

Church, Synagogue and State
Erev RH 2011-5772

Tonight is Erev Rosh Hashanah and the beginning of our New Year. Tomorrow is Thursday, a work and school day for most people in Maine. I hope to see many of you tomorrow but some of you I won't see.

Now that may be because tonight was enough, but it may be that you are supposed to work and in this terrible economy you don't dare take the day off. In some cases it may be a day of school that for some reason you are afraid to miss.

Last year Rosh Hashanah coincided with the first day of school at Kents Hill, and understandably most of the students did not want to miss. Kents Hill is a private school, but year after year public schools also end up in conflict with the Jewish holidays: maybe it's parents' night, or a spring concert that is scheduled for the first night of Passover.

Year after year we send out letters to the schools attended by our Hebrew students, but the Jewish holidays just aren't on the schools' radar screens.

This is hardly a new problem but this year it feels particularly threatening, because our current governor does not seem to understand the idea of separation of church and state. Moreover he represents a growing trend among the

Tea Party and evangelical Christians who are determined to make this country and this state officially Christian.

This attitude was expressed in the proclamation which the governor, inspired by Gov. Rick Perry of Texas, signed on June 6 proclaiming August 6 as a day of prayer and fasting. Earlier in May, Gov. LePage and his wife affirmed their support for the National Day of Prayer urging that “the cause of Christ prevail in our schools, our courts and our homes.”

In many ways I think this effort is a reflection of nostalgia for an America that no longer exists. America, and Maine, are much more diverse than they ever were. More and more Mainers are not white Protestants or even French Catholics. When I speak at Maine high schools on Diversity Day I am struck by the fact that a great percentage of Maine teens seem to have no religious education at all. I won't say that this is a good or a bad thing, but it does put the idea that we are a Christian society in question.

However many Mainers who are nominally Christian do not understand that for Jews Jesus is not the same as God. I have been asked by young people whether Jews believe in God, and when I wrote to the KJ objecting to “the cause of Christ in our schools” I received many responses saying I obviously did not believe in God.

The idea that Adonai or Allah is God seems too complex for some uneducated Christians to grasp. And the idea that

those who do not believe in God have the right to their unbelief as American citizens is also foreign and unfathomable to many.

I suspect that the First Amendment to the US Constitution, stating that "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof*" would never be passed today.

We hear many generalizations about the religious preferences of the Founding Fathers. The Pilgrims and Puritans may have been fleeing religious persecution in England, but they had no intention of creating a commonwealth in Massachusetts with true religious freedom. Anne Hutchinson was banished for being an activist female Bible interpreter, and Mary Dyer was hung on Boston Common as a Quaker.

The men, like James Madison and Thomas Jefferson who wrote the Constitution were from a different generation than the dogmatic Puritans. They were men of the Enlightenment, not truly Christians but rather Deists who believed in a Creator who took no ongoing role in the affairs of humanity. They made a radical provision in Article 6, section 3 of the constitution stating that "*no religious test shall ever be required as a qualification to any office or public trust under the United States*"

In August 1790 George Washington, another Deist, wrote his famous letter to the Hebrew congregation at Newport RI.

It is now no more that toleration is spoken of as if it were the 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.

It was no coincidence that the thriving Jewish congregation had been established in Rhode Island, which had been founded as a place of refuge by Anne Hutchinson and Roger Williams who had to flee religious persecution in Massachusetts.

It was Chuck Acker who first called my attention to the 1796 Treaty of Tripoli, an effort to stop the Barbary Pirates from attacking American ships once they were no longer under British protection. The treaty with the Muslim rulers of North Africa states in translation that the United States was "*not in any sense founded on the Christian religion*" Some sources claim the translation is not accurate or that it was inserted to placate the Muslim Bey of Tripoli, but in any case it is there.

Separation between church and state in this country has often been less of a wall than a permeable barrier. I am old enough to have childhood memories of saying the Pledge of Allegiance without the words "under God," which were inserted by President Eisenhower. On the other hand, I recall reciting the Lords Prayer every day in my first grade classroom in 1952. Throughout elementary school our music classes involved singing Christmas carols, and I remember awkwardly trying to skip the Jesus parts. I grew up in

Newton Massachusetts and as the Jewish population grew there were fewer of these conflicts as parents advocated for their children. By the time I was in high school classes were cancelled for the High Holidays, mostly because so many teachers were Jewish that the cost of hiring substitutes would have been too high.

But the degree to which religion is involved in the schools depends very much on the locality and its religious population. In my first autumn here in Augusta I spoke at an interfaith Thanksgiving service about the importance of separation of church and state, since the Pilgrims came here to find religious freedom. The very next week I was asked to give the invocation in the state legislature. I was flattered and then I realized that such a prayer was exactly the kind of infringement of religion into government against which I had spoken, so I refused. Many people in the congregation told me I was making the wrong choice, because the Christians all do it so why don't we too?

I learned, through research in the excellent Legislative & Law library at the State House, that the US Supreme Court under Warren Burger in 1983 voted to accept the custom of legislative prayer in the case of Marsh vs Chambers. Burger and the majority reasoned from historical precedent, that this has been a custom in many legislative bodies since the founding of the country.

However a dissenting opinion written by William Brennan argued that legislative prayer fails a legal standard known as the Lemon test. In 1971 the court decided in the case of Lemon vs Kurtzman to ban reimbursement for salaries of teachers of secular subjects in private parochial school. In

that decision three requirements for legislation concerning religion were laid out:

The government's action must have a secular legislative purpose;

The government's action must not have the primary effect of either advancing or inhibiting religion;

The government's action must not result in an "excessive government entanglement" with religion.

If any of these 3 prongs are violated, according to the Lemon test, the government's action is deemed unconstitutional under the [Establishment Clause](#) of the [First Amendment to the United States Constitution](#).

In his dissension on Marsh vs Chambers Justice Brennan stated that legislative prayer fails the Lemon test on all three counts. This 1983 decision is generally seen as the start of a new era of a softening of the barrier between church and state, a process that is continuing today.

Church and state conflicts are under continual challenge by local practice. Richard Rubin attests that southern public school football games are routinely kicked off with a Christian prayer. Orthodox Jewish groups in densely populated Orthodox enclaves often seek to find loopholes for state financial support for religious education. The school board in Monsey NY is dominated by Orthodox members whose children do not attend the public schools but are committed to maintaining public busing and special education for their children. Legal decisions interrupt local practice only when someone brings a successful lawsuit.

Which leads us to Christmas, the most problematic time of year for Jews in Maine. All the kids love Christmas or hate Christmas and feel very Jewish at this time of year, for

better or worse. Some public schools still have kids singing Christmas carols. Many Jewish mothers feel compelled to go into their kids' classes to make latkes as a counterbalance. Parallel to Christmas is the High Holiday dilemma, when kids are penalized for missing sports practices, and teachers have to give up personal days to attend services.

We American Jews have benefited so much from the separation of church and state that we tend to take it for granted as a almost a Jewish teaching. Yet in Israel there is no separation of synagogue and state and some Orthodox groups in the US have attempted to get state aid for their religious schools. An interesting gray area in the US are the secular Hebrew language charter schools that have cropped up in New York and Florida.

In Israel public schools are generally either "*dati*" (religious) or "*chiloni*" (secular). There are only a few Masorti (Conservative) or Reform day schools—most kindergartens-- which have received state support, and even fewer experimental mixed Arab/Jewish schools. Now there are one or two Reform synagogues, in Modiin, for example, which have been built with state funds, which is considered a great victory for the Reform movement in Israel, since all Orthodox synagogues in Israel may be built with state funds.

The Orthodox domination of religious education in Israel is an outgrowth of the original deal made by the secular socialist David Ben Gurion in 1947 when he agreed to give

the Orthodox religious authority in family matters, including marriage and divorce, and in education in his government.

Today as the power of the Orthodox establishment is growing in the current Likud government, we see such phenomena as separate bus lines for religious people in Jerusalem where women must sit in the back, we see many neighborhoods and apartment complexes where the right to refuse any but Orthodox tenants is upheld, not to mention the maintenance of the Western Wall the Kotel, as an Orthodox synagogue with subservient status for women.

The Reform Movement in Israel, particularly through its legal branch, the IRAC or Israel Religious Action Center, has struggled for years through the Israel Supreme Court to maintain the religious rights of non Orthodox Jews in Israel and especially to lobby for recognition of converts. I urge all of you who care about Israel to support ARZA, the American Reform Zionist Association or IRAC directly to help them in this struggle.

In our Machzor (579 & 581) we have prayers for our country and for the state of Israel. I suggest that we truly direct our hearts in these prayers this Rosh Hashanah, and add the hope that both here and in Israel, religion and civic matters will keep a respectful distance from each other.

In Fiddler on the Roof, the question is asked, Is there a prayer for the czar? And the answer is, May God bless and keep the czar, far away from us. Rabbi Hananiah says in Pirkey Avot, *Pray for the welfare of the government, for if*

people did not fear it they would swallow each other alive. Rabbi Hillel says, Do not separate yourself from the community.

Also Rabbi Yohanan the Sandalmaker said, *Every assembly whose purpose is to serve God will have lasting effects; but an assembly whose purpose is not to serve God will not produce lasting results.* May this higher purpose be found in the hearts and minds of each individual who takes on civic responsibility. May it not be imposed by a prayer or a directive from outside.