally approved by the proper Church committees and by the Catholic Queen Isabella, Columbus made preparations and set sail.

It is noteworthy that he landed first on an island in the Bahama chain and named it "San Salvador," which means "Holy Savior."

In a message addressed to Spain's General Treasurer, Columbus wrote the following:

. . . these great and marvelous results are not to be attributed to any merit of mine, but to the holy Christian faith, and to the piety and religion of our sovereigns; for that which the unaided intellect of man could not compass, the Spirit of God has granted to human exertion, for God is wont to hear the prayers of his servants who love his precepts even to the performance of apparent impossibilities. Therefore let the King and Queen, our princes and their most happy kingdoms, and all the other provinces of Christendom, render thanks to our Lord and Savior, Jesus Christ, who has granted us so great a victory and such prosperity.<sup>2</sup>

And so, at that early date in the history of what was later to become America, the church and the affairs of state seemed as if they were to be united forever as they were in Spain, Portugal, and most of the rest of Europe.

### The Early Colonial Period

America, however, was to be different in many ways. The most pronounced reason for the unique development of America seems to be the manner and content of its colonization. It is widely known that those who would leave an already-established society to take their chances in a dangerous wilderness region would do so only for very compelling reasons. Whether their reasons were religious, financial, or philosophical, all of

the settlers came because of some degree of dissatisfaction with their present situation and station in life. Many groups came to the uncharted wilderness, for it was only here in an atmosphere of freedom that they could pursue their religious life in the way they thought best for themselves. Others who had not been overly successful in their native countries saw the frontier across the ocean as a land replete with golden opportunities. And still others were discontent with their lives in Europe for a variety of different reasons, and sought a refuge in which they might rebuild their lives on a basis chosen by themselves and not forced upon them by pre-existing societal conditions of an already-established culture. America, almost out of necessity, because of the type of people who came to inhabit the land and the reasons they had for coming, thus was bound to develop a somewhat unique philosophy of government, different from that which so many of its people had voluntarily left behind.

The molding of this country's attitude regarding the free practice of religion, unencumbered by the strictures of state, was not unmarred by unpleasant experiences and backslidings in what had become the progressive way of thinking. Many of those who fled to this unchartered land did so to escape religious persecution in Europe. Yet, on their establishment of their religion in this country, they felt that it was for the good of the society and the good of the individual to be forced to accept the dominant religion in their area,

namely, their own religion. After all, people are products of their environment, and some of the colonizers of this country, still strongly attached to the old set of European values on which they were weaned - values which often included the 'value' of intolerance - reflected their prior involvement. Those who stood from the beginning for the separation of church and state had to combat these notions.

What is significant about the lapses of intolerance for others is that today they are spoken of in apologetic tones and represent an aberration in the development of the principle of separation of church and state and freedom of religious expression in America. A few examples in our early colonial history should suffice to point out the fact that the emergence of a new and revolutionary way of thinking is often thwarted by detours along the way. Nonetheless, if a principle is essentially just and if it is given the freedom to develop in an open society, that principle will sooner or later prevail.

The spirit of toleration had penetrated the thoughts of Lord Baltimore, the governor of Maryland in the mid-seventeenth century, so much so that he proposed a "Toleration Act" in 1649 in Maryland. It gave freedom to the expression of one's religion, as long as the religion was that of Trinitarian Christianity. Included in its statutes was the death penalty for those who deny the Trinity, and a fine of Five Pounds for speaking ". . . reproachful words of the Virgin Mary, the Apostles, of Evangelists."<sup>3</sup> There was no room under this "Toleration Act" for toleration of Jews, Unitarians, or Atheists.

Though our next chapter will deal with the history of the Jews in America as it related to church-state issues, we would be remiss to leave out in our discussion of intolerance the episode with Peter Stuyvesant. When the first Jews landed in New Amsterdam, he wrote his Company, the Dutch East Indies Company, requesting that no Jews be permitted ". . . to infest New Netherland."<sup>4</sup> An avowed anti-Semite, Stuyvesant tried to make things as difficult for these early Jewish immigrants as possible. Although his request was denied by the Company, they did so on the conditions that the Jews would take care of their own poor, and not practice their religion in a synagogue or even at a public gathering.<sup>5</sup> Nonetheless, the Jews, according to the ruling of the Company, could ". . . exercise in all quietness their religion within their homes."<sup>6</sup> Stuyvesant, however, granted no more 'privileges' than those specifically spelled out by his home Company, and he tried, by denying property ownership and trading rights to the Jews, to discourage their settlement. As the passing years have attested, he failed.

The Puritans of Massachusetts, who fled to this country in order to seek freedom of worship in their own manner, were not among the most tolerant of the early settlers.

To the early leaders of Massachusetts, especially the religious leaders, toleration of dissent from the 'established order' of religious worship was as sedition in the state and sin against God. John Cooton declared that "it was toleration that made the world Anti-Christian."

This sentiment showed a marvelous tenacity, very slowly yielding to the influences of more liberal thought; and so as late as 1673 President Oaks of

Harvard College, said in an election sermon, "I look upon unbounded toleration as the first-born of all abominations."<sup>7</sup>

During this pre-revolutionary period, British policy left the question of church-state relationships up to the individual colonies and their owners. It is interesting, then, to look at the conditions set forth in individual state constitutions and afterwards to proceed to a study of the shaping of national laws relating to the separation of church and state.

. . . when the American Union was formed, there was a great variety of legal expression on the subject of religion and its civic relationship in the different states. By brief group of them it appears that in only two out of thirteen was full and perfect freedom conceded by law. These were Rhode Island and Virginia. Six of the states, viz., New Hampshire, Connecticut, New Jersey, the two Carolinas, and Georgia insisted on Protestantism. Two were content with the Christian religion: Delaware and Maryland. Four, Pennsylvania, Delaware, and the Carolinas, required assent to the divine inspiration of the Bible. Two, Pennsylvania and South Carolina, demanded a belief in heaven and hell. Three, New York, Maryland and South Carolina, excluded ministers from civil office. Two, Pennsylvania and South Carolina, emphasized belief in one eternal God. One, Delaware, required assent to the doctrine of the Trinity. And five, New Hampshire, Massachusetts, Connecticut, Maryland, and South Carolina, adhered to a religious establishment. In one, South Carolina, the obnoxious term 'toleration' found a constitutional place.<sup>8,9</sup>

As we can note, stipulations in state constitutions still remained while at the same time the Constitution of the United States of America forbade these distinctions. Though these remained as petty restrictions of freedom of religion, and though the United States does have in its history some cases

of cruel and inhumane behavior, these cases are the proverbial exceptions which prove the rule of the free spirit which existed at the very beginning of our country's history, the ramifications of which are developed in the principle of the separation of church and state. The most significant thing about these cases of intolerance and colonial persecution is that they were utterly rejected by the greater wisdom of the general public and were eventually banished from the governmental body of laws and statutes of the various states.<sup>10</sup>

This did not happen hastily, but was a long drawn out affair, the course of which was influenced by great leaders in early American history.

Jonathan Edwards was the first ~~early~~ and well-known leader who spoke out in America for the principles embodied in a doctrine of separation of church and state. Up until his time, the world had known only the state which controlled the church or the church which controlled the state. In neither case were the purity and sanctity of the church nor the proper matters of the government left untarnished. But Edwards, a Puritan who was a member of that religious group which fled to America for purposes of securing its own religious freedom, saw things differently. No doubt referring to the New Testament statement by Jesus (Matthew 22:21) that those things which were Caesar's were Caesar's, and those things which were God's were God's, Jonathan Edwards saw the question of church-state separation as one of grace. No man could enter the eternal City of God



without the grace of God. "Thus, the church was greater than the state, and in an entirely different sphere."<sup>11</sup> Not only did the state have no legal or moral right to interfere with the affairs of the church, but it was even theologically unthinkable.

Roger Williams also stands out as one of the foremost proponents of the full separation of church and state. His views at this time did not make him a popular man, for he was even expelled from the Massachusetts Bay Colony in 1635 because of his non-support of the Puritan State-Religion.<sup>12</sup> Moving from Massachusetts to Providence, Rhode Island, he wrote his most important work on the subject of church-state relations and his attitude of toleration. In a document called "The Bloody Tenent of Persecution for Cause of Conscience," Roger Williams reveals the many attitudes required of what he feels are true Christians. A few of them will suffice to give us a picture of the overall scope of this document.

~~Fifthly~~ Fifthly, All Civil States with their Officers of Justice in their respective constitutions and administrations are proved essentially Civil, and therefore not Judges, Governours, or Defendours of the Spirituall or Christian State and Worship.

Sixthly, It is the will and command of God that (since the coming of his Sonne the Lord Jesus) a permission of the most Paganish, Jewish, Turkish, or Antichristian consciences and worships, bee granted to all men in all Nations and Countries: that they are only to bee fought against with that Sword which is only (in Soule matters) able to conquer, to wit, the Sword of God's Spirit, the word of God.

Eighthly, God requireth not an uniformity of Religion to be intact or inforced in any civil State; which inforced uniformity (sooner or later) is the great occasion of civil warre, ravishing of conscience,

persecution of Christ Jesus in his servants, and of the hypocrisie and destruction of millions of souls.<sup>13</sup>

The spirit behind this document is much the same as that found in the attitude of Jonathan Edwards.

Williams, like Edwards, emphasized that that which is the Church's business is not the state's because of theoretical theological reasons. In addition to this, however, Roger Williams adds the practical reason that, if the state sees fit to tamper with religion, civil war could possibly break out over such a matter. This must be understood in terms of the situation in which Williams and Edwards lived. Each colony was controlled in varying degrees and in varying ways, by the majority religion of that colony. Opposition to this situation arose when a vocal and courageous member of a minority faith raised his voice opposing his state's policy. There was opposition also when truly enlightened and unselfish men of honor, like Roger Williams, spoke out not only for personal religious reasons of his own, but in addition because he felt for theological and historical reasons that separation of church and state must be maintained in all locales and that freedom of worship is, because of Jesus' coming, a God-given right.

Through theology, then, "The Bloody Tenent of Persecution for Cause of Conscience" sets the stage for a later writing of Williams' which was to contain the very principles set forth in the Constitution of the United States over one hundred years hence. In this letter, Williams wrote metaphorically about the ship of the government and the passengers of that ship

as members of varied religious backgrounds. The principles contained in this letter are important enough for it to be quoted in full.

There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe is common, and is a true picture of a commonwealth, or a human combination or society. It hath fallen out sometimes, that both papists and protestants, Jews and Turks, may be embarked in one ship upon which supposal I affirm, that all the liberty of conscience, that ever I pleaded for, turns upon these two hinges - that none of the papists, protestants, Jews or Turks, be forced to come to the ship's prayers or worship, nor compelled from their own particular prayers and worship, if they practice any. I further add, that I never denied, that notwithstanding this liberty, the commander of this ship ought to command the ship's course, yea, and also command that justice, peace and sobriety, be kept and practiced, both among the seamen and all the passengers. If any of the seamen refuse to perform their services, or passenger to pay their freight; if any refuse to help, in person or purse, towards the common charges or defence; if any refuse to obey the common laws and orders of the ship, concerning their common peace or preservation; if any shall mutiny and rise up against their commanders and officers; if any should preach or write that there ought to be no commanders or officers, because all are equal in Christ, therefore no masters nor officers, no laws nor orders, nor corrections nor punishments; - I say, I never denied but in such cases, whatever is pretended, the commander or commanders may judge, resist, compel, and punish such transgressors, according to their deserts and merits.<sup>14</sup>

Later to be echoed in the First Amendment were the points made in this letter of Roger Williams: (1) the affairs of the state and the affairs of the church were varied and therefore ought not interfere with one another; and (2) when there is interference, resulting in the church threatening the policies of the state, the state has the right to enforce its policies when the health and safety of its citizens are involved.

Rhode Island, under the guidance of Roger Williams, was to become one of a few states that granted full religious liberty from its very earliest inception. Also instrumental in this policy in the mid-eighteenth century was John Clarke, the founder of the town of Newport, Rhode Island.

Another early advocate of tolerance was William Penn, the founder of what was later to become the Commonwealth of Pennsylvania. His views are clearly reflected in what is called the "Great Law." This document is the charter of his colony, written in 1682. It provides for freedom of religious practice for all those who believe in God as the Creator and Preserver of life. In this law there is the assumption of a general Christian belief. Nonetheless, it does represent an early significant step toward freedom of religious expression and separation of church and state.

That no person, now or at any time hereafter, living in this Province, who shall confess and acknowledge one Almighty God to be the Creator, Upholder and Ruler of the World, and who professes, him or herself Obligated in Conscience to Live peaceably and quietly under the civil government, shall in any case be molested or prejudiced for his, or her Conscientious persuasion or practice. Nor shall hee or shee at any time be compelled to frequent or maintain anie religious worship, place or Ministry whatever, Contrary to his, or her mind, but shall freely and fully enjoy his, or her, Christian liberty in that respect, without any Interruption or reflection. And if any person shall abuse or deride any other, for his, or her different persuasion and practice in matter of religion, such person shall be lookt upon as a Disturber of the peace, and be punished accordingly.<sup>15</sup>

Still, William Penn did not always live up to the high ideals of the "Great Law." In the same year in which his

bill was passed, another bill required that all elected officials of what was to be later called Pennsylvania "Shall be such as profess and declare that they believe in Jesus Christ to be the Savior of the world . . . ."16

Although Jews and non-Christian Theists were permitted to live in the province, they could neither vote nor hold office. Athiests and Diests, according to the law of Pennsylvania, were never conceded the right of residency.<sup>17</sup>

The early colonial experience regarding religious liberty and tolerance seemed to be prompted by a number of different forces. The first force might be said to be the religious force, whereby practitioners of one particular religion came to America in an attempt to find the freedom in which they could practice their own religion in the way they chose. These people were largely concerned with their own sects and did not necessarily wax philosophical about the consequences of religious liberty for all, nor the ramifications of church-state relations. The sectarianism of each of the colonies may have been the very reason that the later-to-be-established federal government was forced into a non-sectarian position.<sup>18</sup>

The various sects at the time of the Revolution were grouped as follows: The Puritans in Massachusetts, the Baptists in Rhode Island, the Congregation-  
alists in Connecticut, the Dutch and Swedish Protestants in New Jersey, the Church of England in New York, the Quakers in Pennsylvania, the Baptists, Methodists, and Presbyterians in North Carolina, the Cavaliers in Virginia, the Huguenots and Episcopalians in South Carolina, and the Methodists in Georgia.

Owing to these diversities, to the consciousness of danger from ecclesiastical ambition, the intolerance of sects as exemplified among themselves as well as

in foreign lands, it was wisely foreseen that the only basis upon which it was possible to form a Federal union was to exclude from the National Government all power over religion.<sup>19</sup>

The first reasons, then, for the early colonial success of the experiment in religious tolerance was a selfish reason: the federal government could not survive without separation.

In addition, the established churches have been said to have feared Episcopacy and Popery. The fear of Episcopacy concerned the Church of England, the Episcopalian Church, and its rule of bishops. One as prominent as the founder of Yale University, Ezra Stiles, joined in the "battle against Episcopacy." Although he recognized that the objections to Episcopalian bishops coming to the shores of colonial America were based on unrealistic futuristic schemes of some of the English bishops, he still warned his flock in this manner: " I have thoroughly studied the views and ultimate designs of American Episcopalians that I know I am not deceived."<sup>20</sup> The feeling of the impending doom of having the colonies being taken over by Episcopalian bishops was thought to have forshadowed a loss of colonial charters, the imposition of new taxes used to support the Church of England, and a denial of religious freedom and expression. Yet it turned out that it was an Anglican, Charles Pinckney of South Carolina, who proposed the all-important Article Vi, Clause 3, of the U.S. Constitution which prohibits religious tests to hold an office.<sup>21</sup>

In addition, there was a fear of Popery: namely, of the Roman Catholic Church taking over control of the colonies.

This fear, perhaps more well-founded than that of Episcopacy, was based on the experience of many religious groups who had previously been under the domination of the Roman Catholic Church and under the control of the Pope. In many of the countries from which American colonials came, most notably France and Spain, the religious experience of some groups was far from pleasant. This dread was also widespread during Cromwell's era in England. Since many of the colonists were English, it was only natural that the experiences of one's past would play a great part in shaping one's present attitudes. This fear of domination by the Roman Catholic Church and the Pope was fanned throughout the decades of American life and even as recently as the election of President Kennedy in 1960 it became a national issue of some importance.

The mood of national growth and expansion during this period also had an impact on the expressions of toleration at this time. The dynamism found in a people opening up new frontier vistas would have hardly been conducive to class and religious restrictions as were found in the Old World. The mood of openness and progressivism was evident, then, not only in the economic and political spheres, but also in the question of religious toleration.

This, as well as the factors of self-protection and the fear of Episcopacy and Popery, all had a large effect on the developing doctrine of religious liberty and separation of church and state.

In addition, there were those who for strictly religious and philosophical reasons denied the old theory of a connection between the policies of the state and the theology of the church. Many of these men, some of whom were discussed in previous pages, were to have a great effect on religious freedom and the principle of separation during the next stage - the Revolutionary and Constitutional period.

### The Revolutionary and Constitutional Period

The successful experiment of a relatively large degree of religious liberty and a fairly clean break between the policies of the state and the theologies of the various sects during the colonial period dictated in a most positive sense the definitive aspects of the Constitution regarding these areas. In addition to the theoretical aspects of religious freedom and church-state separation, the period after the Revolution through the first decades of the nineteenth century was a period marked by increased immigration, composed largely of minority groups such as the Roman Catholics and Jews. This led to an even greater heterogeneity among the population of the states and thus to increased pressure for the toleration of groups of all persuasions.

The early Presidents of the United States were also among the strong proponents of religious liberty and separation of church and state. There were some persons who had particular impact on the thinking of these Presidents.



The English philosopher, John Locke, was one who taught that religion depends on inward conviction, not external compulsion and that the rights of conscience regarding religious matters must not be displaced. It was Locke who held that life, liberty and property were the inalienable rights of all men and, therefore, these rights could not be violated by any local, state, or federal government.

Benjamin Franklin, the original American renaissance man, likewise supported the cause of religious liberty and the separation of church and state.

Unmoved by dogma and uninterested in sectarian strife, Franklin favored religion that did not demand political patronage. "When a religion is good," he wrote, "I conceive that it will support itself; and when it cannot support itself and . . . (is) obliged to call for the help of the civil power, it is a sign, I apprehend, of its being a bad one."<sup>22</sup>

The Freemasons, which included such luminaries as Benjamin Franklin, James Otis, and George Washington, (who took the oath of office as President on his Masonic Bible), in addition to some fourteen signers of the Declaration of Independence, also were active in the cause of religious freedom.<sup>23</sup>

The Revolution itself served to broaden the outlook of the common citizen of the newly-formed United States of America. By coming into close contact with men from all religious backgrounds, many soldiers gained respect for their brethren in arms as well as for their religious convictions.

The Commander of the Revolutionary Army and the first President of the United States was one of the great protectors of the concept of religious liberty and separation of church and state. George Washington, though not among the more philosophical and scholarly of our early Presidents, did, nonetheless, set the tone which would allow freedom of religious expression to exist and the separation of church and state to become part of an American tradition.

As is well known, the Constitution was a document born out of compromise. Though ratified by all of the thirteen colonies, it was tacitly agreed that a subsequent Bill of Rights comprised of a number of Amendments to the Constitution would be necessary ~~so~~ to secure firmly the basic rights held dear by the colonials. In this early period, leadership from the President was, therefore, of paramount importance if religious and civil rights were to be respected. In one letter written by a Baptist preacher, John Leland, himself a proponent of freedom of religious expression, Washington's position was both respected and held as an essential guarantee of religious liberty and separation of church and state.

When the Constitution first made its appearance in Virginia, we as a society feared that the liberty of conscience, dearer to us than property or life, was not sufficiently secured. Perhaps our jealousies were heightened by the usage we received in Virginia, under the regal government, when mobs, fines, bonds, and prisons were our frequent report. Convinced on the one hand that without an effective national government the States would fall into disunion and all the subsequent evils; and on the other hand fearing that we should be accessory to

some religious oppression should any one society in the Union predominate over the rest; yet, amidst all these inquietudes of mind our consolation arose from the consideration: the plan must be good, for it has the signature of a tirest, trusty friend; and if religious liberty is rather insecure in the Constitution, "the administration will certainly prevent all oppression, for a WASHINGTON will preside."<sup>25</sup>

In a significant letter to the Hebrew Congregation of Newport, Rhode Island, Washington affirmed his stance regarding freedom of religious expression: no government intrusion into the affairs of the various organized religious bodies in the United States. He wrote on August 17, 1790:

The Citizens of the United States of America have a right to applaud themselves for having given to mankind examples of an enlarged and liberal policy, a policy worthy of imitation. All possess alike liberty of conscience and immunities of citizenship. It is now no more that toleration is spoken of, as if it was by indulgence of one class of people that another enjoyed the exercise of their inherent natural rights. For happily the government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support.<sup>26</sup>

At these early and sensitive moments in our nation's beginnings, consummate skill and dexterity were necessary to keep the newly-built ship of state afloat on the same terms on which that ship was blueprinted. The second President of the United States, John Adams, skilled in so many different ways, was not, however, of the same persuasion regarding religious liberty and the establishment of a state religion as was his predecessor, George Washington. Though Adams

respected all religions, and in particular the Jewish religion, the value of which was that it gave the world the Bible, he did believe that each state could establish its own state religion as long as the Federal government took no steps to establish a federally-sponsored religion.<sup>27</sup> The First Amendment prohibited the establishment of a national religion or the sponsorship of a religion. But, as it says in the Tenth Amendment, those rights not ascribed to the Federal government are within the purview of the individual states. Apparently with a belief in what today might be called the strict constructionist viewpoint, Adams drew the conclusion that it was, therefore, permissible for each state to sponsor its own religion.

His fellow early Presidents heartily disagreed with him. It might be interesting at this point to go back a few years before the establishment of the Constitution to a struggle that was taking place in the Colony of Virginia. This struggle effected the American theories of church and state to such a great degree that it may well be considered the fulcrum over which the debate regarding this subject has turned since then. The men who took part in it included Thomas Jefferson, James Madison, George Mason and Patrick Henry. Thomas Jefferson exerted the greatest lasting influence among the four, although James Madison was likewise a pivotal character in the drama.

The Bill at stake before the Virginia Assembly was the "Bill for Establishing Religious Freedom." It was made very

clear in the preamble what the bill sought to do; namely, grant religious liberty and freedom to members of all religious groups and to keep the state government out of the affairs of these religious groups. On one occasion, when some in the Assembly tried to limit the function of the Bill, Jefferson reacted according to his philosophy of religious liberty. In a retrospective glance back at this affair, Jefferson wrote:

Where the preamble declares that coercion is a departure from the plan of the holy author of our religion, an amendment was proposed, by inserting the word Jesus Christ, so that it should read a departure from the plan of Jesus Christ, the holy author of our religion. The insertion was rejected by a great majority, in proof that they meant to comprehend within the mantle of its protection, the Jew and the Gentile, the Christian and the Mahometan (sic), the Hindoo, and infidel of every denomination.<sup>28</sup>

This "Bill for Establishing Religious Freedom" was one of the three things Jefferson wanted to be remembered for in his epitaph, the other two being the writing of the Declaration of Independence and the founding of the University of Virginia.<sup>29</sup> It is no wonder that he was proud of this accomplishment. Part of this bill is printed below:

Be it therefore enacted by the General Assembly: That no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever, nor shall be enforced, restrained, molested, or burdened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.<sup>30</sup>

This bill clearly spelled out the concept of religious liberty as it was to be echoed in the Constitution of the United States. Also in it are hints of Jefferson's feelings regarding the support of religions and religious organizations. Less than ten years after the passage of the Bill of Rights, Jefferson was to coin a phrase which has become part of the vocabulary today in the debate regarding the relationship between church and state. That phrase was first mentioned in a letter to the Danbury Baptists Association; namely, "a wall of separation between church and state."

Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government teach actions only, and not opinions, I contemplate with sovereign reverence that act should "make no law respecting an establishment of religion or prohibiting the free exercise thereof," thus building a wall of separation between church and state.<sup>31</sup>

In his later years, when Jefferson concentrated on the establishment of his university, the University of Virginia, he sought to found a school based on his philosophy of religious expression. In a letter dated January 6, 1826, to a leading Jew of that day, Isaac Harby, Jefferson wrote the following:

I have thought it a cruel addition to the wrongs which that injured sect (the Jews) have suffered, that their youth should be excluded from the instruction in science afforded all others in our public seminaries, by imposing upon them a course of Theological Reading which their consciences do not permit them to pursue, and in the University lately established here, we have set the example of the different sects respecting their religion.<sup>32</sup>

The successor of Thomas Jefferson in the Presidency was James Madison. These two men, Jefferson and Madison, complemented each other in such a way that the theories of religious freedom and liberty as well as the belief in the separation of church and state became firmly established as American principles down to this day. It was James Madison who saved the day for Jefferson when his "Bill for Establishing Religious Freedom" was proposed before the Virginia Assembly. Immediately before that bill was considered, another bill in opposition to it was presented before the Assembly and had to be voted upon. This bill would have assessed all citizens of the colony of Virginia a tax which would provide for the teaching of the Christian religion. Though there was the provision, in deference perhaps to Jefferson and Madison, that non-Christians could designate their tax portion to other institutions of learning as they would choose, James Madison spoke strongly against it. In his historic speech entitled "Memorial and Remonstrance Against Religious Assessments," Madison proclaimed, among other points, that:

Since the equal right of every citizen to the free exercise of his Religion is equal in weight to all other natural rights, acceptance of a legislative infringement of this right means that the legislature may likewise infringe the freedom of the press, or abolish trial by jury. The alternatives are clear and inescapable. Either . . . the will of the Legislature is the only measure of their authority, they may sweep away all our fundamental rights, or . . . they are bound to leave this particular right untouched and sacred.<sup>33</sup>

It was evident that the theory of the separation of church and state was a clear and distinct, even sacred, right which no legislature dare tamper with.

Two conclusions seem to emerge from the Virginia contest: to Madison, at any rate, nonestablishment meant no aid even on a basis of equal treatment, and not simply a guarantee against preferential treatment; to Jefferson, the free exercise of religion meant freedom for believers and non-believers alike.<sup>34</sup>

Madison, in strict adherence to this principle, also opposed a federally-funded or state-supported chaplaincy. Even this, he felt, was contributing to the establishment of religion.

If religion consists in voluntary acts of individuals, singly or voluntarily associated, and if it be proper that public functionaries, as well as their constituents, should discharge their religious duties, let them, like their constituents, do so at their own expense. How small a contribution from each member of Congress would suffice for the purpose! How just would it be in its principle! How noble in its exemplary sacrifice to the genius of the Constitution: and the divine right of Conscience! Why should the expense of a religious worship for the Legislature be paid by the public, more than that for the Executive and Judiciary branches.<sup>35</sup>

### The Documents Themselves

Though the Virginia Assembly led the way for the espousal of religious liberty and separation of church and state, in the final analysis it is the Constitution of the United States and its Bill of Rights which sets the definitive policy of the United States.



The first document of America, however, was the Declaration of Independence. The Declaration supports the view that the framers of this document were at least favorably disposed toward religion. The four references to God in the Declaration of Independence mention "Nature's God," "The Creator," "The Supreme Judge of the World," and "Divine Providence."

Though it does indeed mention God and sees Him as the Source of All Life, it more importantly imputes to man certain inalienable rights bestowed upon man by God. These God-given rights became the basis of the Constitution, and they are rights which no government can take away. As was noted earlier, the Constitution itself contains very little about religion. It drops the references to God that the Declaration of Independence makes. Its only specific reference to freedom of religious liberty is found in Article VI, Clause 3.

The senators and representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.<sup>36</sup>

Not only does this amendment prohibit religious tests in order to hold an office, but it permits Quakers, against whose religion it is to take an oath, merely to affirm their loyalty, thus opening further the door of freedom for all.

There are two other oblique references to religion in the Constitution. The first recognizes Sunday as the Sabbath,

in that it exempts Sunday from being counted in the days that are required to have passed before a bill becomes a law with the President's signature.

. . . If any bill shall not be returned by the President within ten days (Sunday excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.<sup>37</sup>

The other reference deals with the dating of the signing of the Constitution by its authors.

Done in Convention by unanimous consent, of the States present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.<sup>38</sup>

It becomes obvious by the lack of mention about religion in the Constitution before it was amended that there was little doubt in the framers' minds that the proper place for religion was at home, and perhaps, under the jurisdiction of the states. Although the concerns of the Federal government were many, religion was not one of them. In the important Federalist Papers, religion is mentioned only once, and even this reference to it by James Madison is quickly passed over.<sup>39</sup>

Nonetheless, there was felt the need for an addition to the Constitution which would guarantee the inalienable rights referred to in the Declaration of Independence. It was correctly assumed and understood that as soon as the Constitution was ratified and the country was moving toward

its own development, these amendments would be immediately forthcoming. These were to be in the form of the Bill of Rights, the first ten amendments to the Constitution. The amendment in the Bill of Rights which pertains to the topic in question is the First Amendment. It protects the right of religious expression and guarantees that the Federal government will neither support nor interfere in free religious expression.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.<sup>40</sup>

In quite specific terms the law of the land proclaims religious liberty for all, without governmental interference. Still, this law was limited to Federal institutions. It was not until 1868, when the Fourteenth Amendment was ratified, that this protection was extended to the citizens in their individual states. In effect, the Fourteenth Amendment limited another amendment, the Tenth, by broadening the protective umbrella of the Federal government and extending all rights of the people promised by the Federal government in such a way that the individual states could take no action which would in any way abridge those rights and privileges of American citizenship. This amendment also had the important effect of granting citizenship to all people born in the United States or naturalized within its jurisdiction, regardless of race, creed, or religion. It is the interpretation of this Fourteenth

Amendment, in conjunction with the First Amendment, which is presently causing the great legal debate regarding the states' responsibilities in matters religious. The Fourteenth Amendment reads as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.<sup>41</sup>

On the surface, then, the Constitution protects every individual's religious liberty and makes the actions of the state separate and distinct from the actions of any or all religious groups. The Bill of Rights Amendments, which specify the right of religious liberty, were added because of three concerns of many of the colonials. They felt a need for a written guarantee for their right of religious expression; they needed assurance that Congress would not establish one national religion to take precedence over all the others; and, on the other hand because of these first two concerns, they wanted to protect the already-existing state religious establishments.<sup>42</sup> The reasons for a guarantee of religious freedom and separation of church and the Federal government were as varied as the sects which existed at that time. Nonetheless, there was general agreement on the need for particular Constitutional guarantees.

After the adoption of the Federal Constitution, the State Constitutions followed suit. Some, such as Virginia and New York, actually led the way for the United States Constitution itself, while other states lagged in accordance with their more conservative philosophies, allowing only incomplete religious freedom and statutory distinctions between Christians and others to persist for some time.

The points on which all the state constitutions are at one are as follows:

1. No legislature can pass a law establishing religion, or a Church. To effect such purpose a change in the constitution would be required.
2. No person can be compelled by law to attend any form of religious service; or, -
3. To contribute to the support of any such service of the Church.
4. No restraint can be put by law on the free exercise of religion; or, -
5. On the free expression and promulgation of religious belief, provided always that this freedom "shall not be so construed as to excuse acts of licentiousness, or to justify practices inconsistent with the peace and safety of the State."<sup>43</sup>

Although the American sub-continent was discovered by Columbus under the auspices of the Catholic Church, the direction which the later colonies of America was to follow differed greatly from the Old World Tradition. Founded on the principles of freedom of religious expression and separation of church and state, America was to write a new leaf in the annals of human history, governmental relations, and church affairs.

## CHAPTER TWO

### FREEDOM OF JEWISH RELIGIOUS EXPRESSION

#### The Old World

Perhaps the first and most significant statement in the traditional Jewish writings regarding Judaism's relation with the state is that of the Amoraic master, Samuel, who proclaimed as a general principle dina d'malchuta dina: "the law of the kingdom is the law." The Jews, no longer living in the protection of the land of Palestine and no longer living as an independent state, had to learn how to survive both secularly and religiously in foreign surroundings under foreign rulers. Thus, the Jews had to accept their fate by declaring that the law of the land was also the law of the Jews in civil matters. This pronouncement and attitude enabled the dispersed Jewish people to live in concord with the country of their dispersion when it came to legal and secular matters.<sup>1</sup>

The prophet Jeremiah, several centuries earlier, had spoken to the newly-conquered Jews of his time in a similar vein when he declared: "Seek the welfare of the city where I have sent you into exile, and pray to the Lord on its

behalf, for in its welfare you will find your welfare."<sup>2</sup>

It was realized from the very beginning of Israel's exile and throughout the millennia that the Jews lived among the gentile nations of the world, that there would have to be an accomodation made between the Jews of the land and the individual nations in which they lived.

Nonetheless, accomodation did not mean the forsaking of one's traditions as they were set forth in the laws of traditional Judaism, nor did accomodation mean the refutation of the moral and ethical ~~precepts~~ of Judaism. Though the People, Israel, realized that they could not exist, even if they wanted to, as an independent entity unconcerned and unconnected with the state in which they resided, still the acceptance of this fact of life did not mean that they accepted the oft-times capricious and arbitrary rulings of the kingdoms of which they were a part. There was thus a distinction made between the universal dina d'malchuta, in which the laws were equally applicable to all residents of the land, and dina d'malka, whereby laws might be discriminatory and unfair.<sup>3</sup> These latter laws did not have to be accepted by the Jewish population, although they were often thrust upon them without any choice on their part.

We notice, then, the delicate balance which the Jewish people have tried to maintain in relation to their non-Jewish rulers. The Jews attempted to live peaceably within whatever

society they might be found, participating in that society as much as was allowed, while at the same time trying to hold on to the culture and heritage of their people. The world, however, was not always as considerate of the Jewish People as the Jews were of the non-Jewish world. In presenting a short history of the relationship between the Jews and the various governments by which they were ruled, we notice the close relationship between the church, usually the Roman Catholic Church, and the state. The degree of tyranny and oppression in former times often varied in relation to the connection of church and state, and also depended upon the political powers of the church at any given time. When the church ruled completely over the affairs of the state, the Jews most likely suffered.

Catholicism was first declared the state religion of Rome on February 27, 380. From this declaration on, the tyranny of the state was felt by the Jews in those countries in which this declaration took effect.

We desire all people, whom the benign influence of our clemency rules, to turn to the religion which tradition from Peter to the present day declares to have been delivered to the Romans by blessed Peter the Apostle, the religion which it is clear that the Pontiff Damascus and Peter, Bishop of Alexandria, a man of apostolic holiness, follow! this faith is that we should believe, in accordance with apostolic discipline and Gospel teaching, that there is one Godhead, Father, Son and Holy Spirit, in an equal Majesty and a holy Trinity. We order those who follow this doctrine to receive the title of Catholic Christians, but



others we judge to be mad and raving and worthy of incurring the disgrace of heretical teaching, nor are their assemblies to receive the name of churches. They are to be punished not only by Divine retribution but also by our own measures, which we have decided in accordance with Divine inspiration. Given on the 3rd Kalends of March at Thessalonica, Gratianu and Theodosius being Consuls.<sup>4</sup>

This decree set the stage for much of the history of the Western world. Seven hundred years later it was an accepted principle that the ends justified the means. Warfare, or for that matter, any activity in the name of the Holy Mother Church, at which time it was felt that these activities would benefit the Church in any way, either through the conquest of territory or through the conversion of pagans or non-Catholics, was condoned by Papal authority. What follows is the "Bull of Laudabiliter" of Pope Adrian IV, which sanctions the conquest of Ireland by Henry II, King of England, in 1155.

Bishop Adrian, servant of the servants of God, to his most beloved son in Christ, the illustrious King of England, greeting and Apostolic benediction.

Laudably and profitably your Magnificence contemplates extending the fame of your glorious name on earth and accumulating for yourself the rewards of eternal happiness in Heaven; in doing so you intend, like a truly Catholic prince, to enlarge the boundaries of the Church, to teach rude and ignorant peoples the truth of the Christian faith and to stamp out the plants of evil from the field of the Lord; and you ask for advice and favour of the Apostolic See

in order the better to accomplish that. In this activity, we are sure, the loftier the council and the greater the discretion with which you proceed, the happier progress you will make with the help of God; because those things which are commanded in the arduous of faith and in the love of religion are always wont to come to a good end and termination. There is certainly, as your Excellency also acknowledges, no doubt that Ireland and all islands which Christ the Sun of Righteousness has illumined and which have accepted the doctrines of the Christian faith, belong to the jurisdiction of the blessed Peter and of the most holy Roman Church. Consequently, so much the more willingly do we plan in them the seed of right faith agreeable to God, the more we are aware - by examining our conscience - that this is required of us.<sup>5</sup>

With this close link between the affairs of the state and the wishes of the church, those who did not live under the banner of the Roman Catholic Church were indeed endangered residents. It was not long after Pope Adrian declared it a matter of conscience to overtake and convert a land for the Church, that the Jews were expelled from the country of France across the Channel. Through the vicious approach of the infamous 'blood libel,' in which Jews were accused of killing Christians and using their blood for ritual purposes, King Philip Augustus of France in 1179 justified the seizure of all the property of the Jews in his land and likewise supported their resultant expulsion. Taken from a contemporary journal written by a monk, we have the following account of this church- and state-related bit of infamy.

(Philip Augustus had often heard) that the Jews who dwelt in Paris were wont every year on Easter day, during the sacred week of our Lord's Passion, to go down secretly into underground vaults and kill a Christian as a sort of sacrifice in contempt of the Christian religion. For a long time they had persisted in this wickedness, inspired by the devil, and in Philip's father's time, many of them had been seized and burned with fire. St. Richard, whose body rests in the church of the Holy Innocents-in-the-Fields in Paris, was thus put to death and crucified by the Jews, and throughout martyrdom went in blessedness to God.

Wherefore many miracles have been wrought by the hand of God through the prayers and intercessions of St. Richard, to the glory of God, as we have heard. And because the most Christian King Philip inquired diligently, and came to know full well these and many other iniquities of the Jews in his forefathers' days, therefore he burned with zeal, and in the same year in which he was invested at Rheims with the governance of the kingdom of France, upon a Sabbath, the sixteenth of France (1180), by his command, the Jews throughout all France were seized in their synagogues and then despoiled their gold and silver and garments, as the Jews themselves had spoiled the Egyptians at their exodus from Egypt. This was a harbinger of their expulsion, which by God's will soon followed....<sup>6</sup>

It was not long before the implicit rule of the Church became the explicit rule of the State, wherein Jews, among other 'infidels,' were forbidden to hold public office. This entanglement of the affairs of the church in the affairs of the state marks, according to Dr. Jacob R. Marcus, the decline of the Jew, socially and politically, throughout Western and Central Europe.<sup>7</sup>

Since it would be altogether too absurd that a blasphemer of Christ should exercise authority over Christians, we, in this chapter, renew, because of the boldness of transgressors, what the Toledo Council has prudently decreed in this matter. We forbid that Jews be preferred for

public offices since by pretext of some sort they manifest as much hostility to Christians as possible. If, moreover, any one should thus turn over an office to them, after due warning he shall be checked by a severe punishment, as is fit, by the provincial council which we command to meet each year.

In some provinces a difference in dress distinguishes the Jews or Saracens from the Christians, but in certain others such a confusion has grown up that they cannot be distinguished by any difference. Thus it happens at times that through error Christians have relations with the women of Jews or Saracens, and Jews or Saracens with Christian women. Therefore, they may not, under pretext of error of this sort, excuse themselves in the future for the excesses of such prohibited intercourse, we decree that such Jews and Saracens of both sexes in every Christian province and at all times shall be marked off in the eyes of the public from other peoples through the character of their dress.<sup>8</sup>

The social and political decline of the Jews was thus marked by total and complete discrimination in secular matters. Book confiscations and burnings were not uncommon. The culmination of the church's control over the state, however, manifests itself in that country in which the church was the state: namely, Spain. Though the Inquisition was not specifically set up to denounce, torture and kill the Jews of Spain and Portugal, that was its ultimate effect. The years of 1492 remains indelibly inscribed in the Jews' memory not only as the date that Columbus discovered the New World, but also as the year when the Jews were expelled from Spain.

Even the discovery of America was tainted by the intervention of the rich and powerful church.<sup>9</sup> In a Papal

Bull entitled "Inter Caetera Divinai," written by Pope Alexander VI, the newly-discovered land of America was ceded to Spain. Seeing the discoveries of Columbus as religious ventures in which the Catholic faith and Christian religion were exalted and enlarged, this blessing by the Pope and its interpretation by the Catholic Queen Isabella, seemed to place this momentous discovery in the framework merely as an expansion of the Christian rule.<sup>10</sup>

Nonetheless, the course of history was not predetermined by the Spaniards and their close links with the Church. England and Holland were to take their places in the historical development of America. Their ties to the Catholic Church were minimal and their attitudes toward the new colonies of the New World were ones of relative enlightenment. Still, there would be hurdles for the Jews to conquer in the frontier of America.

Peter Stuyvesant, already discussed in the early pages of the first chapter, tried to thwart the settlement of the Jews in the Dutch Colony of New Amsterdam. Although the Dutch East Indies Company, his employer, shackled his efforts with some success, he did, nevertheless, do everything in his power to make life difficult for the Jews living under his aegis. This incident, in which there was an attempt to deny the Jews the same rights enjoyed by all the other new settlers, was one of the relatively few concrete examples of blatant and official anti-Semitism in America.

In 1761 in France the situation was quite different than it ever was or would be in America. The Catholic Church was very influential there and the affairs of Church and State were often one in the same. That year a Jew, Jacob Alexandre, known to have been psychologically troubled, was arrested for receiving communion by eating the Holy Wafer of the Mass. In Catholic States this sacrilege was punishable by the death sentence. Though inconceivable in newly-developing America that such a law and its punishment would ever be officially recorded among its statutes, this was not the case in those states of the Old World in which the Church and State were often the same entity. Though the sentence of hanging, to which Jacob Alexandre was condemned, was commuted to life imprisonment, this still serves as a poignant example of ". . . enforcement of canon law by the state and of the characteristic medieval severity imposed for infraction of Church law.<sup>11</sup>

### The American Scene

The rest of our story is concerned with the treatment and welfare of the Jews in the United States. Leaving behind the inter-twined histories of church and state as were found in the European countries, we enter a period of governmental tolerance which has had no equal in the history of mankind. Though flaws certainly exist in any man-made

structure, the basis upon which American democracy is theoretically based remains America's great contribution to the world. Its fault usually lies not in this theoretical base, but in the application of these basic principles to the realities of our everyday living.

During the time of the Revolutionary War, close to one hundred Jewish men served in the Revolutionary Army. Integrated into its divisions, these Jewish soldiers had as much, if not more, at stake in this war as did their fellow soldiers in arms. On the whole the Jews of the colonies supported the colonial revolutionary cause, for remembering the oppression of Europe they had far more to gain by the establishment of America as an independent country which promoted the causes of freedom than they did by supporting Britain's continued control. Of course, among the Jews there were those who supported the British position. David Franks is but one example of these Jewish Tories. Still, this number represented a small minority the significance of which was not great at all.

The Presidents of the United States have always had close relations with their Jewish constituencies. The early Presidents in our country's history were no exception. Correspondence between George Washington and the Hebrew Congregation of Newport, Rhode Island, serves to make this point.<sup>13</sup> In a letter praising the attitude of General Washington, the Jews of Newport wrote:

Deprived, as we have hitherto been, of invaluable rights of free citizens, we now - with a deep sense of gratitude to the Almighty Disposer of all events - behold a government erected by the majesty of the people, a government which gives no sanction to bigotry and no assistance to persecution, but generously affording to all liberty of conscience and immunities of citizenship, deeming every one, of whatever nation, tongue, or language, equal parts of the great governmental machine. This so ample and extensive Federal Union, whose base is philanthropy, mutual confidence and public virtue, we cannot but acknowledge to be the work of the great God, who rules the armies of the heavens and among the inhabitants of the earth, doing whatever deemeth to him good.<sup>14</sup>

Grateful for the new form of government of which they were a part, the relationship between this new government and its Jewish citizens could only be said to be one of mutual cordiality, understanding, and respect.

John Adams also admired the Jews, for it was they who gave " . . . to all mankind the doctrine of a supreme, intelligent . . . almighty Sovereign of the Universe, which I believe to be the great essential principle of all morality and consequently of all civilization."<sup>15</sup>

Thomas Jefferson is well-known for his high ideals of fair and equal protection for all people under the law, as well as his stance which insists on the "wall of separation between Church and State."<sup>16</sup> His ardent defense of these principles is contained in a letter he wrote to Mordecai M. Noah in 1818, in which Jefferson expressed the hope that people will reconsider the prejudice they have harbored in the past against the Jews.



Your sect, by its suffering, has furnished a remarkable proof of the universal spirit of religious intolerance inherent in every sect, disclaimed by all while feeble, and practised by all when in power. Our laws have applied the only antidote to the vice, protecting our religious as they do our civil rights, by putting all men on an equal footing. But more remains to be done; for although we are free by the law, we are not so in practice; public opinion erects itself into an inquisition and exercises its office with as much fanaticism as fans the flames of an auto de fe. The prejudice still scowling on your section of our religion, although the elder one, cannot be unfelt by yourselves; it is to be hoped that individual dispositions will at length mold themselves to the model of the law, and consider the moral basis on which all our religions rest as the rallying point which united them in a common interest.<sup>17</sup>

Jefferson's reference to an inquisition and an auto de fe reflect his genuine concern for the specific historical instances of prejudice and intolerance which the Jews have, in the past, undergone. Although Jefferson in this same paragraph refers to Judaism as merely the elder section of "our religion" (no doubt, Christianity in general), the principles put forward in this and other writings of this President serve to point out the greatness of many of those men who formed this country and its constitution. Not only did Jefferson preach religious equality, but he also applied these principles when he founded the University of Virginia as an institution which would not impose upon any Jewish student enrolled in the University theological courses contrary to a Jewish student's training.

James Madison and Thomas Jefferson often fought together to secure basic civil liberties for all religious groups. In a letter to Dr. de la Motta of the Savannah Synagogue in 1820, James Madison congratulated the Jews of Savannah for their participation in the American experiment and he expressed his hope that the concept of equal rights will forever be found and applied throughout the country.

Among the features peculiar to the political system of the United States, is the perfect equality of rights which it secures to every religious sect. And it is particularly pleasing to observe in the good citizenship of such as have been most distrusted and oppressed elsewhere a happy illustration of the safety and success of this experiment of a just and benign policy. Equal laws, protecting equal rights, are found as they ought to be presumed, the best guarantee of loyalty and love of country; as well as best calculated to cherish that mutual respect and goodwill at length mold themselves to the model of the law, and consider the moral harmony, and most favorable to the advancement of truth. The account you give of the Jews of your congregation bring fully within the scope of these observations.<sup>19</sup>

At this early revolutionary period there were relatively few Jews in the United States. Still, the Jews were protected by the Federal Constitution and by most state constitutions. There was a notable instance which deserves mention here, however, only because it is the proverbial exception which proves the rule.

There was an attempt made in 1809 to expel a Jewish member of the legislature of North Carolina, Jacob Henry, from that body because of the state constitutional require-

ment that all elected officials must be Protestant.

Speaking in his own behalf on the floor of the legislature, Henry insisted that those provisions in the state constitution were inconsistent with the Bill of Rights and the U.S. Constitution, and therefore those particular clauses must be declared invalid.<sup>20</sup> This legalism and the stylistic force of his message saved the day for Jacob Henry and helped assure a permanent place for Jewish citizens in the United States.

Another early and isolated instance of a stumbling block placed before the feet of the Jewish citizens of America was found in the constitution of the State of Maryland. Even though the Federal constitution prohibited such discrimination, the Maryland constitution gave the legislature the power to levy a tax for the support of the Christian religion and made it imperative for every state officer holder to declare his belief in the Christian religion.<sup>21</sup> Years of struggle and frustration went by until 1826 when the bill called the "Jew Bill" came out of the Maryland legislature forbidding discrimination among those who professed a belief in God. Though no tax was ever levied, the power given to the legislature in this regard and the requirement of a particular religious belief slowed the process of granting complete religious equality and freedom in all the states. Even with the "Jew Bill," however, non-theists were unprotected until the United States Supreme

Court decision rectified this subtlety in the case of Torcaso v. Watkins.

The mid-nineteenth century produced some events which had important implications for the Jews of the United States as well as for Jewry around the world. The relationship between the American Jewish community and its government was to be cemented during that period in a way which continues to exist even until today. The first event was called the Damascus affair.

The ugly accusation of ritual murder surfaced in this case, when, on February 5, 1840, the head of a Franciscan monastery in Damascus, Syria, disappeared. The monks charged the Jewish citizens of that land with ritual murder. The government of France, recognizing what it sensed to be its national interest, supported this claim. The French consul took charge of this case and with the cooperation of the Turkish government facilitated the arrest of a number of Jews, including three rabbis, many other Jewish community leaders, and sixty Jewish children.<sup>22</sup> Under both torture and threat of torture, some of this group 'confessed' the part they allegedly played in the monk's 'ritual murder.' In addition to the inhumane treatment of this select group of prisoners, the French consul incited the Moslems against the Jews in Damascus. The contagion of anti-Semitism spread as reactionary clerical and secular groups in France, Belgium, and Italy propagated the blood libel of Damascus.

The news of these events reached the shores of America and it was not long before the American Jewish Community was compelled to act in a way that would benefit not only those imprisoned in Damascus, but would also deter the further dissemination of this charge. Although American Jewry came to the rescue too late, since prominent Jews in France and England had already enlisted the aid of their respective governments, the fact that American Jewry sought to intervene through the power of the United States Government was significant. The Damascus Affair represented the first time in the history of the Jews of America in which they requested their government to intercede on behalf of persecuted Jews outside of America.

It was the first time that the Jews of the U.S. interested themselves and enlisted the interest of the government in the cause of suffering Jews in another part of the world, and thus participated in that consolidation of the Jewish public spirit which resulted from this memorable occurrence, and which justifies the statement that "that" in a measure, modern Jewish history may be said to date from the Damascus affair of 1840."<sup>23</sup>

The American government responded by sending instructions to its representatives to do all in their power to help these persecuted Jews. Though the Damascus Affair remains as a scar upon the histories of France, Turkey and Syria, in addition to those other nations that condoned this kind of action, it was perhaps the watershed event of American Jewish history which signaled a new kind of relationship between Jewish citizens of America and their government.

From this point on the Jews of America were to stand up for their rights, realizing the great protection offered them under the Constitution and the Bill of Rights and what could happen when these rights are not enforced.

The other event of the middle eighteen hundreds was called the Swiss Affair. In November, 1850, the American representative to Switzerland signed a general pact with the Swiss Confederation which gave rights to the citizens of both countries to travel, lodge, and conduct business in the other country. This treaty, however, took into consideration the constitutions of the various cantons which make up the Swiss Confederation and in some of the cantons, the rights of the Jews were severely limited. This was reflected in the proposed treaty in the following manner:

On account of the tenor of the Federal Constitution of Switzerland, Christians alone are entitled to the enjoyment of the privileges guaranteed by the present Article in the Swiss Cantons.<sup>24</sup>

The American Government was now faced with the prospect of ratifying a treaty which discriminated against some of its citizens.

President Millard Fillmore, not one of the better-known Presidents, distinguished himself in this case by objecting to this article in the proposed treaty by confirming the principles set forth in the Constitution.

. . . neither by law, nor by treaty, nor by any other official proceeding is it competent for the

Government of the United States to establish any distinction between its citizens founded on differences in religious beliefs.<sup>25</sup>

The Senate subsequently refused to ratify this treaty, taking the advice of the President as well as that of Secretary of State Daniel Webster and Senator Henry Clay.

A second treaty was negotiated in which this objectionable clause was deleted. Still, another clause was added in its place in which it was made quite clear that this reciprocity of travelling privileges must be in accordance with the laws and provisions of the Swiss Cantons involved. Though the obvious reference to one's Christian belief was eliminated from this draft, the force of the former treaty remain in effect; namely, that Jewish citizens of the United States were not to be accorded the same rights and privileges as were Christians. This time, much to the discredit of the U.S. Government, the treaty was approved by the Senate and by the new President, Franklin Pierce, in 1855.

Two years later, a Mr. A.H. Gootman, an American Jewish citizen, was threatened with expulsion under the provisions of this treaty. Protests were held in the United States and a committee headed by Isaac Mayer Wise was received by President James Buchanan in October, 1857. Rabbi Wise left that meeting with this impression:

The President assured the committee that the wrong would be righted. The Committee went away satisfied that its mission was accomplished . . . .<sup>26</sup>

Nonetheless, it was not until 1874 when Switzerland adopted a new constitution which erased all distinctions due to religion. The issue was kept alive in the meantime, as President Lincoln plainly exhibited his attitude on this whole affair by appointing a Jew as Consul in Zurich.

American by now had accepted its Jewish citizens and in practice, as well as in theory, placed them on an equal footing with the larger Christian America. Some Rabbis and Jewish community leaders became men of rank to whom American Presidents and other governmental leaders turned to for advice and companionship. Isaac M. Wise, the first Rabbi to visit the White House, writes of his delightful experience in his Reminiscences, first published in 1875. The date in which this scene takes place is 1850.

A fire was burning in the grate opposite the door, chairs stood on both sides, and a man sat in front of the fire, with his back to the door. Without turning around to see who it might be, he called out: "Step up closer, gentlemen: it is cold today."

I was standing before the President (Zachary Taylor). "Mr. President, I have the honor of introducing to you my friend from Albany," said (Senator William H.) Seward. The President extended his hand, and asked us to be seated. After chastising me in true American fashion, he said: "I suppose you have never seen a President of the United States, and for that reason you have paid me a visit." "I beg your pardon, Your Excellency," said I, "I had the honor of speaking with your predecessor, James K. Polk. My object in coming has been to see the hero of Buena Vista." Hereupon the old war horse arose and bowed graciously. "Mr. Seward," said he, "Your friend seems to be very polite."



The old man became so talkative that I ventured to say: "Your Excellency, it has afforded me the keenest pleasure to form the acquaintance of the hero-President - a unique and magnificent personality. Permit me, however, to say that I believe you have never seen a person of my kind." He looked at me dumbfounded. "I have seen people of all sorts and conditions," said he, "and would like to know what you mean?" "Certainly," said I, "I am a rabbi." "You are right: I have never seen a rabbi." He now extended his hand a second time, and began the conversation anew.<sup>27</sup>

The Jews' relationship with the government, and in particular with Presidents, was often one of mutual respect. Most Presidents realized the importance of guarding with zealousness the rights of all citizens of the United States, regardless of religious beliefs.

The atrocities committed against Jews, however, did not cease around the world. The Mortara Affair of 1857, in Italy, during which time a Jewish child was taken from his parents and raised as a Catholic, shocked the Jewish conscience and made Jews the world over realize the precarious position which they occupied, especially in those countries which were under the control of the Church.<sup>28</sup>

Discrimination also existed in the United States. On December 11, 1861, President Lincoln received Rabbi Arnold Rischel who was acting as a representative of the Board of Delegates of American Israelites. He brought to Lincoln's attention a law which Congress enacted which provided chaplains for the Union Army who were appointed by the field

officers and company commanders and who were regularly ordained ministers of some Christian denomination.<sup>29</sup> Under the law, a certain Michael Allen of Philadelphia, who had been chosen by the army officers to serve as a chaplain of a regiment, was forced to resign his appointment because he was a Jew. Fischel, appointed in his place, had likewise been disallowed under the orders of the Secretary of War for the same reason.

The Board of Delegates of American Israelites pointed out in a resolution presented to Mr. Lincoln that these acts ". . . are oppressive, inasmuch as they establish a religious test as a qualification for an office under the United States.<sup>30</sup> In response to Fischel's plea, President Lincoln vowed to right the obvious injustice. Shortly thereafter the original act was amended, and the objectionable phrase was altered to reflect more clearly the concept of freedom and justice for all citizens of the United States, regardless of their religious preference.

The most serious issue, however, which developed between the Jewish citizens of America and the American government occurred during the Civil War. This involved the infamous Order #11, issued by Major General Ulysses S. Grant, on December 17, 1862.

The Jews, as a class violating every regulation or trade established by the Treasury Department and also department orders, are hereby expelled from the department within twenty-four hours from

the receipt of this order. Post commanders will see that all of this class of people be furnished passes and required to leave, and anyone returning after such notification will be arrested, and held in confinement until an opportunity occurs of sending them out as prisoners, unless furnished with permit from headquarters. No passes will be given these people to visit headquarters for the purpose of making personal application for trade permits.<sup>31</sup>

This order was issued out of a background of recent Union successes in Tennessee, southern Kentucky and northern Mississippi. Major General Grant, a rising star in the Union Army, was in charge of this area, called the Department of Tennessee. After this area had been partially secured, a minor trading boom ensued between the merchants and peddlers from the north and costumers who lived in this southern area. Some of this trade was illegally licensed by the Department of Tennessee, while part of it was clearly a case of profiteering as well as aiding and abetting enemy forces. In July, prior to Grant's Order #11, General William Tecumseh Sherman wrote from Memphis: "We cannot carry on war and trade with a people at the same time."<sup>32</sup>

Cotton was among the commodities traded, with unscrupulous northern merchants trading much needed cotton in the north for the military and medical supplies which were needed to advance the cause of the Army of the Confederacy. There were, to be sure, Jews among the ranks of these traders. Yet, ". . . an examination of the available records has disclosed only a very tiny fraction of Jewish names among those

who were apprehended for practicing it."<sup>33</sup> Why, then, were the Jews singled out as a group for these illegal practices? No doubt the prejudices of the famous General Grant had much to do with this Order. He saw the Jews as a distinct group which was somehow more successful and privileged than all other groups. His order was thus carried out in some places in the Department of Tennessee.

As has been the case throughout the history of Judaism, a man arose at that time who would carry the banner of the Jewish citizens of America. Cesar Kaskel, from Padukah, Kentucky, sounded the alarm by sending a telegram to President Lincoln, informing him of General Grant's directive. He also informed newspapers and influential Jews throughout the country before he travelled to Washington to pleade the case of the Jews in person. On January 3, 1863, just two weeks after the issuance of Order #11, Kaskel was received by President Lincoln, who then ordered Henry W. Halleck, General-In-Chief of the Army, to have Grant's order rescinded. General Halleck wrote Grant the following message, in which he expressed shock that such an order had even been drafted.

A paper purporting to be General Orders No. 11, issued by you December 17, has been presented here. By its terms, it expells all Jews from your Department. If such an order has been issued, it will be immediately revoked.<sup>34</sup>

Though it cannot be denied that individual Jewish citizens participated in this illegal trade during the Civil War, the

American democratic principle which forbids class discrimination remained intact and the rights of the Jewish citizens of America were once again affirmed to be the same rights as those possessed by all citizens of the United States. Equal rights for the Jews in America had triumphed, although it was not until 1868 that the last state constitution, that of North Carolina, permitted all persons regardless of religious persuasion, to seek and hold office.<sup>35</sup>

American Jews had made great strides because of the American way in which the rights of all people were protected by law regardless of their religious beliefs. (This paper, because of its limited scope, necessarily omits the question of the protection of the rights of citizens in America regardless of their national origin or race). There were still some other countries, however, which insisted on denying the spirit of American law even as they dealt with this country on the ambassadorial level. There was prior mention<sup>ed</sup> in this paper of the affair of the treaty with the Swiss Confederation in 1850. This next event, and the last of this sort since that time, took place when the Secretary of State Thomas F. Bayard notified the Austro-Hungarian minister in Washington of the pending appointment of a Mr. Keily to be the next ambassador from America to the Austro-Hungarian Empire. The next day Count Gustave Kalnoky, minister of Foreign Affairs, replied, "The position of a foreign envoy

wedded to a Jewess by civil marriage would be untenable and even impossible in Vienna.<sup>36</sup> It was obvious that the appointment of Mr. Keily, due to his wife's religion, was unacceptable to the Austro-Hungarian Empire. This put the government of the United States in a position of either quickly and quietly rescinding the appointment, as it occasionally does when the government to whom the appointment is made raises a serious objection to that appointment, or defending this appointment on the ground that the reason given by the Austro-Hungarian government goes against the very grain of the American system because it discriminates between citizens of the United States on a basis unallowed by the American Constitution.

Once again, the government responded by protecting its autonomous rights and standing by the principles of American democracy. Secretary of State Bayard responded to Count Kalnoky in the following manner.

It is not within the power of the President nor of the Congress, nor of any judicial tribunal of the United States, to take or even hear testimony or in any mode to inquire into or decide upon the religious belief of any official, and the proposition to allow this to be done by any foreign government is necessarily and a fortiori inadmissible.

To suffer an infraction of this essential principle would lead to a disfranchisement of our citizens because of their religious belief, and thus impair or destroy the most important end which our constitution of government was intended to secure. Religious liberty is the cornerstone of the American system of government, and provisions for its security are imbedded in the written charter and interwoven in the moral fabric of its laws.<sup>37</sup>

President Grover Cleveland, in a message to Congress, likewise reaffirmed the principles of the Constitution on which the American form of government is based.

(The argument of the Austro-Hungarian government) . . . could not be acquiesced in, without violation of my oath of office and the precepts of the Constitution, since they necessarily involved a limitation in favor of a foreign government upon the right of selection by the Executive, and required such an application of a religious test as a qualification for office under the United States as would have resulted in the practical disfranchisement of a large class of our citizens and the abandonment of a vital principle of our Government.<sup>38</sup>

Unfortunately, Mr. Keily, aware of the Austro-Hungarian ~~government~~ government's unbending attitude, resigned his appointment and the whole matter was never brought to a proper conclusion. Still, in principle and in fact, the Constitutional guarantees of freedom of religious expression along with its constituent rights, were reaffirmed by the President and government of the United States.

Since that time there have been no important incidents of blatant governmental discrimination due to religion. The relationship ~~between~~ the Jews of America and the government has for the most part been one of mutual respect and helpfulness. Two significant comments merit attention here which serve to illustrate this observation. The relationship of American citizenship on the Jews and their traditions is pointed out here by Solomon Schechter.

There is nothing in American citizenship which is incompatible with our observing the dietary laws, our sanctifying the Sabbath, our fixing a Mezuzah on our doorposts, our refraining from unleavened bread on Passover, or our perpetuating any other law essential to the preservation of Judaism. On the other hand, it is now generally recognized by the leading thinkers that the institutions and observances of religion are part of its nature, a fact that the moribund rationalism of a half century ago failed to realize. In certain parts of Europe every step in our civil and social emancipation demanded from us a corresponding sacrifice of a portion of the glorious heritage bequeathed to us by our fathers. Jews in America, thank God, are no longer haunted by such fears. We live in a commonwealth in which the blessing of God, and the wisdom of the Fathers of the Constitution, each man abiding by his laws, has the inalienable right of living in accordance with the dictates of his own conscience. In this great, glorious and free country we Jews need not sacrifice a single iota of our Torah; and in the enjoyment of absolute equality with our fellow citizens, we can live to carry those ideals for which our ancestors so often had to die.<sup>39</sup>

Chancellor Emeritus of the Jewish Theological Seminary, Dr. Louis Finkelstein, took another tack on this same issue. Whereas Dr. Schechter correctly and articulately illustrated the compatibility of American citizenship with Jewish religious practices and freedom of worship, Dr. Finkelstein endeavors to show the contribution that American Jewry made and still makes toward the perpetuation of that relationship.

There is another point to be made about the contribution that Jews can make to political and social mores in this country. There is an important role which a small minority can play in this land that no one else can play, and precisely because the minority tends to be so sensitive to any act of disparagement to the stranger. The members of the majority often will,



without malice but thoughtlessness, and without really entering into the spirit of members of a minority, do things that will hurt the stranger. Because the Jewish community is articulate and extremely sensitive, it has been able to help the American people understand this situation; and in that way it has been able to help all minorities, and above all, the American spirit.<sup>40</sup>

The relationship of the Jews with the states of the world has, in general, been tenuous at best and disastrous at its worst. In this country, however, the basis of the constitution of the United States and the basis upon which that constitution was framed were different than those of the European models prior to this time. We have seen in this chapter how the Jews throughout their history have been ruled by the governments under which they lived. We have also discovered the process and development of Jewish living as citizens of the United States, and the relationship between these Jewish citizens and their government and Presidents. There can be little doubt that no government in the history of the western world has allowed the Jews to practice their religion so freely as their conscience dictates as has the United States, while at the same time allowing the Jewish citizens to participate in their own government with the full rights accorded to all citizens under its constitutions.

In the third and final chapter, we shall deal with a specific instance in the relationship of church and state and how it affects not only the Jewish citizen but also the concept of the separation of church and state.

## CHAPTER THREE

### PUBLIC AID FOR NON-PUBLIC SCHOOLS

#### Part I: Introduction

The first chapter of this thesis dealt with the relationship of organized religion with the United States government since the time of the early settlement of this land. The second chapter was more limited in scope, as it surveyed one organized religion, Judaism, and its relationship with some of the countries under whose governments the Jewish people have lived and, more recently, its relationship with the government of the United States. The question raised in both chapters was the problem of church-state relations. This question has largely been focused on this issue: How have the churches, and in particular the Jewish religion, fared under the rule of the government of the United States and what has been the relationship between the church and the state in the history of the United States?

In this third and final chapter, we limit our topic even more, as we will study one particular issue of church and state in the United States, and then examine the Jewish attitudes toward this topic. We will be dealing with

the question of public financial support of private, church-related schools. The major point to be pursued is whether public monies could and should be appropriated to non-public schools, and if they can, under what conditions and toward what end?

In the forthcoming parts of this chapter, the following areas of concern will be examined: (A) arguments for public aid to church-related schools; (B) arguments against public aid to church-related schools; (C) Supreme Court decisions which have effected the course of this issue of church and states; and (D) Jewish perspectives on this issue. It might be interesting to begin by looking briefly at the history of public education in the United States.

The first public school system in the U.S. was established under the Massachusetts School Law of 1674.<sup>1</sup>

"It being one chief project of the old deluder, Satan," it said, "to keep men from the knowledge of Scriptures, as in former times by keeping them (the Scriptures) in an unknown tongue, so in these later times by persuading from the use of tongues (i.e. from learning to read) and in order that the true sense and meaning of the original might not be clouded by false glosses of saintly-seeming deceivers, every townships having 50 or more householders shall appoint a teacher to instruct children in reading and writing. In the event the township shall increase to 100 families, it shall set up a grammar school, and failure to do so shall subject it to a penalty."<sup>2</sup>

The public school system of education thus was formally started as a religious act, in that the courses of instruction were

aimed at teaching the children how to read the Bible so that others, especially Satan, might not deceive them. Though set up for religious purposes, these schools soon took on a more secular nature. As soon as town halls were erected, the school system became an important topic of conversation and debate. As an important community matter, the control of the school system was slowly wrested from the hands of ministers and transferred to the authorities elected by the cities and townships.

Horace Mann set up the first state board of education in 1837 in Massachusetts. Under his leadership, the state adopted just five years later a law calling for compulsory education for all children residing within that state.<sup>3</sup> The State was now in complete control of the schools and in that same year the Massachusetts Constitution was amended so as to cut off any state funds from any church-supported schools.<sup>4</sup> Following the precedent set by the State of Massachusetts, all states subsequently amended their constitutions in a similar manner. The established tradition in America at that time of the separation of church and state had now made its most significant impact, as the public educational systems were recognized by law as the only school systems permitted to receive public funds.

For many years the church-related and supported schools

could get along financially from the resources of their own coffers. It seemed as if there were tacit approval by churchmen of the principle of separation of church and state, since the churches rarely asked the assistance of the government in the financial matters of their school systems. Today, under different circumstances and a different economy, the financial burden of education has become too great for even the financially secure Roman Catholic Church to be willing or able to bear. They have had to close many of their parochial schools and limit the services at others in an attempt to keep these schools as viable education institutions. They have now sought the assistance of the federal and state governments to overcome their present and long-range financial difficulties. By doing so, the question of the separation of church and state has become once again a real issue, not just a theoretical one. Because of the situation in which religious bodies seek the financial aid of federal and state governments in order to run their own school systems, we now have a constitutional crisis which goes to the very heart of the American system as we have known it since its conception.

The constitutional argument is easily stated: Can church-related schools share in any general provision for government aid to all schools without violating the First Amendment? Or is such support forbidden on the ground that it would favor educational groups with religious commitments over other groups, church and nonchurch, which lack such commitments? It is not a question of whether religion or church is helped or hurt by the fact

that such benefits are provided in these schools as well as in the regular public schools; it is a question of whether the help or hurt that results is the kind of benefit or detriment forbidden by the First Amendment.<sup>5</sup>

The arguments pro and con are many, as we shall see.

The American public is likewise divided on this issue. In a Gallup Poll released in October, 1970<sup>6</sup>, the following question was asked:

It has been proposed that some government tax money be used to help parochial schools make ends meet. How do you feel about this? Do you favor or oppose giving some government tax money to help parochial schools?

	National Total	No Child In School
Favor	44%	47%
Oppose	44%	44%
No Opinion	8%	9%

	Public School Parents	Parochial School Parents
Favor	47%	59%
Oppose	47%	33%
No Opinion	6%	8%

It is surprising to find that even with the vested interest that those parents who have children in parochial schools must have, one-third of them see something wrong in having the government partially sponsor their church-supported schools.

The Jews of America have a very large stake in this issue as well. With the emergence of a growing day-school movement - a movement which is no longer only Orthodox in character, but which now represents the Conservative and Reform wings of Judaism also - the issue of the relationship of church and

state with all of its ramifications assumes an important place in the future of the Jewish Day School movement.

Part II: The Arguments in Favor of Public Aid to Non-Public  
Church-Related Schools

The greatest promoter of parochial education in the United States and throughout the world is the Roman Catholic Church. Its church-related school system has supported the strongest educational lobby in the legislatures of the various states and in the Congress. The number of Catholics within the constituencies of the politicians in whose hands the financial fate of many of these schools depends makes for a powerful lobbying body.

In the early 60's, one of the great issues of debate was the question of federal and state financing of local public schools. It was felt that if the federal government, in particular, contributed in a financial capacity to the various local and state school systems, the federal government could, to some extent, dictate the curriculum of those schools which accepted the funds. The question at that time was one of federally-controlled financing versus the great need for additional monetary resources. In the long run, the financial burdens became so great that the federal financial resources had to be employed to prop up almost all of the school systems across the country. Today, very little is heard of the question of federal aid to the public schools.

The situation today is similar in the Catholic schools and in some other parochial school systems. The financial burden is becoming too great to run a large and educationally respectable parochial school system on the resources of the churches and religious bodies alone. It is felt by many that federal aid is the only answer. There is the great theoretical question, however, which counter-balances the obvious financial need. This theoretical question differs somewhat from the previous one encountered in the problem of allocating federal funds to public schools. This question is even more basic in its constitutional implications.

In simple terms, would federal aid to non-public, parochial schools violate the First Amendment? We remember that the First Amendment states that Congress shall make no law respecting an establishment of religion or prohibiting its free exercise. The legal aspects of this question will be covered in Part IV of this chapter. What we will now deal with are the arguments which favor the proposed aid to parochial schools. These arguments are not necessarily legalistic, though many are. Most deal with the moral responsibility of helping to maintain alternatives to public school education for various different reasons.

Early in the debate, even when the question essentially dealt with federal aid to public education, there were some cogent arguments that this proposed federal aid should be



applied to all educational institutions. Father Robert F. Drinan, now a Congressman, wrote an article entitled "The Constitutionality of Public Aid to Parochial Schools." In it he summarized some of the current arguments which he felt supported his claim for federal funds for public and parochial schools

The claim is a very small one; the Catholic contention is that, if federal aid is to be enacted, some recognition should be given to Catholic schools. This Catholic request is grounded on several factors, among which are the following: (1) About 92% of all children attending private schools in America today are enrolled in Catholic elementary and secondary schools. (2) ~~Some six~~ <sup>Some six</sup> million students - or every eighth child in America - attend Catholic schools. Any program designed to elevate the nation's standards of educational excellence which ignores the 12% of the nation's school children enrolled in non-public schools is seriously neglecting a significant element in the population. (3) The first program of massive federal aid to education must be designed either to help public schools alone or to elevate the educational excellence of all schools. Consequently, an important public-policy decision must be made before federal aid can become a reality.<sup>7</sup>

Unfortunately for Fr. Drinan and the Catholic school lobby, the public-policy decision was made for the public schools alone, and the question of the propriety of federal monies for parochial schools was postponed for later years. In addition, the educational legislation under the administration of President John F. Kennedy could not have included the parochial schools for cogent political reasons, the most obvious of which was that President Kennedy was a Catholic,

and duplicity and conflict of interests would have been serious charges to be leveled against the President.

Other tacks were taken, as it quickly became obvious to the supporters of parochial education that they would have to turn to the federal government for financial relief. Another argument given for public funding of private schools is based on an appeal to the question of double taxation.

All citizens must pay taxes to support public schools. Yet parents whose religious conscience precludes them from utilizing the public schools, and who are compelled by the state to provide a basic secular education for their children, are in effect taxed double when they must also pay privately for their children's secular education in denominational schools.<sup>8</sup>

It is even suggested that not only could the government legally and morally support the parochial school system, but that the federal government should support these private school systems on the basis of the constitutional guarantee of freedom of religion. It is claimed that the right of freedom of religion is abridged when parents lack the financial resources to provide for the exercise of that freedom by sending their children to private parochial schools.

Although this argument is just one of the many used by those who support federal aid to the parochial school systems, it is not often found in the more serious scholarly articles. A parallel to this argument would be a claim for money from the federal government to establish a newspaper so that one might more fully exercise his right of freedom of the press.

In a more practical light, the Catholic school lobby is quick to point out the chaos that could result if the parochial schools were to suddenly close their doors, and the former students of these schools would be thrust upon the already over-burdened public school systems. It is cheaper, they claim, to support the parochial school system than to have their students transfer to the presently faltering public school systems.

The disappearance of all nonpublic schools in this country would saddle the American taxpayer with an additional \$3 billion annually in school operating costs, plus as much as \$10 billion in new school construction. Seventy per cent of that burden would fall upon seven States: California, New York, Illinois, Ohio, New Jersey, Michigan, and Pennsylvania. And the impact would fall most heavily upon our central cities, where in some cases as many as one-third of all children attend nonpublic schools and where many public school systems are on the verge of bankruptcy today.<sup>9</sup>

The most cogent positive argument for federal aid to parochial education, however, is that since parochial schools fulfill to some degree a public function, in that they teach secular subjects as well as religious courses, the parochial schools deserve support at least in the proportion that they teach these secular and state-required courses. The legal department of the National Catholic Welfare Conference issued the following statement in this regard:

Education in church-related schools is a public function, which, by its nature, is deserving of governmental support. There exists no constitutional

bar to aid to education in church-related schools in a degree proportionate to the value of the public function it performs. Such aid to the secular function may take the form of matching grants or long-term loans to institutions or of scholarships, tuition payments, or tax benefits.<sup>10</sup>

We find a similar appeal made by Rabbi Bernard Goldenberg, national director of the Department of School Organization and Professional Services of Torah Umesorah, National Society for Hebrew Day Sch for Hebrew Day Schools.

The Hebrew Day School has the objective of providing intensive instruction in both the area of secular, general education and that of religious education, and it seeks to accomplish both on highly exacting levels. It strives to inculcate in its pupils a rich knowledge and fervent love of their American heritage, a firm sense of civic responsibility and an enduring commitment to the pursuit of academic excellence in the sciences and humanities, side by side with a high regard for ethical norms and an abiding loyalty to the principles and precepts of the Jewish religious tradition. In essence, the Hebrew Day School is committed to the building of a synthesis between the values of Judaism and the best of American culture and a life style corresponding to that synthesis.<sup>11</sup>

The final argument for federal aid to parochial schools is a negative argument. It is negative in the sense that it combats the major point made against this position by arguing that the traditional 'wall of separation between church and state' is not as solid a wall as might be imagined.

. . . absolutistic allusions to the "wall of separation" are meaningless, in the light of a long history of accommodation between church and state in America, including governmental aid to religion, i.e. military chaplaincies, tax exemption for religious property, tax

deductibility of contributions to church and synagogue, G.I. Bill of Rights (which involve direct Federal tuition payments to religious colleges), etc. If help is funneled to the child, rather than to the school, possible constitutional barriers will be by-passed, and, furthermore, interreligious rivalry will be obviated.<sup>12</sup>

Aside from the technical legal arguments regarding the constitutionality of this issue, the forces which promote federal aid to parochial schools, made up largely of the Roman Catholic Church, with considerable support from the Orthodox Hebrew Day School Movement, present the following arguments: (1) Since federal aid cannot discriminate, it should not discriminate against those children who are enrolled in parochial schools; (2) it is unfair to pay taxes to support the public school system and to pay tuition to private denominational schools at the same time; (3) the federal government has an obligation to support the parochial school system in order to promote freedom of religion; (4) it is also a matter of financial responsibility for the federal government to support the parochial school systems, for their closing would spell disaster; (5) since the parochial schools teach secular subjects, these at least should be underwritten through federal funding, and (6) the proverbial "wall of separation" has been honored more in the breach than in its fulfillment.

We now turn to Part ~~IIII~~ wherein the arguments against federal aid to parochial schools will be presented.

Part III: The Arguments Opposed to Public Aid to Non-Public  
Church-Related Schools

The opponents of federal aid to non-public parochial schools vigorously oppose any change in the present system, which they believe has wisely ruled against public aid for church-related schools. A number of arguments employed by this group are herein presented in ~~Part III~~.

The first argument takes the same viewpoint which formed the basis of church and state separation for Thomas Jefferson and some of the other founding fathers. In claiming that there must be a wall of separation between church and state, Jefferson went on to explain that each of the institutions involved had separate functions and both institutions would be prostituted when one interfered with the other. Religion, he felt, was a matter between man and God, and therefore government should in no way interfere, either to help or to hinder, that sacred relationship.<sup>13</sup>

In testimony before a House Committee and in the printed word of the Congressional Record, Rabbi Maurice Eisendrath, President of the Union of American Hebrew Congregation, echoed the sentiments of these early founding fathers, as well as the feeling of Roger Williams and other colonial church leaders when he said:

Religion can retain its integrity only when it remains unencumbered by entangling alliance with any social, economic, or political instrument of society; only when it knows how to distinguish

between God and country; only when it seeks to judge the world that is finite from the perspective of Him who is infinite. We urge this committee not to initiate any action which would deprive religion of its integrity and democracy of its vitality.<sup>14</sup>

Though some advocates of public add to church-related schools claim that monies should only be allocated in relation to the amount of time spent on secular subjects, this distinction is seen by many opponents of this aid as impossible.

The raison d'etre of the parochial school is, or at least once was, that the main purpose of education is to instruct the young in what God proposes: to develop skills essential for learning, such as reading and writing: to prepare for a life as a useful member of society and of the family. From this it followed that religion must be the integrating thread in all of the educational process of the parochial school; that religion must permeate all phases of the curriculum, including secular instruction. In a word, if a parochial school is designed to fulfill its essential reason for being, the sacred and the secular are inseparable within its walls. Accordingly, parochial school educators have said repeatedly - and with understandable pride - that the church-related school is the place for the child to learn systematically about his religion, to deepen his sense of religious dedication, to capture for the rest of his life a love of and loyalty to his religious heritage.<sup>15</sup>

Another argument against the support of parochial schools through public financing makes the claim that if any law is passed which will allow the government to grant money to a parochial school, this certainly would include any private school. Private schools, including parochial schools, can discriminate either in terms of religious affiliation, geographical area, or the setting of additional tuition requirements. These methods can exclude those groups who are

who are presently educationally disadvantaged: namely, the Blacks, Chicanos, Indians, and other similar minority groups. The public school system, under a publically-supported private school plan, could then become only a second-class repository for those groups who need a first-class education. Their first-class education might be denied them because of the proliferation of federal monies into channels other than those which are in toto for the public benefit. Marvin Bratterman, writing for the Union of American Hebrew Congregations, presents this argument most convincingly.

If the abandonment of separation is a prelude to the abandonment of the public school, there will be an unfortunate demonstration of the value of separation - but too late to preserve either separation or the schools. How can this happen? Anyone can have a so-called 'private' school if the government pays for it. If it continues to be necessary, they can even be deemed 'sectarian' to qualify for governmental aid. Many of them will be integrated. They then will be private in their admission of students, and relatively cheap if they are publically financed. In the present state of racial alienation and socio-economic stratification, such public-private schools will be very attractive to many parents seeking to solve their children's 'problem.' They will occupy a geometrically larger portion of the government's education budget. There will still be public schools, of course, though they will be, strictly speaking, public-public schools to distinguish them from the public-private counterparts. The former will become, even more rapidly than they are now, the repository of the disadvantaged - a kind of educational sewer system, containing only the waste material of society, educating only those lacking the sophistication to take public funds and 'do it themselves.'<sup>16</sup>



In this argument it is felt that church-related schools supported by public funds could actually escape public social responsibilities and add to the deteriorating conditions of the present ~~public school~~ system. In fact, they might actually encourage segregation and conflict with the avowed goal of previous civil rights legislation.

The third argument presented against public aid to church-related schools is simply that it violates the First Amendment, which says that Congress shall make no law respecting an establishment of religion or prohibiting its free exercise. This argument is tremendously complicated and technical, though in the next Part we shall deal with some of the aspects of church-state separation as the Supreme Court has interpreted them in the past.

The fourth argument encompasses Benjamin Franklin's remark that if a church seems to be a worthwhile institution, it will support itself.<sup>17</sup> That is not to say that the costs of today's education can be easily handled by the individual denominations involved, but it is to say that these denominations could find a way to support their own school systems if they really had to. And because of the other cogent reasons given in Part III, if they feel that a separate parochial school system is a necessity in their church work, then these denominations must handle their finances on their own.

#### Part IV: The Legal Issues Involved

The major issue involved in the question of whether public monies can be used to finance parochial schools is based around the First Amendment.

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.  
 . . .<sup>18</sup>

The same principle involved in the question of allocating federal monies is likewise involved in the question of allocating state and local monies to the parochial schools. This is the case because of the Fourteenth Amendment, which reads in part:

. . . no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . .<sup>19</sup>

The First Amendment actually consists of two clauses, each of which has been utilized in the various cases which have come before the courts. Taking the second clause first, we see that the Amendment prohibits laws which deny the free exercise of one's religion. This second part of the Amendment has played an important role in the history of church-state related Court decisions. It has been clearly decided in some landmark decisions, as we shall soon see, that this clause of the First Amendment is not an absolute right. The good of the general public and the welfare of the country do take precedence in some cases over specific instances of the completely free exercise of one's religion.

The first clause of the First Amendment deals with laws respecting an establishment of religion. This has been interpreted in the past to have the following affect:

(a) There shall be no laws which establish a federal religion and (b) there shall be no laws which aid religious establishments in a direct way. There has been little question raised on the first interpretation. The intent of the Constitution and the founding fathers seems to be quite clear. The problems abound, however, in the interpretation of this latter understanding of the first clause of the First Amendment. Today the problem rests squarely on this question: At what point is the child aided, while the church is not directly aided, and at what point does aid to the child constitute direct aid to a religious establishment?

One of the earliest cases to come before the Supreme Court in the matter of church-state separation was Reynolds v. United States (1878). Congress had passed a law making bigamy a crime under any territories under the control of the federal government. The defendant, claiming that as a Mormon he had the right to practice polygamy, fought the charge leveled against him on the grounds that this law prohibited the free exercise of his religion. The Court ruled against his claim stating that:

. . . The amendment deprived Congress of all power over beliefs, but it did not forbid its enacting laws aimed at actions which were in violation of social duties or subversive of good order.<sup>20</sup>

In the first significant decision regarding the first clause of the First Amendment, the State of Louisiana provided textbooks purchased from public funds to children attending all schools, whether public or private, in that State. In Cochran v. Louisiana State Board of Education (1930), ~~THE~~ State argued that the textbooks benefited the children and not the private and parochial schools involved, and therefore was constitutional. The Supreme Court upheld this contention and denied the plaintiff's plea that public funds were used for private and not a public purpose. This decision may constitute a significant precedent in future cases.

In Everson v. Board of Education (1947), we have the great landmark decision which applies the statutes of the Fourteenth Amendment to those of the First Amendment, and therefore makes Federal laws applicable to the States as well as the federal government regarding the relationship of church and state. It was decided here that the State may finance school bussing for the protection of children going to and from school, regardless of whether it was a public school or a private, church-related school. This decision followed the precedent set down in Cochran v. Louisiana State Board of Education (1930), whereby it was felt that benefit to the child can be funded by public monies, as long as the church-related institutions do not directly benefit from these funds.

The next significant case, McCollum v. Board of Education (1948), produced some of the most lucid and elegant explanations of the First Amendment by Supreme Court Justices, as well as explanations of the concept of the separation of church and state. The case involved what is called a 'released-time' program of religious instruction, wherein religious instruction was allowed on school property during school hours for those students whom were given parental permission for such instruction. The teachers were paid by the Champaign (Illinois) Council on Religious Education at no expense to the public school system. However, this program was disallowed and judged unconstitutional. In the majority report, Justice Hugo Black wrote the following opinion.

The 'Establishment of Religions' Clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a Church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or a disbelief in any religion. No person can be punished for entertaining or professing religious beliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.'<sup>21</sup>

Justice Felix Frankfurter voted with the majority and accepted the opinion written by Justice Black. In addition to concurring with that statement, however, he also wrote his own report on the case, a section of which is reproduced below.

Separation means separation, not something less. Jefferson's metaphor in describing the relation between Church and State speaks of a 'wall of separation,' not of a fine line easily overstepped. The public school is at one the symbole of our democracy and the most pervasive means for promoting our common destiny. In no activity of the State is it more vital to keep out devisive forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart. "The great American principle of eternal separation" - Eliahu Root's phrase bears repetition - is one of the vital reliances of our Constitutional system for assuring unities among our people stronger than our diversities. It is the Court's duty to enforce this principle in its full integrity.<sup>22</sup>

Extreme Orthodox Jewry had its day in Court in 1951 in the case of The People v. Donner (1951). A New York law requires that all children receive secular instruction in ten common branches of learning for a particular period of time. Some Orthodox Jews sent their children to a small parochial school in which the only subjects taught were the Bible, the Talmud, and Jewish Law. In addition, Yiddish was the language of instruction. The State brought suit against this group, claiming violation of its State law. The Jews' defense was that secular education is prohibited in their interpretation of Jewish law and thus being forced to educate

their children in a secular manner would violate their Constitutional right of the free exercise of their religion.

Once again, the opinion of the Court was that the welfare of the general public supercedes an absolutist interpretation of the First Amendment and in this case the Court let stand the opinion of the State Domestic Relations Court, in which the parents were found guilty of violating this State statute.<sup>32</sup>

In Zorach v. Clauson (1952), we find the case of 'released time,' in which students are let out of school early so that they may attend religious instruction. As long as the State's minimum requirements for secular education are met, this program was held constitutional. Justice William O. Douglas, known for his attitude of promoting civil libertarianism, delivered the opinion of the Court. In a portion of this opinion, we notice the difference here between a strict separationist opinion, as was taken by Justice Frankfurter, and Justice Douglas' interpretation of the relationship between Church and State.

We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom of worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma. When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our

traditions..For it then respects the religious nature of our people and accomodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do not believe . . . But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence.<sup>24</sup>

In Gallagher v. Crown Kosher Super Market of Massachusetts and Braunfeld v. Brown (1961), the Supreme Court upheld the legality of Sunday closing laws. The defendants felt that since their understanding of Jewish law forced them to close their businesses on Saturday, the additional loss of business on Sunday was too great a financial burden to bear, and thus the Sunday Closing Law promoted the establishment of religion by denying them equal protection under the law. The Court ruled against them.

If the State regulated conduct by enacting a general law within its power, the purpose and effect of which it is to advance the State's secular goals, the statute is valid despite its indirect burden on religious observances unless a State may accomplish its purpose by means which do not impose such a burden.<sup>25</sup>

Engle v. Vitale(1962) is the famous New York State Board of Regent's 'non-denominational' prayer case. A recommended prayer which was formulated by the New York State Board of Regents and seen by some as being 'non-denominational' in character was declared unconstitutional



by the Supreme Court. Though not overly offensive to most established religious groups, the rights of non-religious individuals and those who did not want the State interfering in any way with their religious expressions were upheld.

The Bible reading cases of Abington School District v. Schempp and Murray v. Curlett (1963) brought about the Court's next major decision on the question of church-state separation. Bible reading was declared unconstitutional, for it was religious in character and thus promoted the establishment of religion.<sup>26</sup>

The invalidity of the practices is not mitigated by the fact that individual students may absent themselves upon parental request, for that fact is no defense to the challenge under the establishment clause. Nor is it a defense that the religious practices here may be relatively minor encroachments on the First Amendment. The breach of neutrality that is today a trickling stream may all too soon become a raging torrent, and, in the words of Madison, "it is proper to take alarm at the first experiment on our liberties."<sup>27</sup>

In the last few years, the number of cases concerning schools and public support of them in various ways through federal and state funds has increased. While the courts have made a number of minor decisions on specific state laws, the Supreme Court has yet to produce a major decision which would have the far-reaching affect on the whole area of church-state relations and public funding for parochial schools that, for instance, Engle v. Vitale (1962) had on the issue of prayer in the public schools, or McCullum v. Board of Education (1948) had on the issue of religious instruction in public schools.

Nonetheless, in Walz v. Tax Commission (1970), in which the Court upheld the tax exemption for churches, Chief Justice Warren Burger made the following observations. He felt that in church-state related cases, there are three tests which may be applied: (1) the statute must have a secular purpose, (2) it must have a primary effect that does not advance nor inhibit religion and (3) it must not foster an excessive governmental entanglement with religion.<sup>28</sup> Typical of the recent Nixon appointees to the Court, Justice Burger expressed thoughts on that case which may have great bearing on the entire future question of public funds used to aid church-supported schools. It is an indication, at any rate, of how the Chief Justice will respond to future questions of church-state separation and public funding of parochial schools and what guidelines he will follow.

#### Part V: Jewish Views on the Issue

Within the last few years, an expanding awareness among many American Jews of the importance of a deeper and more meaningful Jewish education for their children has come into being. The Orthodox have always maintained a Jewish Day School Movement. It is, however, in the rapid growth of the Conservative, Reform, and Community Day Schools that the great change is happening. The Conservative movement, through its Solomon Schechter Schools, is expanding.

Some Reform educators and Rabbis are considering the importance of providing the choice of liberally-oriented Jewish Day Schools for members of the Reform movement. Very simply, the Jewish Day School is growing in popularity. Consequently, many of the same financial problems that plague the Catholic parochial school system - salaries, building maintainance, supplies, administrative costs, transportation and food - are likewise being confronted in the Jewish Day Schools throughout the country.

At this time, there is a division within the ranks of American Jewry over the question of Federal and State aid for parochial schools. The largest and oldest Jewish Day School movement, largely represented by the Union of Orthodox Jewish Congregations of America, Agudath ~~I~~Israel of America, and Torah Umesorah, National Society for Hebrew Day Schools, is the most vocal in its fight for governmental assistance. Opposed to the Orthodox viewpoint are a myriad of groups, including the American Jewish Congress, the National Jewish Community Relations Advisory Council, the Union of American Hebrew Congregations, the American Jewish Committee, and the Synagogue Council of America.

#### Section A; The Orthodox Viewpoint

In much of the literature written by Jewish spokesmen on the question of public monies being used to support

parochial schools, both the pro-aid and anti-aid camps repeat all of the arguments we have reviewed previously. These arguments (see this Chapter, Parts II and III) will be mentioned in Part V only as they apply to the specific Jewish concerns.

One of the ways in which many Jews view the world and its complex sets of problems and dilemmas is by posing this question: "Is it good for the Jews?" Rabbi Moshe Sherer, Executive Vice President of Agudath Israel of America, sees the problem at hand in this light.

We have until now heard opinions about the legal questions involved: Is it in conformity with the American Constitution? Is it good for America? I would like to ask a prior question: Is it good for Torah? Is it good for the Jewish people? Of course, the answer must be obvious to those of us who have worked with so much diligence to obtain federal aid for Yeshivos. Our first concern must be that most of the Yeshivos of today are bankrupt. So, if we ask the question: is it good for the Jews?, our first answer must be that anything that will alleviate the financial situation of the Yeshivos is good for Torah, and what is good for Torah is good for the Jews. And permit me to say, what is good for the Jews is good for America, in a metaphysical sense based on the concepts of our sages.<sup>29</sup>

Some have thought that a position such as this was ignoring the historical consequences of such an attitude regarding an encroaching relationship of the State to the Church. In addition, Rabbi Sherer might be accused of naïvete. The Union of Orthodox Jewish Congregations of America, in a series of resolutions at their recent 72nd

Biennial Convention, answered these charges in this manner.

The Orthodox community is all too aware of how Jews throughout history have suffered from government sponsorship of religion. No group is more appreciative of the American principle of separation of church and state. We would never risk Jewish security or tamper with the basic fabric of American freedom in order to receive government funds. However, we believe to be specious the oft-repeated argument that government support for the secular programs of religious schools is an erosion of the separation principle. The law requires children attending religious schools to study secular subjects. Government licenses these schools and closely supervises their secular programs. Government directly benefits from the educated citizens that these schools graduate. It is, therefore, both constitutional and equitable for government to share the cost of their secular program.<sup>30</sup>

The latter point made in this argument is one heard in most statements which urge governmental aid. Those groups favoring governmental aid do not want the government to underwrite any religious training. Instead, they feel that the secular material being taught in the parochial schools should be governmentally financed, since the secular material is required by the State to be taught.

One of the strongest arguments for support by the State of the general studies programs of the non-secular schools is that the State is obligated to pay for that which it mandates - no more and no less. Following this argument to its logical conclusion leads to a demand for support by the State of the costs of books, paper, teachers, and laboratory equipment for those subjects prescribed as the minimum permissible under the compulsory education laws. It excludes all subjects taught in the religious studies curriculum. Overhead and maintenance for the school plant - heat, light,

depreciation, repairs, and cleaning services - should be apportioned between the sacred program and the general studies program on some acceptable accounting basis. A division of these costs based on hours of use would be one reasonable method.<sup>31</sup>

There are many different elements involved in the question of the separation of church and state. One of the thorniest issues is that of Jewish identification as opposed to living within an integrated society. Are the Jews a people apart and if so, how do the Jews maintain their distance from the secular world while participating in the economic, social and cultural life of that world? Or are the Jews American citizens first and then secondly members of the Jewish religion? Can we even speak of an order of allegiances? May it not be too late for American Jewry to consider itself as a special chosen people? Even if it is too late, is this a desirable goal in any case?

Questions like these lie behind a Jewish understanding of the issue of church-state separation and its concomitant issue of public funding of parochial schools. With feelings running deeply, harsh polemics can develop on both sides. Dr. Jakob J. Petuchowski attributes opposition to federal programs which assist religious instruction to the fear of some parents who do not want their children to be readily identified as being Jewish.

When Jewish parents and 'defense' agencies fight 'released time,' 'shared time,' and opening prayers, their stated or ill-concealed motivation

is the fear of discrimination. God forbid that the rest of the class should know that little Johnny is a Jewish boy! The fear, of course, has a realistic basis. There are painful memories of Europe. Jews did suffer from discrimination in European schools, and it was sometimes better not to be conspicuous. And there is the fear that this sad experience might be repeated on American soil. But the actions of this fear are highly unrealistic. In the first place, in the majority of cases, the identity of the Jewish child will not long remain concealed from his class-mates, even though he may not adjourn to a different classroom for his religious instruction. Secondly, the very anti-Semitism, feared by parents and 'defense' agencies and which inspires their harping on the separation of Church and State, may be provoked by their very attempts at averting it.<sup>32</sup>

The American Jewish Congress has been very effective in blocking laws and presenting amicus curiae briefs in court to prevent any large programs of governmental aid to parochial schools. In an instance of inter-denominational bickering, a press release by Torah Umesorah makes the following suggestion to the American Jewish Congress.

I would suggest that the bright, legal experts of the American Jewish Congress who are so quick on the trigger to 'gun down' every whisper and whimper of aid to Hebrew Day School students use their legal talent to find a solution for those who are involved in intensive Jewish education despite all such economic disabilities. They who are rather 'quick on the draw' to torpedo all aid to non-public schools and thus with the use of Jewish communal funds, resources and personnel should now be equally bright, alert, and quick to find some constitutional and soluble means to aid students in non-public schools and Hebrew Day Schools. Else they betray only a negative attitude to what is one of the outstanding achievements of the American Jewish Community of the last quarter century - namely, the Hebrew Day School movement.<sup>33</sup>

The final appeal made by Jewish groups who favor publ public aid for parochial schools is made on the basis of cultural pluralism. It is the belief of the Union of Orthodox Jewish Congregations of America that the continued existence of a vibrant private and parochial school system is essential to maintain an ethnic mixture which is supportive of American society, rather than disruptive.

The myths of the past - that a public school child grows up to be more tolerant of and more at ease with people of different backgrounds and hence better equipped to take his place in a pluralistic American society; or that a public school education makes a person more liberal, whereas parochial school education makes one more conservative - today stand discredited among social scientists who have studied the subject. On the contrary, a child grows into a more secure and tolerant adult when he is permitted to 'find himself' in a school that is free from the intergroup tensions that are the hallmark of the public schools in our large cities. If monopoly is unhealthy in other areas of our society, then it is not different in education. In an age of soaring costs, unless private education receives government aid, it cannot survive except for the very rich. If the concept of cultural pluralism is to have any meaning at all, educational facilities must exist for the ethnic and religious groups in American society to transmit their cultures to future generations.<sup>34</sup>

#### Section B1; Jewish Groups Opposed to Governmental Aid to Parochial Schools

Though there is rarely unanimity within the Jewish community, those Jewish groups which are opposed to governmental aid to parochial schools have taken a unified stand on this issue.



With the exception of the Rabbinical Council of America and the Union of Orthodox Jewish Congregations of America, we are opposed to governmental aid to schools under the supervision or control of any religious denomination or sect, whether Jewish, Protestant or Catholic, including outright subsidies, transportation, and other supplies. . . . We are not opposed to the use of any school for the provision of lunches, or of medical and dental services to children.<sup>35</sup>

We noted in the previous section that polemical writings were not uncommon among those who hold opposing viewpoints. In answer to the Orthodox charges that the American Jewish Congress has played a major role in defeating the federal grants and positive legal decisions for federal aid, while at the same time neglecting the cause of Jewish Day Schools, the American Jewish Congress has responded in kind by saying that it is proud of this achievement and will continue in the future with renewed vigor to oppose public monies going to parochial schools.

This convention of the American Jewish Congress reaffirms its full support of religious freedom and strict separation of church and state in accordance with our historic position. We note with satisfaction the leadership role played by the American Jewish Congress during the past 25 years in the courts, in the legislatures, and in the forums of public opinion. We pledge ourselves not to lessen but, on the contrary, to strengthen our efforts and leadership role in this area.<sup>36</sup>

In a resolution accepted by the American Jewish Congress at their Biennial in 1970, which they reaffirmed in 1972, the Congress made the following points in regard to this issue.

Such 'parity' and other public financing of church-affiliated schools would bring in its train the very evils envisaged by those who framed the

constitutional requirement of separation of church and state. It would subject the government to the conflicting claims of competing religious groups for support of their own programs, thereby bringing organized religions into politics in pursuit of its own pecuniary advantage. It would intrude government in the affairs of religious groups, supervising the day-to-day operation of religious groups, to insure compliance with the conditions of which the money was granted, thereby endangering the constitutional right of free exercise of religion.<sup>37</sup>

In addition, the American Jewish Congress has stressed the importance of maintaining a strong public school system and promoting the mixture of religious, ethnic, and racial groups that go into making up the present public school system.

The Union of American Hebrew Congregations has likewise maintained this same position regarding separation of church and state. In addition to a number of standard arguments which oppose public funds for parochial schools, the major point of the Union's argument revolves around religious freedom.

The main value of separation is worth all the restraints and brush-offs by government, one hundred fold. Because when the chips are down, separation insures that we can act and speak critically, regardless of whether the government likes it or not, listens or not. Separation is religion's best contract with the state, leaving it free to support and oppose -both of which frequently occur and at the same time.<sup>38</sup>

In another point made by those who question the wisdom of accepting federal funds for church-related schools, Mr. Lawrence Halpern suggests that an acceptance of federal monies can lead to a restriction of freedom.

What about the political debt of the Orthodox Jewish community because of this federal aid? Recall how the fear of United States assistance to Israel has been obliquely used by the President to stifle Jewish dissent on Vietnam.<sup>39</sup>

In that same article, Mr. Halpern points out the possibility that community funds so vital to the budget of any private school can quickly dry up because of a mistaken notion by the community that the government will completely take care of the financial needs of the parochial schools.<sup>40</sup>

Another powerful organization which stands in opposition to the Orthodox viewpoint is the American Jewish Committee. Their arguments against public monies being used to support private and church-related schools deal largely with the constitutional question of the First Amendment and the effect such aid will have on the public schools. It is the Committee's feeling that any aid which would go to private or parochial schools takes away from that amount which would have gone to the public school systems throughout the country. By fully supporting the public schools and not diverting any funds which might otherwise be earmarked for these schools, they feel that there will be a better chance to foster the ideals of equality and justice for which American stands.<sup>41</sup>

The Central Conference of American Rabbis likewise stresses the constitutional question and the responsibility of the federal government to public school systems. The C.C.A.R. cautions against superfluous entanglements with the federal government in the area of education in order to preserve

religious liberty.<sup>42</sup>

The Labor Zionists of America also point out the possibility of governmental control when governmental funds are involved. By supporting the public school system with public monies and private school systems with monies collected outside of the public domain, they feel the religious rights of all involved would be more closely safeguarded.<sup>43</sup>

There is a traditional reliance in the American Jewish outlook on the secular and democratic character of the state as the guardian of Jewish rights and opportunities. In the United States this secular character, as it has developed within the constitutional context, has served as the shield behind which the Jewish community has succeeded in reaching its present level. It has, thus, given the Jewish community the opportunity to develop the very means by which it can now safeguard its own identity - if only it would choose to employ them to that end.<sup>44</sup>

In other words, if the Jewish community truly wants Jewish Day Schools, the Labor Zionists of America feels that the Jews of America have the freedom and the means to support such a system. There is not need for the entanglement of governmental funds to be involved. The National Jewish Community Relations Advisory Council likewise stresses this point.<sup>45</sup>

For the most part, the opposition to public monies being used to help maintain church-related schools encompasses the entire Jewish community with the exception of the Orthodox-affiliated groups. This opposition is not complete, however. Most of the opposing organizations do support the use of

federal and state aid when it benefits the child directly, such a lunch programs, medical and dental services, and other similar health and welfare-related aides. Yet time and again does the Jewish community, with that aforementioned significant minority, affirm its general opposition to the public funding of parochial schools.

In an amicus curiae brief filed during the case of McCollum v. Board of Education (1948), by the Synagogue Council of America and the National (Jewish) Community Relations Advisory Council, we found a definitive stand on the issue of church and state which, over the last fifteen years, has varied little.

. . . We regard the principle of separation of church and state as one of the foundations of American democracy. Both political liberty and freedom of religious worship and belief, we are firmly convinced, can remain inviolate only when there exists no intrusion of secular authority in religious affairs or of religious authority in secular affairs. As Americans and as spokesmen for religious bodies, lay and clerical, we therefore deem any breach in the wall separating church and state as jeopardizing the political and religious freedoms that wall was intended to protect. We believe, further, that our public school system is one of the most precious products of our American democracy. We are, therefore, impelled to voice our opposition whenever attempts are made to compromise its integrity.<sup>46</sup>

## SUMMARY AND CONCLUSIONS

The history and dilemma of church-state relations is as difficult as it is variegated. There would obviously be little discussion or concern over such an issue, either from an historical glance backward or by a close examination of the issue as it presents itself today, if the problems of church-state relations were quickly delineated or easily solved. Nonetheless, there are certain conclusions which can be drawn from such a study and examination as has been undertaken in this thesis. First, however, it would be appropriate to review the salient points made in the preceeding three chapters.

The first chapter of the thesis was an historical survey of the principles of religious freedom and church-state separation. This survey was concentrated on pre-revolutionary and later American history. In the early colonial period we noticed a change between the attitude taken by these colonizers regarding church-state relationships and the situation of which they had been former participants in the Old World. The word "tolerance" became an accepted philosophy in the area of religious freedom. Although toleration was sometimes limited to Christians and at other times only to those who professed a belief in Deity of any sort, the development of a tolerant attitude in which peoples of all religious beliefs

accepted the right of others to hold their religious beliefs became better established in the grain of the early American scene.

The attitude of toleration grew out of the beliefs of many that the business of the church and the business of the state were of an entirely different nature. One should therefore not interfere with the other. This belief in the separation of church and state was not always for the most altruistic of reasons, but sometimes had larger political and economic reasons which prompted this stance. Nonetheless, there were those influential colonials, such as Roger Williams, who for historical and theological reasons did expound such a philosophy.

In the early colonial period each group looked out for its own welfare. Fears of Episcopacy and Popery, as well as Baptist and Puritan takeovers, prompted this attitude which influenced people's thoughts on the desirability of the separation of church and state. In addition to these reasons, the dynamism of early American life and the colonial spirit of expansion and growth would hardly have engendered restrictive measures as were often found in the lands from which many of the colonials had fled.

The toleration of the colonial period was further developed in the revolutionary and constitutional periods, in which the early Presidents of the United States became

strong proponents of religious liberty and separation of church and state. Outstanding among these early leaders were Thomas Jefferson and James Madison, men whose philosophical and historical viewpoints did more to shape the tenets found in the Constitution regarding this issue than perhaps any others of that time.

It was, finally, the end product of this period, the Constitution of the United States of America, which best reflected the mature attitude of this newly emerging country. In Article VI, Clause 3, it is specifically mentioned that no religious test shall ever be required of any office holder under the United States.

The First Amendment of the Constitution, found in the Bill of Rights, spells out the right of religious liberty and freedom to an even greater degree. Herein it points out the principle of the separation of church and state in general terms. And herein lies the controversy over the interpretation of this Amendment.

Chapter II dealt with freedom of Jewish religious expression. Sketching briefly some incidents throughout the history of Jewry in the diaspora under the rule of various countries, we find that the Jews did not fare well when the church ruled the state to such a degree that the laws of the church were synonymous with the laws of the state. Although Jews have always accepted the principle of dina d'malkuta dina,



in which the laws were equally applicable to all residents of the land, dina d'malka, the oftentimes capricious laws of the ruler - laws which might be discriminatory and unfair - were not accepted as being of that type which was binding upon the Jews. The history of the ruling Church, usually the Roman Catholic Church, and its relationship with the Jews, was quite often unpleasant, uncomfortable, and sometimes unbearable.

The American scene, however, presents quite a different picture. The history of American Jewry closely parallels the history of America itself. When and where America grew and prospered, so did the Jews. When and where Americans suffered, so did the Jews. There were, however, some noteworthy incidents in the history of American Jewry and its relationship with the government of the United States which deserve mention. Some of the incidents, such of those recorded regarding the relationship of the Jewish citizens to the Presidents of the United States, are pleasant and supportative of the constitutional principles of freedom of religious expression and separation of church and state. There were other times, however, when these principles were endangered and the situations in question had to be squarely encountered by the government in order to rectify these periods.

The first time the government of the United States intervened for the benefit of Jews in distant lands because

of the pressure brought to bear by its American Jewish citizens was the Damascus Affair of 1840. This intervention, symbolic as it may have been, marked the new kind of relationship which existed between the Jewish citizens of America and their government. The Swiss Affair of 1850 similarly gave credence to the government's sincerity in its support of the equality of all of its citizens, regardless of religious affiliation.

President Abraham Lincoln reacted speedily to an overt anti-semitic order issued by General Ulysses S. Grant during the Civil War. The infamous Order #11 of General Grant would still go down as a blot upon the relatively clean record of governmental equality on the basis of religion.

After citing other incidents, we completed that chapter by noting the contribution of American Jewry toward the perpetuation of the principles of freedom of religious liberty and expression. Drs. Solomon Schechter and Louis Finkelstein, both have taken pains to make the point perfectly clear that no government in the history of the western world has ever allowed the Jews to practice their religion so freely, while at the same time allowing the full participation of Jewish citizens in the affairs of that government.

Note at this point that the progression of this thesis has been from the general to the specific. In the first chapter we discussed the general relationship of church and

state in the United States. In the second chapter we concentrated on the relationship of just one group, the Jews, and how they have fared throughout the years in their relationship with various governments under which they have lived, and specifically with the government of the United States. The third chapter then takes a specific incident in the church-state relationship in the United States and tries to deal with that relationship in the most detailed, yet concise and appropriate manner possible.

The third chapter deals with the specific issue of public aid for non-public schools. This issue directly deals with the question of the relationship of church to state, for what is involved here is the granting of public funds for use in non-public, church-related schools. This has never been permitted before this time. Currently there is a great amount of concern over this issue, for an important legal and moral question is involved: namely, the meaning of the First Amendment of the Constitution of the United States. In Part IV of this chapter, we dealt with the history of the Supreme Court decisions which have had and will have a bearing on this question. As of this moment, the Supreme Court has yet to rule in a decisive and far-reaching judgement. When it does rule, the controversy will certainly not be ended,

for the following questions will in turn be raised: (1) if the Supreme Court rules in favor of the use of public funds for private, church-related institutions, should these funds even be accepted by the religious organizations on moral and historical grounds; and (2) if the Court rules against the use of public funds for private, church-related institutions, won't those defeated groups seek comfort from Congress and perhaps even promote a constitutional amendment to counter-balance the decision of the Court?

Since the possibilities for the future are unknown at this time, there is little value in further conjecture. The arguments for and against that very issue of public funding for private, church-related educational institutions have already been presented in full in the text of ~~CHAPTER~~ Three. Instead of repeating the arguments of both sides, what will concern us in this summary and conclusion is not the legal ramifications of this issue, but the stance which I believe would be most beneficial for the Jews.

Rabbi Moshe Sherer, Executive Vice President of Agudath Israel of America, and a proponent of the use of public funds to finance church-controlled educational institutions asked the following questions:

We have until now heard opinions about the legal questions involved: Is it in conformity with the American Constitution? Is it good for America?

I would like to ask a prior question: Is it good for ~~Tor~~=Torah? Is it good for the Jewish people?<sup>1</sup>

On this basis the question "Is it good for the Jews if public funds are permitted to be used for private, church-related schools?" must be answered in the negative. This conclusion is grounded on the basis of sound historical evidence and its implications.

*Reagan*  
*1964*

Historically it has been shown most decisively in Chapter Two that, for the most part, whenever the state has become entangled in the affairs of the church or whenever the church has become entangled in the affairs of the state so that church law becomes indistinguishable from state law, both the church and the state, in addition to the Jews, have suffered. For hundreds of years under the oppression of the Roman Catholic Church through the puppet regimes of France, Spain, Portugal and other European countries, the Jews suffered often to the point of utter deprivation and death. Marked off from the rest of the inhabitants of the land and denied the rights of the other residents of the land because of their religious beliefs, the Jews were denied time and again participation in their own destiny. Church and state became as one and from this union came great hardship for those who did not agree with the philosophy and theology of the church and state. And to think that today Orthodox Jewry desires to form a partnership with the Roman Catholic Church in their common struggle to have the state become more involved in the life of religious bodies through financial aid becomes hard to

understand.

Of course, there seems to be little resemblance between the situation as it now exists in the United States and the historical facts of the Old World. Nonetheless, we do know that today when the state participates in the lives of its citizens through the issuance of public funds, the state has much to say about how and by whom those funds are spent. The restrictions on such funds, if not overtly evident, are often covertly present. When a privately controlled, church-related institution becomes dependent upon public funding to any significant fiscal degree, then that church had better remain in the good graces of the governmental powers-that-be in order to insure a continuance of those governmental funds. We have seen within the last years the increasing power of the Executive Branch of our government and the continuing disregard of the Congressional and Judicial controls available. To answer that the law which provides these monies might be worded in such a way so as to prevent such governmental control is to deny the realities of the political arena. When the state controls the church, the church risks losing any efficacy it might have had as a moral guide and even as a watchdog of the state. And when that government is controlled largely by Protestants and Catholics, and the Jews and other religious minorities rarely determine the outcome of a national political contest, than those minorities are sure to be low on the totem.

pole when the issuance of governmental funds comes up. This would tend to deny equality for all under the law.

Has it ever been historically favorable for the Jews when the state ran the affairs of the church or when the church became so entwined in the affairs of the state so that the two were indistinguishable? We can find no evidence to answer this question affirmatively.

Nor is it good for the Christians, or any other Americans, to have a situation of financial dependence develop, for with the issuance of public funds to church-related groups, there is the danger of losing that for which millions have died and for which America has stood throughout the centuries - freedom; in particular, freedom of religious expression. America was founded largely because of an attempt by some to escape religious oppression and persecution. It was thereby founded upon the principle of religious liberty and its historical antecedent, the separation of church and state. Any act which threatens those principles therefore is inherently destructive and ought to be vigorously opposed by all Jewish and Christian groups, no matter what the short-term benefits may seem to be.

The most astute observation regarding the question of religious liberty and the separation of church and state comes from a man whose wise sayings and sage advice have had a real effect on the thoughts of Americans, Benjamin Franklin.

Unmoved by dogma and uninterested in sectarian strife, Franklin favored religion that did not demand political patronage. "When a religion is good," he wrote, "I conceive that it will support itself; and when it cannot support itself and . . . (is) obliged to call for the help of the civil power, it is a sign, I apprehend, of its being a bad one."<sup>2</sup>

If the people who are members of our synagogues and churches, all of which exist on voluntary membership contributions, do not feel that their institutions or aspects of those institutions are worth maintaining through their financial support, then it is the synagogues and churches which have failed. Voluntary programs and voluntary financial contributions exist as long as those volunteers supporting those programs feel they are worthwhile of sacrifice. Though the financial sacrifice is becoming greater every year and no one claims that separate school systems are inexpensive to maintain, then either one of two things must occur: (1) Either people must feel that these programs are so worthwhile as to be willing to sacrifice even more, or (2) there must be a careful reassessment of these programs, with the possibility of their ultimate demise. While religions are based on optimism to some degree, the realistic expectations of any institution must be seriously considered at the same time. There may be a greater evil in falling back on the government to support church-related programs than the scaling down of those programs to meet the individual religious institution's ways and means.



The history of the Jews has been good in the United States. One of the reasons it has been so favorable is simply because the Jews are at this time assured of their right of religious liberty and expression. This is the case because the state and the church in America have been separate in their purposes and their modes of operation. Though there can never be that totally impregnable wall of separation of which Thomas Jefferson spoke, there should be a constant attempt made to insure that whatever parts of that wall remain should remain intact. Jewish history and our experiences living under the rule of church-related states or government-controlled religions makes the point time and again that the wall must be maintained as much as possible in order to preserve the freedom and liberty of religious expression, for only in freedom and liberty does man achieve the heights of which he is capable. This seems to be an obvious lesson and conclusion of Jewish history.

FOOTNOTES"

Chapter One

<sup>1</sup>Edwin Scott Gaustad, A Religious History of the United States (New York: Harper and Row, 1966), p. 7.

<sup>2</sup>Ibid.,

<sup>3</sup>Sanford H. Cobb, The Rise of Religious Liberty In America (New York: Cooper Square Publishers, Inc., 1968), p. 376.

<sup>4</sup>Ibid., p. 316.

<sup>5</sup>Ibid.

<sup>6</sup>Ibid., p. 311.

<sup>7</sup>Ibid., p. 68.

<sup>8</sup>Ibid., p. 597.

<sup>9</sup>Some authors ascribe ~~condemnation~~ to the term 'toleration,' in that this term implies a majority which, through its grace and beneficence, 'permits' other points of view. The word 'toleration' when used in this paper, should not be understood in this way.

<sup>10</sup>Cobb, p. 3.

<sup>11</sup>Ibid., pp. 484-485.

<sup>12</sup>Anson Phelps Stokes and Leo Pfeffer, Church and State In the United States. (New York: Harper and Row, 1964), p. 13.

<sup>13</sup>Ibid., pp. 14-15.

<sup>14</sup>Ibid., p. 15.

<sup>15</sup>Ibid., pp. 18-19.

<sup>16</sup>Cobb, p. 444.

<sup>17</sup>Ibid.,

<sup>18</sup>Peter Wiernik, History of the Jews in America (New York: The Jewish Press Publishing Company, 1912), p. 84.

<sup>19</sup>Ibid., pp. 84-85.

<sup>20</sup>Gaustad, p. 155.

<sup>21</sup>Ibid., p. 120.

<sup>22</sup>Ibid.

<sup>23</sup>Stokes and Pfeffer, p. 27.

<sup>24</sup>Ibid., p. 35.

<sup>25</sup>Gaustad, p. 119.

<sup>26</sup>Ibid., p. 125.

<sup>27</sup>Ibid., p. 128.

<sup>28</sup>Stokes and Pfeffer, p. 71.

<sup>29</sup>Gaustad, p. 129.

<sup>30</sup>Ibid., p. 30.

<sup>31</sup>Saul K. Padover, The Complete Jefferson (New York: Duell, Sloan and Pearce, 1943), pp. 518-519.

<sup>32</sup>Nathan A. Pelcovitz, Church-State Relations in the United States (New York: American Jewish Committee, 1941), p. 14.

<sup>33</sup>Leo Pfeffer, Church, State and Freedom (Boston: Beacon Press, 1967), p. 113.

<sup>34</sup>Paul A. Freund and Robert Ulich, Religion and the Public Schools (Cambridge, Mass.: Harvard University Press, 1965), p. 7.

<sup>35</sup>Stokes and Pfeffer, p. 60.

<sup>36</sup>U.S., Constitution of the United States of America, Article VI, Clause 3.

<sup>37</sup>Ibid., Article I, Section 7.

<sup>38</sup>Ibid., Article VII.

<sup>39</sup>Alexander Hamilton, James Madison, and John Jay, The Federalist Papers (New York: The New American Library of World Literature, Inc., 1961), p. 72

<sup>40</sup>U.S. Constitution of the United States of America, Amendment 1.

<sup>41</sup>Ibid., Amendment 14, Section I.

<sup>42</sup>Marvin Schick (ed.)†, Governmental Aid to Parochial Schools -- How Far? (New York: National Jewish Commission on Law and Public Affairs, 1967), p. 29.

<sup>43</sup>Cobb, p. 520.

## Chapter Two

<sup>1</sup>Peter Wiernik, History of the Jews in America (New York: The Jewish Press Publishing Company, 1912), p. 270.

<sup>2</sup>Jeremiah 29:7

<sup>3</sup>Wiernik, p. 270.

<sup>4</sup>Jacob R. Marcus, The Jew in the Medieval World (New York and Philadelphia: Meridian Books and The Jewish Publication Society, 1960), p. 7.

<sup>5</sup>Ibid., pp. 54-55.

<sup>6</sup>Ibid., pp. 24-25.

<sup>7</sup>Ibid., p. 137.

<sup>8</sup>Ibid., p. 138.

<sup>9</sup>see Chapter 1, page 1.

<sup>10</sup>Marcus, p. 155.

<sup>11</sup>Ibid., p. 181.

<sup>12</sup>Anson Phelps Stokes and Leo Pfeffer, Church and State in the United States (New York: Harper and Row, 1964), p. 38.

<sup>13</sup>see Chapter 1, page 18.

<sup>14</sup>Stokes and Pfeffer, p. 243.

<sup>15</sup>Edwin Scott Gaustad, A Religious History of the United States (New York: Harper and Row, 1966), p. 128.

<sup>16</sup>see Chapter 1, pp. 19-21.

<sup>17</sup>Stokes and Pfeffer, pp. 243-4.

<sup>18</sup>Nathan A. Pelcovitz, Church-State Relations in the United States (New York: American Jewish Committee, 1941), p. 14.

<sup>19</sup>Stokes and Pfeffer, p. 244.

<sup>20</sup>Ibid., pp. 244-5.

<sup>21</sup>Ibid., p. 245.

<sup>22</sup>Rufus Lears, The Jews in America: A History (New York: Ktav Publishing House, Inc., 1972), p. 80.

<sup>23</sup>Wiernik, p. 194.

<sup>24</sup>Lears, p. 83.

<sup>25</sup>Ibid.,

<sup>26</sup>Ibid., pp. 83-4.

<sup>27</sup>Gaustad, p. 216.

<sup>28</sup>Lears, pp. 85-87.

<sup>29</sup>Ibid., p. 105.

<sup>30</sup>Ibid.

<sup>31</sup>Ibid., p. 106.

<sup>32</sup>Ibid., p. 107.

<sup>33</sup>Ibid.,

<sup>34</sup>Ibid., p.108.

<sup>35</sup>Stokes and Pfeffer, p. 248.

<sup>36</sup>Ibid., pp.249-50.

<sup>37</sup>Ibid.

<sup>38</sup>Ibid., p. 250.

<sup>39</sup>Gaustad, pp. 220-221.

<sup>40</sup>Ibid., p. 392.

### Chapter Three

<sup>1</sup>Anson Phelps Stokes and Leo Pfeffer, Church and State in the United States (New York: Harper and Row, 1964), p.264.

<sup>2</sup>Ibid.

<sup>3</sup>Ibid., p. 266.

<sup>4</sup>Ibid., p. 268.

<sup>5</sup>Neil G. McCluskey, S.J. The Christian Century, "Child Support or Wall of Separation?" (New York: The Christian Century Foundation, June, 1969), p. 9.

<sup>6</sup>Religion and the Schools; From Prayer to Public Aid (Washington, D.C.: National School Public Relations Association, 1970), p. 20.

<sup>7</sup>Robert F. Drinan, "The Constitutionality of Public Aid to Parochial Schools," The Wall Between Church and State, Dallin H. Oaks, ed. (Chicago: Phoenix Books, University of Chicago Press, 1963), p. 57.

<sup>8</sup>Samuel Rabinove, "Church, State and the Schools," The Chicago Jewish Forum (Chicago, The Chicago Jewish Forum, Inc., Spring, 1968), p. 4.

<sup>9</sup>Richard M. Nixon, "Remarks of the President to the 69th Annual Convention, National Catholic Educational Association," (Washington, D.C.: Press Release, the White House, 1972)

- <sup>10</sup>Philip Jacobson, Religion in Public Education (New York, The American Jewish Committee, 1969), p. 15.
- <sup>11</sup>Bernard Goldenberg, "Educational Needs of Elementary and Secondary Schools in the Seventies," (Washington, D.C.: Press Release, Torah U'Mesorah, National Society for Hebrew Day Schools, 1971).
- <sup>12</sup>Rabinove, p. 4.
- <sup>13</sup>Saul K. Padover, The Complete Jefferson (New York: Duell, Sloan & Pearce, 1943), pp. 518-519.
- <sup>14</sup>Abraham J. Multer, "Preserving Religious Integrity Through Separation of Church and State," Congressional Record (Washington, D.C., United States Senate, ~~87th~~ Congress, Second Session, 1962), p. 2.
- <sup>15</sup>Philip Jacobson, "The Nonsectarian Public Parochial School," The Christian Century (New York: The Christian Century Foundation, 1969), p. 3.
- <sup>16</sup>Marvin Braiterman, "A View from the Wall: Church-State and Social Action," Dimension (New York: Union of American Hebrew Congregations, Summer, 1967), p. 2.
- <sup>17</sup>see Chapter 1, p. 16.
- <sup>18</sup>U.S., Constitution of the United States of America, Amendment 1.
- <sup>19</sup>Ibid., Amendment 1, Section 1.
- <sup>20</sup>Stokes and Pfeffer, p. 109.
- <sup>21</sup>McCollum v. Board of Education, Supreme Court Decision 333 US 203, 1948.
- <sup>22</sup>Edwin Scott Gaustad, A Religious History of the United States (New York: Harper and Row, 1966), p. 378.
- <sup>23</sup>Leo Pfeffer, Church, State and Freedom (Boston: Beacon Press, 1967), p. 714.
- <sup>24</sup>Gaustad, p. 380.
- <sup>25</sup>Stokes and Pfeffer, pp. 138-139.

<sup>26</sup>Ibid., pp. 144-146.

<sup>27</sup>Abington School District v. Schempp, Supreme Court Decision, 1963.

<sup>28</sup>"Summary and Analysis of the United States Supreme Court Decisions of June 28, 1971, Dealing with Government Aid to Religiously Affiliated Schools," (New York: American Jewish Congress, Commission on Law and Social Action, 1971), p. 4.

<sup>29</sup>Marvin Schick (ed.), Governmental Aid to Parochial Schools - How Far? (New York: National Jewish Commission on Law and Public Affairs, 1967), pp. 55-56.

<sup>30</sup>"Resolutions Adopted by the 72nd Anniversary National Biennial Convention," (Washington, D.C.: Union of Orthodox Jewish Congregations of America, 1970), p. 18.

<sup>31</sup>Marvin Schick (ed.), "Government Support for Non-Secular Schools: How Far?" Reuben E. Gross, pp. 18-19.

<sup>32</sup>The Jewish Spectator, "Logic and Reality," Jakob J. Petuchowski (New York: The Jewish Spectator, Inc., Sept., 1962), p. 20.

<sup>33</sup>"Press Release," (New York: Torah U'Mesorah, National Society for Hebrew Day Schools, undated), p. 2.

<sup>34</sup>"Joint Program Plan for Jewish Community Relations 1971-1992," (New York: National Jewish Community Relations Advisory Council, 1972), p. 26.

<sup>35</sup>Safeguarding Religious Liberty (New York: Joint Advisory Committee of the Synagogue Council of America and the National Jewish Community Relations Advisory Council, 1971), pp. 9-10.

<sup>36</sup>Resolution on "Religious Freedom and Separation of Church and State" (Cleveland, Ohio: American Jewish Congress, Biennial Convention, May, 1972),

<sup>37</sup>Resolution on "Religious Freedom and Separation of Church and State" (Washington, D.C.; American Jewish Congress, Biennial Convention, 1970), p. 1.

<sup>38</sup>Braiterman.

<sup>39</sup>Schick, p. 24.



<sup>40</sup>Ibid.

<sup>41</sup>Religion and Public Education (New York: American Jewish Committee, 1969), p. 16.

<sup>42</sup>Central Conference of American Rabbis Yearbook (New York: Central Conference of American Rabbis, Vol. 58, 1948), p. 105.

<sup>43</sup>"Church-State-Education and the Jewish Community,"- (New York: Labor Zionist Organization of America, May, 1967), p. 3.

<sup>44</sup>Ibid.

<sup>45</sup>"Joint Program Plan for Jewish Community Relations, 1971-72" (New York: National Jewish Community Relations Advisory Council, 1972), p. 20.

<sup>46</sup>Pfeffer, pp. 347-348.

#### Summary and Conclusions

<sup>1</sup>Marvin Schick (ed.), Governmental Aid to Parochial Schools - How Far? (New York: National Jewish Commission on Law and Public Affairs, 1967), pp. 55-56.

<sup>2</sup>Edwin Scott Gaustad, A Religious History of the United States (New York: Harper and Row, 1966), p. 155.

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