

AMERICAN JEWS

Lowering the Separation of the Church and State Wall?

MURRAY FRIEDMAN, PH.D.

Director, Myer and Rosaline Feinstein Center for American Jewish History, Temple University, Philadelphia

In the period after World War II, Jews and Jewish groups adopted a strong separationist position on First Amendment issues in line with their broader effort to obtain full inclusion in the society. In recent years, however, significant changes have occurred within the Jewish community and in the general society that should cause Jews and their civic bodies to review this absolutist approach. The urban crisis has caused some to look to religious bodies to partner with government to find solutions. New initiatives cited have included vouchers that permit parents to use government monies to send their children to private and public schools and "charitable choice," an amendment to 1996 welfare reform legislation that provides public funds directly to churches, mosques, and synagogues for social welfare purposes.

When Senator Joseph Lieberman called for religion to play a more pervasive role in American life shortly after receiving the Democratic Party's vice presidential nomination, he triggered a national debate that undoubtedly will continue long after the election. Some of the sharpest reaction came from within the Jewish community. Anti-Defamation League National Director Abraham H. Foxman and Howard P. Berkowitz, its national chair, urged him to stop making "overt expressions of religious belief while campaigning." Two social activists writing in the Philadelphia *Inquirer* warned that his appeal to renew the dedication of our nation and ourselves to God's purpose "made him a leading spokesman for an alliance between fundamentalist Jews and Christians that seeks to erode America's separation of church and state."

It is not hard to understand the furor. In the first part of this century, anti-Semitism was rife in the land—many feel it is still a lurking menace. Jews entered the post-war years determined to wipe out every vestige of prejudice and discrimination directed against them and other outsiders. Jewish civic bodies spearheaded by the American Jewish Congress and its redoubtable general counsel, Leo Pfeffer, an absolutist on separation, took the lead in a successful effort to eliminate prayer and Bible

reading in the public schools and most forms of direct aid to parochial schools. Pfeffer's position prevailed when Justice Hugo Black, in the trail-blazing *Everson* decision in 1948, held that the establishment clause of the First Amendment erected "a wall of separation between church and state [that] must be kept high and impregnable" (Ivers, 1995).

Secular in orientation and determined also to assimilate, Nathan Glazer wrote in 1957, in the final chapter of *American Judaism*, that Jews came to believe that religion should keep in step "with science, psychotherapy, and liberal policies."

In the years that followed, their high hopes dimmed that the nation would become more inclusive and poverty would be banished from the land. In spite of the impressive gains of the civil rights revolution and the war on poverty, conditions in the inner cities of America including the public schools grew worse. Widespread use of drugs, increased crime and violence, and family breakdown spread to wider segments in the community.

In response, a powerful movement has gotten underway to mobilize the force of thousands of neighborhood-based churches, synagogues, and mosques to assist in individual and community renewal. Cover stories in *Time* and the *New Yorker* and lead news articles have highlighted the work of

such ministers as Eugene Rivers in Boston and Floyd Flake in New York who have worked successfully through their churches with gang youth and in the development of drug, housing rehabilitation, and employment training programs in urban ghettos.

These efforts are backed up by an impressive group of social critics, including University of Pennsylvania professor John DiIulio and James Q. Wilson, and an equally impressive body of research that supports faith-based activism and the partnering of religious bodies with government to help cure seemingly incurable social problems. Based on his study of 113 congregations in Chicago, Indianapolis, Mobile, New York, Philadelphia, and San Francisco, Ram Cnaan, a social work professor at the University of Pennsylvania, enthusiastically tells an interviewer of the "enormous and selfless energy going into such programs." In his book, *Bowling Alone*, Robert Putnam quotes one estimate that some 50 percent of the social capital of the nation "is reflected in religious organizations." Summing up this body of research in the Spring 1999 issue of *Brookings Review*, columnist E.J. Dionne and DiIulio wrote, "Sacred places, it seems, serve civic purposes."

These activities have been limited, however, by the inexperience of their members and a lack of funding that would permit them to hire appropriate staff (Personal communication, Donna Jones, minister at the Cookman United Methodist Church in North Philadelphia). In response, several legislative initiatives have been undertaken in various cities and in Washington. The first is an amendment to the 1996 Welfare Reform Act. "Charitable choice" provides funding directly to religious bodies to promote and expand social welfare activities in their communities without any diminution in their religious character. Before this amendment, religious bodies had difficulty participating in public programs. For example, Stanley Carlson Thies, a faith-based activist, reported that a local St. Vincent de Paul agency was told it could participate in a city's public funding program only if it changed its name to Mr. Vincent de

Paul. Similarly, a Salvation Army operation in a large Eastern community was informed that the city wanted to give it a major contract but insisted that it would have to be some other kind of Army.

The second initiative has been passage by a number of states of tuition grant, commonly called voucher, legislation that permits low-income students to use tax dollars to pay for private school education, including in parochial schools. Last August, scholars at Harvard and the University of Wisconsin released a study showing that between 1997 and 1999 blacks who used vouchers to move to private schools scored an average of 6 percentile points higher in reading and math than those who stayed in public schools in the three cities studied—New York City, the District of Columbia, and Dayton, Ohio—although the results have been disputed (*N.Y. Times*, Sept. 15, 2000).

Jewish civic bodies have responded with alarm to these moves. In its program plan for 1999–2000, the Jewish Council for Public Affairs, the coordinating body for national and local community relations bodies, announced opposition to charitable choice. The field "must be increasingly vigilant and vocal in monitoring the implementation of federal block grant programs at the state and local level to prevent First Amendment violations and to protect the religious freedom of program beneficiaries and employees as service providers," it warned. In a letter to a Senate committee considering a charitable choice provision in the Youth Drug and Mental Health Service Act late last year, Richard Foltin, legislative director and counsel for the American Jewish Committee, urged that a hold be placed on the bill. The measure, he said, was both constitutionally flawed and bad public policy. Similar complaints have been registered against vouchers, which are viewed as a siphoning off of money from public schools.

Support for these programs, nevertheless, has been growing. Last year, an NBC-*Wall Street Journal* poll found 76 percent of Americans favored "giving federal funds to private

groups, including religious organizations (Hoover, 2000). A 1999 survey by the Joint Center for Political and Economic Studies found that 60 percent of black Americans support school choice. Earlier, the Joint Center indicated over 65 percent of Hispanics favored vouchers. During the election campaign, both Bush and Gore announced their support for charitable choice, although Gore was opposed to vouchers, which Bush supports.

Advocates of partnering religion and government have been backed up by a number of constitutional theorists, including Philip Kurland, Michael McConnell, and Carl Esbeck, who have called for equal treatment for religion and view religion itself as a form of identity politics in a multicultural age. Their arguments are summed up in what is called the "Kurland Rule": If a policy furthers a legitimate secular purpose it is a matter of legal indifference whether or not that policy employs religious institutions.

McConnell, a kind of Leo Pfeffer in reverse, has been the most prominent and successful proponent of this view. In 1981, he helped persuade the U.S. Supreme Court that a regulation adopted by the University of Missouri at Kansas City barring a student bible-study group from using campus facilities was unconstitutional. In so doing, the High Court began the movement back from Justice Black's strict separatism by ruling that religious and non-religious groups must be treated equally. In 1995, following McConnell's lead, the High Court ruled in a 5-4 decision that a university could not deny funds drawn from student fees to a campus religious newspaper when offered to a broad class of participants.

A series of subsequent cases including *Bowen v. Kendrick* and *Agostine v. Felton* have clearly altered the legal landscape on separation. In *Agostine*, the court, overruling two previous decisions, upheld remedial educational and counseling services in parochial schools so long as the services themselves were "secular, neutral, and non-ideological" (Rosen, 2000).

What we are witnessing today is the beginning of a new public discussion of government collaboration with faith-based institutions. As columnist E.J. Dionne (2000) writes, "The turn of the millenium in America may well be remembered as a time when the country renegotiated the relationship between religion and public life, faith and culture."

If this is so, it is a dialogue that clearly makes Jews and Jewish civic groups nervous. They are beginning to sense that they are losing the battle against Pfefferian absolute separation. Nor can their fears be lightly set aside. They are acutely aware that there are those who would like to make this a Christian nation. The Southern Baptist Convention, the largest Christian body in the land, announced last year during the Jewish High Holidays that they were mounting a program for the conversion of the Jews. In each recent session of Congress, Rep. Ernest Istook (R. Okla.) has introduced a measure, so far unsuccessful, that would allow any kind of prayer in government-sponsored settings. The support Bush and Gore gave charitable choice during the election convinces many that the country is moving down a slippery slope that threatens religious freedom. Clearly, charitable choice and other faith-based partnerships with government need to be monitored closely.

Yet, there is a need for Jews and Jewish organizations to review their traditional posture here. This is hardly to suggest any diminution of our strong support for the First Amendment. Jews have gained a favorable place in society in no small measure because of its religious freedom and no establishment guarantees. Such protections continue to remain important. The real question may be what the First Amendment means today in the light of changing circumstances, most especially the urban and broader social crisis.

As Stephen L. Carter (1993, p. 109), the widely respected professor of law at the Yale School, has written, "The secular world acts as though the constitutional command is that the nation and its people must keep religion under wraps.... There is nothing wrong with the metaphor of a wall of separation. The trouble

is that in order to make the Founders' vision compatible with the structure and needs of modern society, the wall has to have a few doors in it."

There are signs that the post-war Jewish consensus on strict separation is beginning to weaken. Gary Rosenblatt (2000), the editor of the *Jewish Week* in New York, reported last June the organized Jewish community has begun to reconsider its "sacred policy." For some time, Orthodox Jews have been seeking government funding for their religious schools. A number of influential voices now are being raised on their behalf as well. Speaking at a national conference on Jewish education convened by the American Jewish Committee last June, Dr. Jack Wertheimer, provost of the Jewish Theological Seminary, noted it costs \$420 million each year to educate today's 210,000 Jewish day school students—a total that exceeds half of the combined monies raised by all Jewish federations each year. Calling for a reexamination of the Jewish community's traditional opposition to government assistance to parochial education, Dr. Wertheimer said government funding could be directed strictly to general education, not religious curriculum, thereby leaving church-state separation fundamentally intact.

A number of heads of Jewish federations, including Barry Shrage in Boston and John Ruskay in New York, are echoing this view. Worried about assimilation trends and aware that graduates of day schools are less likely to intermarry, they are breaking ranks increasingly. At the conference at which Wertheimer spoke, Ruskay sought a "partial approach—funding for non-theological subjects like physical education and guidance facilities." Significantly, a nationwide "culture poll" commissioned by the *New Jersey Jewish News* and undertaken by Zogby International from December 14, 1999 through February 7, 2000 indicated that 52 percent of Jews support the provision of school vouchers that would permit their children to attend any school they wish.

There are indications, also, that the intel-

lectual foundations on which Jewish church-state strict separatism has been based are eroding as well. "Most recently it has struck me," Jonathan Sarna, the Joseph H. and Belle R. Braun Professor of American Jewish History at Brandeis University, wrote in 1993, "that the separationist ideal, essentially a theory of separate spheres, reflects an ideology that I and most of my friends have long since rejected.... Clearly the whole basis of strict separation, with its assumption that religion and state should occupy completely differing spheres of life, needed to be rethought."

Sarna, joined by Dalin in their book *Religion and State in the American Jewish Experience*, has also questioned whether separatism has always been the basic strategy of Jews in this country. For most of their history here, they argue, Jews fought for equal footing or equal rights. They opposed discriminatory treatment such as Sunday Blue Laws that forced them to keep closed on the Christian Sabbath and state requirements that elected officials take the oath of office on the Christian bible. However, they did not advocate the exclusion of religion from American life. It was only when Christian practices became too officious that they abandoned their earlier posture. Caught between their fears of a Christian state and "possible anti-religious animus of a secular state," Sarna writes in a pamphlet for the American Jewish Committee, they "have often sought a middle ground." In *Faith and Fear*, Elliot Abrams goes further, arguing that Jews have more to fear from rampant secularism than from Christian conservatives.

It is Christian missionary activities, occasional anti-Semitic statements of fundamentalists, and the political influence of the Christian Right that prevent many Jews from modifying their views on church-state relations. A body of literature is accumulating, however, including the work of political scientist John Green (1996, 2000) at the University of Akron, which suggests that most evangelicals are much like the broader population in their political beliefs and values and only a small

number identify with the Christian Right. Even in the Reagan years, it could not get its agenda adopted. The fact is that except for certain geographic pockets, it is losing ground.

The issue for Jews as we move into a new century may come down to this: Can we trust our fellow citizens to protect us from becoming second-class citizens as we renegotiate "the relationship between religion and life, faith and culture?"

Almost a half-century ago, Will Herberg whose book, *Protestant, Catholic and Jew*, profoundly influenced the study of religious sociology in this country, mounted a lonely vigil against Pfeffer absolutism. He wrote that, while it was possible to understand Jewish sympathies for a strict reading of the establishment clause, "such a stance would not, over the long run, prove beneficial." American Jews, he declared, "must rid themselves of the narrow and crippling minority group defensiveness that dominates much of their thought and behavior."

Herberg's advice has come full circle as we move into a new century.

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