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CHRISTIAN AMERICA OR SECULAR AMERICA?: THE CHURCH-STATE DILEMMA OF AMERICAN JEWS

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The "Christian America" Argument / The "Religious Nation" Response / The "Strict Separation" Approach / The Shift Away From Strict Separation / The Dilemma of American Jewry

"The government of the United States of America is not in any sense founded on the Christian religion." This statement, found in Article 11 of a 1797 treaty between the United States and the Bey and subjects of Tripoli, encapsulates what may safely be seen as a near unanimous Jewish view on the relationship of church and state in America. It is a manifestly negative view, a statement of what America is not. It also turns out to be somewhat of a fraud, since the article in question does not appear in the Arabic original of this treaty -- a fact only discovered some 133 years later. It is however a classic text, "cited hundreds of times in numerous court cases and in political debates whenever the issue of church-state relations arose,"⁽¹⁾ to reassure the faithful that no religion obtains special treatment in America. Christianity might

be the law of the land in other countries; here, American Jews have insisted, religious liberty is guaranteed by the Constitution itself.

But what does religious liberty mean? How are those who adhere to the religion of the majority, those who adhere to the religions of the minority, and those who adhere to no religion at all supposed to interrelate? And if America is not a Christian society, what kind of society is it and what is the relationship of that society to the state? American Jews, especially since they have insisted that the "Christian America" model is wrong, have an obligation to respond to these questions and to propose alternative models of what the relationship of church and state in America should be. How well they have fulfilled this obligation remains unclear, since no full-scale

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account of American Jewish thinking on these matters has yet appeared, and most of the literature that does exist is unfortunately more polemical than scholarly. Yet even the superficial survey I have undertaken here is sufficient to warrant the following conclusions: (1) American Jews have put forward alternative models, (2) their views on church and state have been more diverse than generally imagined, and (3) that in struggling with these issues they have confronted two basic challenges: (a) the challenge to participate as equals in majority society without embracing the majority's religion; and (b) the challenge to decide whether Jewish interests are better served under a system that guarantees equality to all religions or one that mandates complete state separation from any religion.

The "Christian America" Argument

The idea that America is a Christian nation has its roots in the colonial period and continues as an unbroken tradition down to the present day. "From the beginning," Robert Handy explains, "American Protestants entertained a lively hope that some day the civilization of the country would be fully Christian. The ways in which that hope was expressed and the activities it engendered varied somewhat from generation to generation, but for more than three centuries Protestants drew direction and inspiration from the vision of a Christian America. It provided a common orientation that cut across denominational differences, and furnished goals toward which all could work, each in his own style and manner."⁽²⁾ The Constitution and the Bill of Rights (which originally applied only to the federal government and did not become binding upon the states until the twentieth century) did not dampen the ardor of those who embraced the Christian American ideal, for they interpreted these documents narrowly. Their reading -- and whether it was a correct one or not is less important than the fact that they believed it to be true -- was summed up by Justice Joseph Story in his famous Commentaries on the Constitution (1833):

The real object of the amendment was, not to countenance, much less to advance Mahometanism, or Judaism, or infidelity, by prostrating Christianity; but to exclude all rivalry among Christian sects, and to prevent any ecclesiastical establishment, which should give to an hierarchy the exclusive patronage of the national government.⁽³⁾

Story's view was buttressed by various notable court decisions which, in accordance with British precedent, assumed that "the Christian religion is recognized as constituting a part of the common law."⁽⁴⁾ Chancellor James Kent, chief justice of New York's highest court, held in 1811 that religious freedom and church-state separation did not stand in the way of a common law indictment for malicious blasphemy, for "We are a Christian people and the morality of the country is deeply ingrafted upon Christianity." One hundred and twenty years later, in 1931, the same phrase -- "we are a Christian people" -- was used by the United States Supreme Court in a decision known as U.S. v. Macintosh. In 1939, the Georgia Supreme Court in upholding a Sunday closing law, forthrightly declared America to be "a Christian nation."⁽⁵⁾

Individual Americans have been even more outspoken in associating the state with the religion of the majority. Daniel Webster, for example, argued eloquently before the Supreme Court in the case of Vidal v. Girard's Executors (1844) that "the preservation of Christianity is one of the main ends of government," that a school "derogatory to the Christian religion," or even a school "for the teaching of the Jewish religion" should "not be regarded as a charity," and that "All, all, proclaim that Christianity ... is the law of the land." He lost his case, but won cheers from members of the Whig Party. Furthermore, his views with regard to the illegitimacy of schools "for the propagation of Judaism" won support from the Court, even as it rejected his claims on other grounds.⁽⁶⁾ Webster may well have changed his mind later on.⁽⁷⁾ Still, the views he expressed in this case

clearly reflected the sentiments of a significant minority of Americans, in his day and many decades afterward as well.

The "Religious Nation" Response

American Jews have, broadly speaking, offered two meaningful alternatives to the claims of "Christian America." Both of them are historically well grounded, both appeal to American Constitutional ideals, and both claim to promote American and Jewish interests. One stresses the broadly religious (as distinct from narrowly Christian) character of the American people. The other stresses church-state separation and the attendant secular nature of the American government. They reflect different readings of history, involve Jews with different kinds of friends and allies, and translate into radically different policy positions.

The first response conjures up an image of Americans as a religious people, committed to no religion in particular, but certain that some kind of religion is necessary for the well-being of all citizens. This idea finds its most important early legislative expression in the Northwest Ordinance of 1787 where "religion, morality and knowledge" -- not further defined -- are termed "necessary to good government and the happiness of mankind." Leading Americans from Benjamin Franklin (who proposed that non-denominational prayers be recited at the Constitutional Convention) to Dwight D. Eisenhower ("Our form of government has no sense unless it is founded in a deeply felt religious faith, and I don't care what it is") have championed similar views, as have some proponents of what is now known as civil religion.(8) The concept is somewhat nebulous, and means different things to different people. What is important here, however, is the existence of an ongoing tradition, dating back to the early days of the republic, that links Americans to religion without entering into any particulars. It is a tradition that counts Judaism in among all other American faiths, Christian and non-Christian alike.

This tradition, although rarely appealed to by American Jews today, formed the

basis for almost every important American Jewish call for religious freedom in the early decades following independence. A 1783 Jewish petition to the Council of Censors in Pennsylvania, for example, attacked a test oath demanding belief in the divinity "of the old and new Testament," on the grounds that it conflicted with the state's own declaration of rights -- "that no man who acknowledge the being of a God can be justly deprived or abridged of any civil rights as a citizen, on account of his religious sentiments." This declaration of rights, which allied the state with theism, was inclusive of Jews, and did not trouble them at all. Indeed, Jonas Phillips, in another petition on the same subject, declared that "the Israelites will think themselves [sic] happy to live under a government where all Religious societies are on an Equal footing." Jews, in short, sought religious equality, not a state divorced from religion altogether. When efforts were made in 1809 to deny Jacob Henry of North Carolina a public office for refusing to subscribe to a Christian test oath, he further underscored this point: "If a man fulfills the duties of that religion which his education or his conscience has pointed to him as the true one, no person, I hold, in this our land of liberty has a right to arraign him at the bar of any inquisition."(9)

Nowhere in any of these statements do Jews suggest that their rights should stand on an equal basis with those of non-believers. Nor did Jews protest when several states, including Pennsylvania and Maryland (in the famous "Jew Bill" of 1826), accorded them rights that non-believers were denied. Instead, most early American Jews accepted religious freedom as a right rooted within a religious context. Mordecai Noah, a leading Jewish figure of his day, defined it as "a mere abolition of all religious disabilities." Jews did not mind that America firmly committed itself to religion; their concern was mainly to ensure that this commitment carried with it a guarantee to them that, as Noah put it, "You are free to worship God in any manner you please; and this liberty of conscience cannot be violated."(10)

Jewish support for this essentially pro-religion position remained strong throughout the first two-thirds of the nineteenth century. One well-versed student of the subject, Shlomith Yahalom, concluded in her recent doctoral dissertation that American Jews during this period were concerned with "freedom of religion and not freedom from religion." Rather than siding with the demands of anti-religious organizations, she writes, many Jews supported "impartial aid to all religions."⁽¹¹⁾ A prime example of this may be seen in the Civil War when advocates of "Christian America" limited the appointment of chaplains to those who were termed "regularly ordained minister[s] of some Christian denomination." When a Jewish chaplain was refused on this basis, Jews naturally responded with vigorous protests. What they sought, however, was not an abolition of the chaplaincy, as a secularist interpretation of America's religious tradition might have demanded, but only religious equality. When the law was changed so that the word "Christian" was construed to mean "religious," allowing chaplains of the Jewish faith to be appointed, the Jewish community pronounced itself satisfied.⁽¹²⁾ Nor was this a unique case. As Professor Naomi Cohen explains in her recent book on German Jews in the United States:

The Jewish pioneers for religious equality generally asked for government neutrality on matters of religion ... a neutral-to-all-religions rather than a divorced-from-religion state. Indeed, the latter concept, which in the climate of the nineteenth century was tantamount to an anti-religion stance, was as abhorrent to Jews as it was to most Americans. Rabbis, long the most influential leaders of the community, taught that religion was a vital component of the good life and, like Christian clergymen, inveighed against the inroads of secularization.⁽¹³⁾

While this response to the challenge of "Christian America" never completely lost its appeal, Jews in the last third of the nineteenth century found to their dismay that calls for religious equality fell more

and more on deaf ears. The spiritual crisis and internal divisions that plagued Protestant America during this period -- a period that confronted all American religious groups with the staggering implications of Darwinism and biblical criticism -- drove evangelicals and liberals alike to renew their particularistic calls for a "Christian America." Evangelical leaders championed anti-modernist legislation to protect the "Christian Sabbath," to institute "Christian temperance," to reintroduce Christianity into the schools, and to write Christian morality into American legal codes.⁽¹⁴⁾ Liberal Christians may have been somewhat more circumspect, but as Robert Handy indicated, their goal too was "in many respects a spiritualized and idealized restatement of the search for a specifically Christian society in an age of freedom and progress."⁽¹⁵⁾ The implication, spelled out by one writer in the American Presbyterian and Theological Review, was that non-Protestants could never win full acceptance as equals:

This is a Christian Republic, our Christianity being of the Protestant type. People who are not Christians, and people called Christians, but who are not Protestants dwell among us, but they did not build this house. We have never shut our doors against them, but if they come, they must take up with such accommodations as we have If any one, coming among us finds that this arrangement is uncomfortable, perhaps he will do well to try some other country. The world is wide; there is more land to be possessed; let him go and make a beginning for himself as our fathers did for us; as for this land, we have taken possession of it in the name of the Lord Jesus Christ; and if he will give us grace to do it, we mean to hold it for him till he comes.⁽¹⁶⁾

A proposed "Christian Amendment" designed to write "the Lord Jesus Christ" and the "Christian" basis of national life into the text of the Constitution attempted to ensure that these aims would be speedily realized.⁽¹⁷⁾

Jews, new to American and all-too-familiar with the anti-Jewish rhetoric of Christian romantics in Europe, were understandably alarmed by these efforts. As in the old world, so in the new, they thought, proponents of religion were allying themselves with the forces of reaction. In search of a safe haven, many Jews now settled firmly down in the freethinking liberal camp; it seemed far more hospitable to Jewish interests. Jews also turned increasingly toward a more radical response to "Christian America" -- the doctrine of strict separation.

The "Strict Separation" Approach

Church-state separation is, of course, an old idea in America; its roots lie deeply imbedded in colonial and European thought. The idea in its most radical form was embraced by Thomas Jefferson who believed, at least for much of his life, that the state should be utterly secular, religion being purely a matter of personal preference. "The legitimate powers of government," Jefferson wrote in his Notes on Virginia, "extended to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods or no God." Jefferson refused to proclaim so much as a Thanksgiving Day, lest he "indirectly assume to the United States an authority over religious exercises." We owe to him the famous interpretation of the First Amendment as "a wall of separation between church and state."(18)

It is by no means clear when Jews first began to express support for this model of "secular government." In the election of 1800, a majority of the few thousand Jews in the country supported Jefferson, but not on the basis of his religious views. Indeed, Benjamin Nones, a Philadelphia Jewish merchant and broker, pointed out in Jefferson's defense that the future president "in his very introduction to the Declaration of Independence, declared all men equal, and implores a divine Providence" -- a clear indication of where Nones's own priorities lay.(19) Isaac Leeser, the most important Jewish religious leader of the pre-Civil War period, stood much closer to the radical

Jeffersonian view. He repeatedly invoked the principle of church-state separation in defense of Jewish rights, took an active role in the battle for Jewish equality on the state level, and was vigilant in his opposition to such alleged Christian intrusions into American public life as Sunday closing laws, Christian pronouncements in Thanksgiving proclamations, official references to Christianity in state and federal laws, and Christian prayers and Bible readings in the public schools. Even Leeser, however, was primarily motivated by a desire to assure Jews equal rights and to prevent their assimilation into the mainstream. While he was more wary of religious intrusions into public life than were some of his Jewish contemporaries, he did not literally advocate a secular government, much less an atheistic one.(20)

It was, then, only in the post-Civil War era, with the revival of efforts to create a "Christian America" and the resulting ties between Jews and advocates of religious radicalism and free thinking (themselves on the rise during this period), that American Jews began unequivocally to speak out for a government free of any religious influence. Leading Jews participated in such groups as the Free Religious Association and the National Liberal League, and such notable Reform Jewish leaders as Rabbis Isaac Mayer Wise, Bernhard Felsenthal, and Max Schlesinger, as well as the Jewish lay leader Moritz Ellinger, came to embrace the separationist agenda spelled out in such periodicals as The Index, edited by Francis Abbot. As Professor Benny Kraut has pointed out, during this period "the issue of church-state relations precipitated a natural, pragmatic alliance uniting Jews, liberal Christians, religious free-thinkers, and secularists in common bond, their religious and theological differences notwithstanding."(21) The result, particularly in terms of Reform Jewish thought, was a clear shift away from emphasis on Americans as a religious people, and toward greater stress on government as a secular institution. Thus, in 1869, Isaac Mayer Wise proclaimed that "the State has no religion. Having no religion, it cannot impose any

religious instruction on the citizen, adult or child."(22) Bernhard Felsenthal, in an 1875 polemic written to prove that "ours is not a Christian civilization" went even further:

God be praised that church and state are separated in our country! God be praised that the constitution of the United States and of the single states are now all freed from this danger-breeding idea! God be praised that they are "atheistical," as they have been accused of being by some over-zealous, dark warriors who desire to overcome the nineteenth century and to restore again the fourteenth century. God be praised that this has been accomplished in our Union and may our constitutions and state institutions remain "atheistical" just as our manufactories, our banks, and our commerce are.(23)

This soon became the standard Jewish line on church and state. The Union of American Hebrew congregations, founded in 1875 (and not originally an organ of the Reform movement), devoted one of its first resolutions to an expression of support for the "Congress of Liberals" in its efforts "to secularize the State completely."(24) The Central Conference of American Rabbis, the American Jewish Committee and the American Jewish Congress expressed like support for "strict separationism" early in the twentieth century.(25) Even as late as the early 1960s, a recent study indicates, no significant deviation from this position was yet in evidence:

American Jews under the leadership of their defense organizations went on record time after time in significant court cases on behalf of separation....For the most part they eschewed completely the idea of equal government recognition of all religions or of non-denominational religious practices, and they called for non-recognition of any form of religion."(26)

The Shift Away From Strict Separatism

More recently, however, the coalition between Jews and secularists has come under increasing pressure. Beginning in the 1960s, Orthodox Jews abandoned their

opposition to state aid to parochial schools in the hope of obtaining funds for their own day schools. They argued, as Catholics had before them, that education in a religious setting benefited not only members of their own faith, but also the nation as a whole, and that funds used to support secular studies at these schools should not be denied just because the schools happened to teach religious subjects on the side. They also cast doubt on the whole Jewish separationist approach to the problem of church and state, terming it "robot-like" and "unthinking."(27)

Major Jewish organizations were actually not quite as committed to the secularist agenda on church and state as their opponents imagined. Taxation of church property, elimination of chaplains from the public payroll, opposition to the phrase "In God We Trust," and related efforts to outlaw all manifestations of religion in American life never found significant support in Jewish quarters, probably because they failed to comport with Jewish interests that were, in the final analysis, not totally secular at all.(28) But these rarely talked about exceptions did not alter the overall thrust of Jewish rhetoric on the matter of church and state, much less Jewish policy on most issues of contemporary concern.

In insisting that significant policy changes should take place, Orthodox Jews, later joined by neo-conservatives and others, argued that the whole alliance with strict separationists should be abandoned. They sought in its stead a new partnership with groups laboring to shape government policy in a pro-religion direction. They considered this -- a position better rooted in American Jewry's past than they realized -- to be in the best interests of Jews and Judaism, and good for interfaith relations as well. Where major Jewish organizations in the twentieth century feared erosion of the "no establishment" clause of the first Amendment, they stressed the need to champion "free exercise" of religion through laws and government programs designed to make it easier for observant Jews to uphold the tenets of their faith. To their mind, the threat posed by rampant secularism was

far more imminent and serious than any residual threat from the forces of militant Christianity.

The Dilemma of American Jewry

The breakdown of the twentieth century American Jewish consensus on the subject of church and state should not be surprising. If anything, the fact that the consensus lasted as long as it did is surprising, for it effectively masked an agonizing dilemma on the question of religion and state that characterizes much of modern Jewish history.

On the one hand, history teaches Jews to favor strict church-state separation as the only defense against a Christian dominated state. Those who emphasize this reading of history think that sooner or later "so-called non-denominational religious exercises" inevitably acquire "sectarian additions and deviations" and that "non-denominational" then becomes the majority's term for what the minority views as decidedly partisan. They fear that calls for religion in American life will, given the record of the past, likely turn into calls for a "Christian America." To prevent this, they argue for "a fence around the law so as to avoid approaches to transgression as well as actual transgression." They understandably worry that once religion gains entry into the public square, majority rule will come trampling down over minority rights, Christianizing everything in its path.(29)

On the other hand, history also teaches Jews to oppose secularization as a force leading to assimilation, social decay, and sometimes to persecution of all religions, Judaism included. Those who emphasize this reading of history welcome appropriate manifestations of religion in American life and propose a less absolutist approach to church-state separation -- freedom for religion. They insist that "support for religion is basic to the American system" and fear that completely divorcing religion from national life will result in "a jungle where brute force, cunning, and unbridled passion rule supreme." Only the idea "that wrongdoing is an offense against the divine authority and order," they argue, can

protect society against delinquency and crime. They also point out that Jews, as a small and often persecuted minority, should be wary of setting themselves too far apart from the majority, lest anti-Semitism result.(30)

What then of Jews in what Richard John Neuhaus has called "Unsecular America?" They are caught between two positions, both of them historically legitimate, ideologically convincing, and fraught with dangers. Experience has taught Jews conflicting lessons, since those who have held aloft the banner of religion and those who have trampled down upon it have proved to be both friendly and unfriendly at different times. Jews as idealists may seek to promote a utopian society in America where they and their neighbors can live as equals, safe from the fire and brimstone of the Christian state and the desolate barrenness of the secular one. How best to realize such a society, however, remains an unsolved riddle.

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NOTES

1. Morton Borden, *Jews, Turks, and Infidels* (Chapel Hill, 1984), pp.76-79.
2. Robert T. Handy, *A Christian America* (New York, 1971), p.viii.
3. Joseph Story, *Commentaries on the Constitution of the United States* (Boston, 1833), III, par. 1865 as quoted in Chester J. Antieau et al, *Freedom From Federal Establishment* (Milwaukee, 1964), p.160; cf. Michael J. Malbin, *Religion and Politics: The Intentions of the Authors of the First Amendment* (Washington, D.C., 1978).
4. *Shover v. The State*, 5 Eng. 259 as quoted in Bernard J. Meislin, "Jewish Law in America," in Bernard S. Jackson, ed. *Jewish Law in Legal History and the Modern World* (Leiden, 1980), p.159; cf. Borden, *Jews, Turks and Infidels*, pp.97-129.
5. *People v. Ruggles*, 8 Johns Rep. (N.Y.) 294 (1811); *U.S. v. Macintosh* 283 U.S. 605 (1931); *Rogers v. State*, 60 Ga. App. 722, cf. John Webb Pratt *Religion, Politics and Diversity* (Ithica, N.Y., 1967), pp.138,142; Leonard W. Levy, *Treason Against God* (New York, 1981), pp.334; Meislin, "Jewish Law in America," p.159.
6. *The Works of Daniel Webster* (Boston, 1951), VI, pp.175,166,176; cf. Anson P. Stokes and Leo Pfeffer, *Church and State in the United States* (rev. ed., New York, 1964), p.105; Borden, *Jews, Turks and Infidels*, pp.102-103.
7. Ferenc M. Szasz, "Daniel Webster — Architect of America's 'Civil Religion'," *Historical New Hampshire* 34 (1979), pp.223-243; Max J. Kohler, "Daniel Webster and the Jews," *Publications of the American Jewish Historical Society* 11 (1903), pp.186-187.
8. Benjamin Franklin "Motion for Prayers in the Philadelphia convention," in N.G. Goodman (ed.) *A Benjamin Franklin Reader* (New York, 1945), 242; Patrick Henry, "'And I Don't Care What It Is': The Tradition—History of a Civil Religion Proof—Text," *The Journal of the American Academy of Religion* 49 (1981), 41; cf. Russell E. Richey and Donald G. Jones (eds.) *American Civil Religion* (New York, 1974); John F. Wilson, *Public Religion in American Culture* (Philadelphia, 1979); Martin Marty, "A Sort of Republican Banquet," *The Journal of Religion* 59 (October 1979), pp.383-405.
9. These documents are conveniently reprinted in Morris U. Schappes, *A Documentary History of the Jews in the United States, 1654-1875* (New York, 1971), 64,68,122 (italics added).
10. *Ibid*, 279; cf. Jonathan D. Sarna, *Jacksonian Jew: The Two Worlds of Mordecai Noah* (New York, 1981), 132-135.
11. Shlomit Yahalom, "American Judaism and the Question of Separation Between Church and State" (Ph.D., Hebrew University, 1981), English section, p.14; cf. Hebrew section p.260.
12. Bertram W. Korn, *American Jewry and the Civil War* (New York, 1970), pp.56-97.
13. Naomi W. Cohen, *Encounter With Emancipation* (Philadelphia, 1984), p.77.
14. Ferenc M. Szasz, "Protestantism and the Search for Stability: Liberal and Conservative Quests for a Christian America, 1875-1925," in Jerry Israel (ed.) *Building the Organizational Society* (New York, 1972), pp.88-102; Paul A. Carter, *The Spiritual Crisis of the Gilded Age* (DeKalb, III., 1971); Jackson Lears, *No Place of Grace* (New York, 1981).
15. Handy, *A Christian America*, p.101.
16. *American Protestant Theological Review* 5 (July 1867), pp.390-391.
17. Borden, *Jews, Turks, and Infidels*, pp.62-74. Cohen, *Encounter With Emancipation*, pp.254-256.
18. Quoted in Stokes, *Church and State in the United States* 1964), pp.52-53; W.A. Blakely (ed.), *American State Papers Bearing on Sunday Legislation* (New York, 1891), p.57.
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20. Maxie S. Sellar, "Isaac Leiser, Architect of the American Jewish Community," (Ph.D., University of Pennsylvania, 1965), 136-175; cf. Isaac Leiser, *The Claims of the Jews to an Equality of Rights* (Philadelphia, 1841).
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23. Reprinted in W. Gunther Plaut, *The Growth of Reform Judaism* (New York, 1965), pp.180-181.
24. The full text of this July 1876 resolution is reprinted in *Where We Stand: Social Action Resolutions Adopted by the Union of American Hebrew Congregations* (New York, 1960), p.14.
25. Eugene Lipman, "The Conference Considers Relations Between Religion and the State," in B.W. Korn (ed.) *Retrospect and Prospect* (New York, 1965), pp.114-128; Naomi W. Cohen, *Not Free to Desist: A History of the American Jewish Committee* (Philadelphia, 1972), pp.433-452; Leo Pfeffer, "An Autobiographical Sketch," in James E. Wood Jr. (ed.) *Religion and the State* (Waco, Texas, 1985), pp.487-533.
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27. Marvin Schick quoted in Cohen, "Schools, Religion and Government," p.377, cf. pp.366-369.
28. Yahalom, "American Judaism and the Question of Separation Between Church and State," pp.17-28.
29. Quotes in Cohen, "Schools, Religion and Government," pp.354,345.
30. Alvin I. Schiff, *The Jewish Day School in America* (New York, 1966), p.177; Cohen, "Schools, Religion and Government," p.364.