

**The Private School Voucher Debate
in the Jewish American Community:**

A Window into a Greater *American* Question

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Table of Contents

Introduction.....1

Chapter One: An Interface between Government, Religion and Education.....8

Chapter Two: Private School Vouchers.....16

Chapter Three: The Private School Voucher Debate in the Jewish Community.....23

Conclusion.....38

Bibliography..... 42

Introduction

While most of the world views America as a melting pot of cultures and religions, the actual experience of various ethnic groups does not reflect this perception. Upon their arrival to America, all religious ethnic immigrant groups struggled to balance their previous cultures, religions, and identities with the challenges of living in a new country and interacting with a plurality of other immigrant cultures. As Harvard law school professor and Jewish scholar Alan Dershowitz has argued, the United States of America “does not have a *native* population – other than the one we tragically decimated and put on reservations. There are no *real* Americans as opposed to others who just live here. We are *all* real Americans, of differing religious and ethnic backgrounds.”¹ For this reason, being American has come to include a plurality of religious, ethnic, and cultural identities. This plurality has led to debates over education, multiculturalism, the role of religion in society, and the separation of church and state. The debate has occurred between communities and within them, reflecting the larger anxieties all immigrants face over their changing identities.

Because of the large number of Jewish immigrants who came to the United States in a very concentrated period of time, these debates have been particularly acute in the American Jewish community. Between 1880 and 1920 more than two million Jews who fled from pogroms, revolutions, or economic, political, and social disabilities arrived in the United States.² Joyce Antler, a professor of American Jewish history and culture, explains that Jews “felt like strangers in their cultures, outsiders to either the Jewish or the American

¹ Alan M. Dershowitz, *The Vanishing American Jew: In Search of Jewish Identity for the Next Century* (New York: Simon & Schuster, 1997), 144.

² Harry Golden, *The Greatest Jewish City in the World* (Garden City, New York: Doubleday & Company Inc., 1997), 95.

world, or to both.”³ As Jewish immigrants settled, most in New York City, they struggled to reconcile their dual loyalties as Jews and Americans.

Because education had not escaped the cultural turmoil of the larger American society, education became a point of contention for the struggles Jewish Americans faced during their settlement. Education can therefore be used as a lens with which to view the larger issues of American and Jewish identity. Considering the role education played in the transmission of culture and identity from one generation to the next, the government’s involvement in education has been a contentious subject for many Americans. Private school vouchers make use of tax revenue to underwrite private or parochial school tuition in lieu of mainstream public education. An examination of the use of these vouchers provides insight into how various religious and ethnic groups such as Jewish Americans faced social, identity, and religious issues in America. Concerned that private school vouchers potentially violated fundamental *American* values, many Americans have debated vouchers since their inception. These debates produced a larger discussion among Jews over the importance of Jewish education and Jewish commitment to democracy. Orthodox Jews remained committed to reviving Jewish identity, and Reformed Jews leaned toward guaranteeing democracy.⁴

While many issues contributed to the divide in the Jewish community over private school vouchers, the process of acculturating to America proved to be a significant factor.

³ Joyce Antler, *The Journey Home: Jewish Women and the American Century* (New York: The Free Press, 1997), xi.

⁴ It is important to note that Reform and Orthodox communities were just two types of Judaism in America. Beliefs and practices varied dramatically among American Jews, even within Reform and Orthodox communities. While no group has just one viewpoint, evidence reveals that in general there was an intense and clear division between these two forms of Judaism. For the purpose of this thesis, I have formed my arguments based on this evidence and intentionally and distinctly grouped Reform and Orthodox Jews. The disagreement between Orthodox and Reform Jews over their beliefs and values has led to a particularly stark and intense division over private school vouchers.

The freedom afforded by this nation was among the most important reasons for the success of the American Jewish community.⁵ With no established church or official religion, America gave Jews not only a refuge from persecution, but also a new personal freedom and self-respect perhaps unsurpassed in their history.⁶ The American public school served as a great assimilating force for many Jewish immigrants. Jews often regarded public education as essential to democracy and as a powerful guarantee toward upward mobility and eventual acceptance into the mainstream for all immigrants. The pluralistic society encouraged Jews to establish a strong and unified Jewish identity. Yet, these new personal freedoms ultimately altered and further diversified the religious environment in which Judaism operated, where many Jews disregarded their Jewish beliefs, traditions, and practices at the expense of acculturating to American society.⁷

Even as interfaith ties strengthened and Jews assimilated, Dr. Jonathan Sarna, one of America's foremost commentators on American Jewish history, religion and life, has explained that they also worked to revive Judaism, as if in response to those who attempted to undermine it.⁸ Historically, Jews retained their Jewish identity, at least in part, because of anti-Semitism.⁹ In Eastern Europe, Jews were driven into ghettos, discriminated against, and excluded from certain livelihoods, but they unified as a Jewish community, resisting persecution as best they could.¹⁰ In the mid-twentieth century, the experience of the Holocaust made Jewish identity in America seem more important than ever before. Sarna explains that, "Something of a spiritual and cultural revival washed

⁵ Joyce Antler, *The Journey Home*, 147.

⁶ Dershowitz, *The Vanishing American Jew*, 145.

⁷ Jonathan D. Sarna, *American Judaism: A History* (New Haven and London: Yale University Press, 2004), 30.

⁸ *Ibid*, 267.

⁹ Dershowitz, *The Vanishing American Jew*, 4.

¹⁰ *Ibid*, 5.

over American Jewry as Hitlerism rose...”¹¹ Their tragic experience in Eastern Europe combined with anti-Semitism in the United States forged a collective memory about persecution that contributed to a resurgence of Jewish identity in America. Eventually, acceptance into the mainstream lost much of its former attraction to those who feared the loss of Jewish identity.

Many Jews recognized the importance of Jewish education in pioneering this resurgence in Jewish identity and religious belief. Jews began to equate the necessity of Jewish education with the necessity of maintaining Jewish identity. Consequently, many Jewish parents shifted away from public schooling and began sending their children to private Jewish schools in numbers much higher than before. In 1937, the Orthodox community founded three Jewish all-day schools: Hebrew Institute of Long Island, Ramaz School in Manhattan, and Maimonides School in Boston.¹² In the decade between 1940 and 1950, Sarna reports that ninety-seven Jewish all-day schools were founded in the United States and Canada, where in the previous twenty years only twenty-eight were established.¹³ While the movement grew for sometime, in post war-times, after the threat to collective Judaism declined, so too did the enrollment in Jewish schools. Between 1957 and 1982 enrollment in these schools decreased by over 35% from 589,000 to 372,000 students.¹⁴ As Jews deviated from Jewish education, disagreements heightened in the Jewish community over Jewish private schooling options

¹¹ Sarna, *American Judaism*, 267.

¹² *Ibid*, 268.

¹³ *Ibid*.

¹⁴ Leora W. Issacs, “What We Know About...Enrollment,” in Dr. Stuart L. Kelman ed., *What We Know About Jewish Education: a Handbook of Today's Research for Tomorrow's Jewish Education* (Los Angeles, California: Torah Aura Productions, 1992), 63.

versus American public schooling options – a disagreement that mirrored a larger struggle centered on maintaining equilibrium between Jewish and American identity.

Issues of Americanization and assimilation, multiculturalism, and ethnic and religious identity provoked a debate over values in the Jewish community. The United States offered Jewish immigrants the opportunity to settle in a religiously pluralistic society and educate their children however they desired. In response, many Jews wanted to assimilate and Americanize because assimilation propagated acceptance, wealth, and opportunity. Dershowitz explains that, “we must recognize that many of the factors that fueled assimilation and intermarriage are positive developments for individual Jews.”¹⁵ Many Jews looked favorably on these developments and consequently associated Judaism with inconvenient rules and rituals that came to have no meaning for them in America.¹⁶ Simultaneously, though, many Jews worried about losing their traditions and cohesive religious identity, and remained fearful of Judaism’s ultimate extinction.

In this thesis, I address the relationship between civic and religious identity in the United States and its effect on the Jewish community. More specifically, I explore the nature of the educational conflict within the Jewish community and the loss of religious identity. The private school voucher debate that has occurred within the Jewish community is representative of a greater question faced by all ethnic and religious groups when deciding what it means to be an *American*.

The purpose of chapter one is to provide background on education, religion, and public schooling, in America. Chapter two presents background information on private school vouchers. By presenting their history and their relationship to religious schooling, the

¹⁵ Dershowitz, *The Vanishing American Jew*, 14.

¹⁶ *Ibid.*

second chapter illuminates the current status of private school vouchers in America. Chapter three focuses on the specific debate over vouchers in the Jewish American community. In this chapter, I address the manner in which the division over private school vouchers in the Jewish community adds to a larger argument over assimilation, separation of church and state, democratic values, and concepts of Jewish identity.

Scholars have extensively researched both the role of religion and education in forging American identity. For this thesis, I used secondary literature on private school vouchers, American democracy, Jewish education and Jewish identity. Much has been written concerning the debates over private school vouchers in the general American community. Most notable for my research is *Schools, Vouchers and the American Public*, written by Terry M. Moe, a senior fellow at the Hoover Institution and a professor of political science at Stanford University.¹⁷ Moe's study not only provides a history of the voucher system, when it was introduced and under what circumstances, but also explores how the voucher movement attracted support and opposition on religious grounds. Moe explains how the constitutional clause regarding the "separation of church and state" looms over the successes of the voucher movement in religious schools.¹⁸ Additionally, Jewish writers, such as Jonathan Sarna in *American Judaism*, and Alan Dershowitz in *The Vanishing American Jew*, have extensively explored the successes, challenges, and downfalls of Jewish Americans.¹⁹ This thesis incorporates these detailed studies to explore and understand the complexity of Jewish identity in America. Additionally, Thomas C. Hunt and James C. Carper's *Religion and Schooling in Contemporary America*, a compilation of essays on

¹⁷ Terry M. Moe, *Schools, Vouchers, and the American Public* (Washington, D.C.: Brookings Institution, 2001).

¹⁸ *Ibid*, 85.

¹⁹ Dershowitz, *The Vanishing American Jew*; Sarna, *American Judaism*.

religion, culture, education and pluralism in America, was essential to my research and my exploration of the private school voucher debate.²⁰

Very few studies have focused on a single religious group to analyze the debate over private school vouchers and to explore the points of contention in a specific religious community. Even a search of secondary literature concerning Catholic schooling, which has historically been in the center of controversy over private school vouchers, reveals a paucity of information. Consequently, primary sources were integral to my research regarding the actual debate in the Jewish community. These include opinions from Reform and Orthodox Rabbis, mission statements, school board resolutions, synagogue board resolutions, and other forms of publications on the topic. With this research and evidence on religion in America, private school vouchers, and the voucher debate in the Jewish American community, it is my intention that this piece of work will contribute to our understanding of the difficulties in reconciling American and Jewish identity.

²⁰ James C. Carper and Thomas C. Hunt, eds., *Religion and Schooling in Contemporary America* (New York and London: Garland, Inc., 1997).

Chapter 1:
An Interface between Government, Religion and Education

The unique relationship between church and state in the United States can be seen as an interface of government, religion, and education.²¹ Schooling in America therefore has to be viewed in the larger context of freedom of religion.²² Accordingly, the private school voucher debate which emerged in the 1980s mirrored the age-old American conflict over the separation of church and state. Like many other religionists, Jewish settlers arrived in the United States with a Jewish cultural identity and thereupon questioned what consequences freedom of religion had for them. Jews asked whether the separation of church and state inhibited or prohibited their Judaism especially in regards to educating their children.

Often political and religious, education occupied a perpetual and prominent role in church-state debates. Schools in the United States have frequently been used as a mechanism to transmit a certain set of cultural and social values to the next generation. Because education provided a way for children to form their worldviews, the type of education they received influenced how they thought about their cultures, their personal relationships, their definitions of moral or ethical behavior, and their religious or secular identities.²³ E. Vance Randall, in “Culture, Religion, and Education,” explains that education was the brewing ground for a dynamic tension in the American republic between the concepts of ideological pluralism and civic values.²⁴

²¹ Charles R. Kniker, “Religious Practices in Public Schools,” in James C. Carper and Thomas C. Hunt, eds., *Religion and Schooling in Contemporary America* (New York and London: Garland, Inc., 1997), 33.

²² James John Jurinksi, *Religion in the Schools: A Reference Handbook* (Santa Barbara, CA, Denver, CO, and Oxford, England: ABC-CLIO, INC., 1998), 4.

²³ E. Vance Randall, “Culture, Religion, and Education” in James C. Carper and Thomas C. Hunt, eds., *Religion and Schooling in Contemporary America* (New York and London: Garland, Inc., 1997), 72.

²⁴ *Ibid*, 71.

These tensions prompted the creation of a large variety of schooling in America, including religious, secular, private, public, and home schooling. The many different schooling options forced Americans to question how they were supposed to convey their particular ideals to their children while simultaneously maintaining an appropriate relationship with the state.²⁵ Reflecting a larger American conflict, the diversity of schooling systems, specifically, public and private, revealed two diametrically opposed positions in American culture which differed in their interpretation of religious freedom. On the one hand, some recognized religious freedom as the freedom to practice religion in public school, while others viewed it as the freedom to establish parochial schools. Other Americans, though, viewed the concept of religious freedom as a set of laws enforced to limit the relationship between religion and the state.

Diversity of religion has been an important element of American society since the colonial period.²⁶ In the 1600s, religious freedom was particularly important for immigrants who fled England and other European nations. Indeed, many of the original thirteen colonies were populated by immigrants of various minority religious groups.²⁷ While the new American republic rejected the concept of an established national church, some colonies developed their own established churches, a policy not completely abandoned until the 1830s.²⁸ Constitutional scholars Lee Epstein and Thomas Walker explain that Americans often forget that the colonies too became intolerant toward minority religions, and many

²⁵ E. Vance Randall, "Religious Schools in America: Worldviews and Education," in James C. Carper and Thomas C. Hunt, eds., *Religion and Schooling in Contemporary America* (New York and London: Garland, Inc., 1997), 84.

²⁶ Jurinski, *Religion in the Schools*, 3.

²⁷ Ibid.

²⁸ Kniker, "Religious Practices in Public Schools," 33.

passed anti-Catholic laws or imposed religious views on their citizens.²⁹ Other colonies, however, opted for religious tolerance. With the arrival of the Quakers in Pennsylvania in 1656, for example, they officially paved a path for a plurality of religions to migrate to the colonies.³⁰ Religion was a critical and contentious matter for the new nation and its importance is evident in the prominent place it is given in the First Amendment of the United States Constitution.

The Religious Establishment Clause of the First Amendment has been the source of vibrant debates surrounding the separation of church and state. It reads: “Congress shall make no law respecting an establishment of religion.”³¹ Furthermore, in the Free Exercise Clause of the First Amendment citizens are guaranteed the right to “free exercise” of religion. When the two religion clauses are read together, the First Amendment appears to instruct the states against advancing or inhibiting religion. In a letter he wrote in 1802 to the Danbury Baptist Association, Thomas Jefferson explained that the First Amendment built “a wall of separation between church and state,” and since this, Americans have debated the meaning of Jefferson’s words.³² Epstein and Walker provide three different interpretations of Jefferson’s supposed wall. They explain that the clause prohibited public aid for or in support of religion; second, forbade the state to favor one religion over another; and third, only prohibited the establishment of a *national* religion.³³ Since Jefferson’s true intent is unknown and the Framers did not reach unanimity on the issue, the meaning of the Establishment Clause is constantly in question.

²⁹ Lee Epstein and Thomas Walker, *Constitutional Law for a Changing America* (Washington, DC: CQ Press, 2005), 337.

³⁰ Jurinski, *Religion in the Schools*, 3.

³¹ “The Constitution of the United States,” Amendment 1.

³² Epstein and Walker, *Constitutional Law for a Changing America*, 395.

³³ *Ibid*, 358.

Interpreters of the Constitution relentlessly debated the Establishment Clause because while its interpretation seemed to disadvantage religion, the Court also enforced a degree of separation to seemingly benefit religion under the Free Exercise Clause.³⁴ Opponents of the new Constitution objected to its lack of any promises of religious liberty, and consequently, the first Congress addressed this issue when drafting the Bill of Rights. The Framers had to concentrate on the presence and degree of religious freedom guaranteed within the Constitution. As a result, the Free Exercise Clause became the first religious guarantee within the First Amendment.³⁵ While the Establishment Clause prohibited the government from assisting religion and the Free Exercise Clause prohibited it from hindering religion, Jan Robbins notes that, “while the language is clear, no clear guidelines resulted for education policymakers.”³⁶ Causing further tension in American society over who was responsible for organizing and controlling education, the vagueness of these guidelines created controversy over the entanglement of government and religion in American schools.

Leading to further uncertainty, Americans commonly viewed education as a public responsibility for molding American identities; however, the history of public schools is far more complicated. Education was not always a governmental responsibility. In fact, as Charles Kniker reports, “formal instruction in America from the 1600s to the early 1800s most often was conducted in private schools founded by religious groups.”³⁷ Curriculums were based on the Bible and denominational doctrines. Furthermore, involvement of state

³⁴ Thomas C. Berg, “Religious Liberty in America at the End of the Century,” *Journal of Law and Religion* 16, (February 2001), 188.

³⁵ Epstein and Walker, *Constitutional Law for a Changing America*, 339.

³⁶ Kniker, “Religious Pluralism in the Public School Curriculum,” 5.

³⁷ *Ibid*, 5.

governments with education was usually limited to providing some form of education for the poor or encouraging institutions such as churches to provide educational opportunities.³⁸

It wasn't until after the end of the Revolutionary War in 1783, that many of the nation's leaders suggested America needed a new form of education that would promote civic values, knowledge and skills.³⁹ Thomas Jefferson changed the way Americans thought about education by proposing that the responsibility of education belonged to the state and not to religious groups or to the family. Jefferson and his colleagues believed that the viability of the American nation depended on avoiding corruption from European ideas by crafting an educational plan unique to America.⁴⁰ The Founders focused on a common theme: to develop "a distinctively American system of education" tailored to the needs, interests, and concerns of the new nation. A chief need was to create a "new unity, a common citizenship and culture, and an appeal to a common future."⁴¹ In response, in 1791, when the First Amendment mandated a legal separation of church and state, the law established religious pluralism as a public policy while allegedly removing the previously required religious orthodoxy from the school systems.⁴²

The First Amendment inspired the establishment of a state-sponsored school system. By theoretically promoting a pluralistic society, government-funded schools attempted to eliminate the divisiveness of America's diverse society. Until the end of the nineteenth century, though, America was a Protestant nation. As Randall explains, "God was Protestant, and Americans were God's chosen people."⁴³ Protestant values were taught in

³⁸ Randall, "Religious Schools in America," 85.

³⁹ Kniker, "Religious Pluralism in the Public School Curriculum," 5.

⁴⁰ Randall, "Religious Schools in America," 88.

⁴¹ Kniker, "Religious Pluralism in the Public School Curriculum," 22.

⁴² Randall, "Religious Schools in America," 85.

⁴³ *Ibid*, 67.

schools irregardless of a child or parent's personal religious preference. While no specific version of the Bible was stipulated in the law, Americans understood that the Protestant King James version was intended.⁴⁴ Furthermore, in the interest of promoting Protestant hegemony throughout the United States, textbooks used in the schools presented overtly anti-Catholic and anti-Jewish positions.⁴⁵ Appalled by the required use of a Protestant version of the Bible and the general Protestant orientation of the schools, in 1842 Catholic Bishop Kenrick submitted a letter to the government detailing the complaints of Catholics.⁴⁶ In response, the government adopted two resolutions: "that children whose parents objected would not be required to attend or unite in any bible reading exercise, and that children may use any version of the Bible "without note or comment."⁴⁷ Bishop Kenrick's petition resulted in the first of many steps toward a pluralistic and multicultural public school system.

Although the Protestant orientation of America continued, it played a less prominent role in the political life of the United States during the Civil War and for about two decades thereafter.⁴⁸ Everywhere during the war, foreign-born Americans joined the army. Not only did immigrants gain a new standing as comrades in arms, the postwar industrial and agricultural growth increased the need for labor. Between 1870 and 1920, one of every three employers in manufacturing and mechanical industries was an immigrant.⁴⁹ Increasingly, immigrants came to be seen as positive assets to American life.

⁴⁴ Lloyd Jorgenson, *The State and the Non-Public School 1825-1925* (Columbia: University of Missouri Press, 1987), 74.

⁴⁵ *Ibid.*, 77.

⁴⁶ *Ibid.*, 78.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*, 111.

⁴⁹ *Ibid.*

Questions over schooling were still present during the war, but compromises were more common. Eventually, the American public school system began to promote secularization. Public schools were dedicated to inculcating the values of pluralism and were open to all irrespective of religious or ideological allegiance.⁵⁰ In fact, in Oregon in 1922, voters approved an initiative that required all children between the ages of eight and sixteen to attend public schools.⁵¹ While most states did not require attendance at public schools, more than twenty states enacted legislation requiring that the English language be the only medium of instruction.⁵² Patriotic fervor, accentuated by World War I, led to the support of government-funded schools, which intended to amalgamate students from different backgrounds by fostering a common American understanding, language, and set of values.

During the late twentieth century, around the same time the private school voucher debate arose, many Americans had become strongly devoted to the public school system. Terry M. Moe refers to this concept as “public school ideology,” a phenomenon of potentially great significance for American politics and education. Moe reported in 1990 that two-thirds of Americans, even those that sent their children to private schools, said the public school deserved support even when they were performing poorly. A substantial segment of the American population had, in effect, a normative attachment to the public schools. They viewed them,

As an expression of local democracy and a pillar of the local community; they admire the egalitarian principles on which it is based, they think it deserves our commitment and support, and they tend to regard as subversive to any notion that private schools should play a larger role in educating the nation’s children.⁵³

⁵⁰ Randall, “Religious Schools in America,” 88.

⁵¹ Jorgenson, *The State and the Non-Public School 1825-1925*, 205.

⁵² *Ibid*, 206.

⁵³ Moe, *Schools, Vouchers, and the American Public*, 87.

Viewpoints such as these ideologically wedded many Americans to public schools despite the choices they made regarding their own children's education.

That so many Americans were attracted to the public school movement should not be mistaken as a consensus on American education.⁵⁴ The public school has duly been a center for controversy and a source of contention in American debates. Divided by a utilitarian view of the schools and a deeper, more value-laden attachment, some Americans strongly criticized the public school system.⁵⁵ Even with this overwhelming commitment, some of the teachings in public schools may have been contradictory in nature to certain values and beliefs.

Varying opinions on education and religion exhibited how Americans dealt with fitting their own sense of truth and reality into American life.⁵⁶ The wavering dedication of many Americans to public and private schools is in many ways a reflection of their indecisive opinions regarding the true meaning of freedom of religion. These different viewpoints were apparent when the Court ruled that federal funding of private schools, specifically religious schools, through the use of private school vouchers, was permissible in certain cases. As chapter three will demonstrate, all of these issues were central to the private school voucher debate in the Jewish American community.

⁵⁴ Randall, "Religious Schools in America," 87.

⁵⁵ Moe, *Schools, Vouchers, and the American Public*, 87.

⁵⁶ Randall, "Religious Schools in America," 84.

Chapter 2:
Private School Vouchers

Private schools were the principle form of education in America; however, after the mid-twentieth century, they were no longer regarded in this manner. While public schools gained popularity because of their government support and pluralistic ideals, private schools extensively served the purpose of allowing parents to teach their children their own moral visions and exercise their freedoms through encouraging a specific ideology or belief.⁵⁷ Despite the desires of some parents to provide their children with religious education, economically disadvantaged families could not afford to send their children to private schools. Although the doctrine of the separation of church and state would seem to bar the provision of government aid for private church-affiliated schools, the courts have recognized a number of exceptions for practical reasons.⁵⁸ With the intent of furthering choice and equality by helping less fortunate families choose private schools, the government, with the support from many other organizations, introduced private school vouchers.

By the late twentieth century, vouchers were at the center of controversy over religious freedom in America. For opponents, the central problem underlying the voucher system was that it challenged a traditional understanding of the Constitution by entangling state funds with religious institutions. Many promoters of public funding for religious schools, however, supported them on the grounds that religious viewpoints were simply that - viewpoints.⁵⁹ In fact, they argued that failing to fund private religious schools with publicly

⁵⁷ Jorgenson, *The State and the Non-Public School 1825-1925*, 4.

⁵⁸ Jurinski, *Religion in the Schools*, 22.

⁵⁹ Danny Weil, *School Vouchers and Privatization: a Reference Handbook* (Santa Barbara, CA, Denver, CO, and Oxford, England: ABC-CLIO, INC., 2002), 109.

funded vouchers actually constituted a discrimination against a specific viewpoint and violated their ability to freely exercise their religion.⁶⁰

Controversies over public aid to religious organizations existed long before the modern debate erupted. *Bradfield v. Roberts*, in 1889, was the Court's first Establishment Clause challenge.⁶¹ In this case, the District of Columbia had entered into a contract with a Catholic hospital to help fund buildings on the hospital grounds and to pay a certain amount for each poor patient treated by the hospital. A taxpayer filed suit claiming violation of the First Amendment, but the Justices unanimously rejected the challenge.⁶² This demonstrates that from the start the Court was willing to allow some aid to religious institutions.

Using vouchers to cover educational expenses was also not a new concept. Thomas Paine, in the late eighteenth century, is credited with first suggesting a voucher system in the United States.⁶³ He was interested in promoting the goal of an educated, enlightened citizenry; and in his time the idea of government-operated schools was actually a foreign concept. Instead, he proposed financial support to people who could use these funds to purchase education in private schools.⁶⁴

Shortly after Paine introduced this idea, disagreements erupted in America. The first major confrontation regarding public aid to religious schools took place in New York City. Lloyd Jorgenson, in his historical analysis of the relationship between the state and non-public schools, explains that Catholics in New York City sought public aid for their schools beginning in the year 1840.⁶⁵ New York public schools received a large majority of the state

⁶⁰ Ibid, 110.

⁶¹ Epstein and Walker, *Constitutional Law for a Changing America*, 358.

⁶² Ibid.

⁶³ Clint Bolick, *Voucher War: Waging the Legal Battle of School Choice* (Washington, D.C.: Cato Institute, 2003), 1.

⁶⁴ Ibid.

⁶⁵ Jorgenson, *The State and the Non-Public School 1825-1925*, 70.

funds. In response to the Protestant nature of the public schools, some Catholics requested a portion of the funds for their schools. Resulting in the first rejection to the idea, after long and heated debates, the council denied the Catholic request.⁶⁶ In 1842, the legislature enacted the MaClay Law which provided that, “No school....in which any religious sectarian doctrine or tenet shall be taught, inculcated or practiced, shall receive any portion of the school moneys to be distributed as hereinafter provided.”⁶⁷ This law effectively set a standard for how the Constitution should be understood in relation to federal funding of religious schools. The ruling interpreted any public aid to religious institutions as a violation of the First Amendment. Though mostly unsuccessful in their attempts, administrators of private schools, specifically parochial schools, worked hard to overturn this interpretation for almost a century.⁶⁸

School vouchers were introduced into the modern political debate in the 1950s by the Nobel prize-winning economist Milton Friedman. Many parents who preferred to send their children to church-affiliated schools felt that their tax dollars should be used to help support those schools.⁶⁹ Friedman, therefore, proposed that non-public schools be funded through vouchers given to parents.⁷⁰ He advocated that governments could finance education by giving parents vouchers redeemable for a specific sum per child per year. Parents would then be free to spend this and any additional sum on purchasing educational services from an “approved” institution of their choice.⁷¹ Ultimately, this would allow families to select the

⁶⁶ Ibid, 74.

⁶⁷ Ibid, 75.

⁶⁸ Ibid.

⁶⁹ Jurinski, *Religion in the Schools*, 24.

⁷⁰ Donland A. Erickson, “Education Vouchers: Nature and Funding,” *Theory into Practice* 11, (1972).

⁷¹ People for the American Way, “Brief History of Vouchers,” People for the American Way Foundation, http://www.pfaw.org/pfaw/dfiles/file_136.pdf.

public or private schools of their choice and depending on their financial situation have all or part of the tuition paid.

Questions concerning aid to parochial schools in the form Friedman suggested are among the most enduring of those raised in religious establishment litigation. During the late twentieth century and early twenty-first century, voucher proposals were introduced in a number of state legislatures. As a result, law makers have sought to interpret the criteria needed for a voucher to be deemed constitutional.⁷² On one hand, many Americans saw the failure to include parochial schools in a general program of state assistance to non-public schools as constituting a discrimination against religion. On the other hand, many felt that including them actually entangled the government and religion.

The Supreme Court was consequently forced to examine the appropriate and constitutionally allowed role of the government. In response, the Court formulated a test to determine whether government action violated the Establishment Clause. Justice Tom C. Clark wrote: “To withstand the structures of the Establishment Clause there must be a secular legislative purpose and primary effect that neither advances nor inhibits religions.”⁷³ Any chief justice, though, can influence the direction of the Court. Thus, when Warren Burger became chief justice in 1969, he, unlike Justice Clark, was not concerned with whether the effect of legislation inhibited or advanced religion.⁷⁴

Scholars point to *Lemon v. Kurtzman*; *Early V. DiCenson* (1971) in order to interpret Burger’s meaning of entanglement as it is related to the Establishment Clause. The cases involved controversies over laws in Pennsylvania and Rhode Island that made aid available

⁷² William F. Davis, “Public Policy, Religion, and Education in the United States,” in James C. Carper and Thomas C. Hunt, eds., *Religion and Schooling in Contemporary America* (New York and London: Garland, Inc., 1997), 175.

⁷³ Epstein and Walker, *Constitutional Law for a Changing America*, 362.

⁷⁴ *Ibid.*

to “church-related educational institutions.”⁷⁵ In Pennsylvania, a statute provided financial support for teacher salaries, textbooks, and instructional materials for secular subjects to non-public schools. Further, the Rhode Island law also provided direct supplemental salary payments to teachers in non-public elementary schools.⁷⁶ The Court’s verdict in these combined cases was an important step towards a wider understanding of the Establishment Clause.

Writing for the majority, Burger articulated the *Lemon* test, a three-part test for laws dealing with religious establishment. To be constitutional, a statute needed “a secular legislative purpose,” a principal effect which neither advanced nor inhibited religion, and it could not foster “an excessive government entanglement with religion.”⁷⁷ The Court found that subsidization of parochial schools furthered a process of religious inculcation, and that the “continuing state surveillance” necessary to enforce the specific provisions of the laws would inevitably entangle the state in religious affairs.⁷⁸ The Court also noted the presence of an unhealthy “divisive political potential” concerning legislation which appropriates support to religious schools.⁷⁹ The debate, however, did not end there.

Since the *Lemon v. Kurtzman* ruling, many cases have used Burger’s test in the United States, specifically in connection with private school vouchers. In 1998, the Supreme Court of the state of Wisconsin ruled that the expanded Milwaukee voucher program--which allowed up to 15,000 children from underprivileged homes to attend any religious or other private school--did not violate either the state or federal constitutions.⁸⁰ In holding

⁷⁵ Ibid.

⁷⁶ Ibid, 363.

⁷⁷ Ibid.

⁷⁸ Ibid, 368.

⁷⁹ Ibid.

⁸⁰ Andrew J. Coulson, “School Choices,” The Citizens Guide to Educational Reform, <http://www.schoolchoices.org/roo/overview.html> (accessed October, 10 2006).

Milwaukee's school choice program constitutional, the Wisconsin Supreme Court ruled that states could not discriminate against religious individuals or institutions in the name of the Constitution. If a state wished to provide scholarships to families on the basis of neutral criteria, for example, their poverty, and leave it in the hands of families to make a private choice whether to attend a public, private or parochial school, the court did not interpret it as an establishment of religion.⁸¹

While this ruling brought forth a new interpretation of the Constitution, public debates demonstrated that the problem, again, remained unsolved. On June 27, 2002, the U.S. Supreme Court deliberated a similar case. In the Cleveland, Ohio school voucher case, the Court issued its ruling in *Zelman v. Simmons-Harris*. Justices ruled that a Cleveland program allowing parents to use publicly funded vouchers to pay tuition at private schools – including religious schools – did not violate the U.S. Constitution's prohibition on governmental establishment of religion, as reported,

As long as the decision of private schools to participate in the voucher program and the decision of the parents to enroll their children in religious schools cannot be attributed to any government action, the actual choices made by parents and the involvement, or lack of involvement, of particular schools has no bearing on the constitutionality of the program.⁸²

Despite the fact that more than 95% of Americans would use vouchers to subsidize Catholic or religious schooling, the Court majority held that the program was “neutral in all respects toward religion,” and that any tax funds flowing to religious schools did so as a result of individual choice.⁸³ According to the *Zelman* verdict, the program provided genuine secular schooling options. This decision seemingly settled the debate over the alleged

⁸¹ Nathan J. Diament, “Want Social Justice? Try Vouchers,” Institute for Public Affairs, 2000, http://www.ou.org/public_affairs/article/want_social_justice_try_vouchers.

⁸² U.S. Congress, *Supreme Court's School Choice Decisions*, 2002, pp. 8.

⁸³ The Christian Century Foundation, “Supreme Court Actions...Religious School Vouchers Upheld,” *Christian Century* 119.14, (July 3, 2002).

constitutionality of vouchers.⁸⁴ However, both the constitutionality debates and the arguments concerning the importance of supporting public schools, private schools, or simply the choice to choose between the two, have continued in religious and secular communities throughout America.

Reflecting a division among Jews, the debates over private school vouchers were particularly heated in the Jewish American community. These debates resembled many of the same issues Jewish Americans confronted initially in the United States. Not surprisingly, a public school system which promoted Protestant values was unacceptable to many Jewish Americans. The move toward promoting secularization in public schools presumably created a better situation for Jews, but in fact, it stirred conflict. When the government declared education as a public responsibility, the nation's school system was supposedly given a pivotal role in the social and cultural production of society. Many Jews, though, perceived Jewish education to be an important religious and cultural need. In order to function within their *American* world, some Jewish settlers, just like the Catholics, created their own private schools to teach certain worldviews to their children.

Debates over schooling furthered divisions of an already divided Jewish American community. The voucher proposal ultimately created more complications regarding the separation of church and state, public school ideology, and religious identity for the Jewish community. The debate required Jewish citizens to examine and balance the role of their religion in both their Jewish and American identities.

⁸⁴ Epstein and Walker, *Constitutional Law for a Changing America*, 361.

Chapter 3:
The Private School Voucher Debate in the Jewish Community

The divided response to private school vouchers in the Jewish community broke down along the same line as many past religious and ideological debates. The evolving spectrum of American Jewish religious life extended from fervent Orthodoxy to radical Reform.⁸⁵ Orthodox Judaism adhered to a relatively strict interpretation of the laws and ethics first canonized in the Torah and Oral Law.⁸⁶ In the early 1800s, while many Orthodox Rabbis appreciated America's freedom and understood America's modern lifestyle, they also took pride in their lack of accommodation to American life.⁸⁷ Conversely, in 1846, Rabbi Isaac Mayer Wise presented Reform Judaism to America.⁸⁸ He introduced a series of ritual and ideological modifications intended to improve American Judaism. Jewish unity was very important to Rabbi Wise, however ultimately this goal eluded him. As Sarna reports, his aim was two fold: to "reconcile Judaism with the age and its needs" and "to endear and preserve our religion."⁸⁹ As such, Reform Judaism, which eventually became the largest denomination of Judaism in America, came to teach the autonomy of the individual in interpreting the Torah and Oral Law.⁹⁰

Because the communal and unified life of Judaism had declined in America, Jewish Americans generally agreed that Judaism's traditions, values and existence were in need of preservation and revitalization. Similar to their dramatic variations in religious practice and belief, a stark divide existed among Jewish Americans in deciding a course of action. American Jews put forth many strategies to improve American Judaism and achieve a

⁸⁵ Sarna, *American Judaism*, 94

⁸⁶ *Ibid*, 59.

⁸⁷ *Ibid*, 94.

⁸⁸ *Ibid*, 96.

⁸⁹ *Ibid*, 98.

⁹⁰ *Ibid*.

common preservationist end. However, the different approaches reflected the deep uncertainty surrounding the fundamental priorities of American Jewish life.⁹¹

Reform and Orthodox proponents of Jewish life differed dramatically in their approaches for preserving American Judaism. A large part of the Orthodox community was invested in Jewish day school education and treated it as one of the most important tools in the survival of the American Jewish people. Reform Jews, however, argued that Judaism and Jewish education should undergo reformations and create innovative ways for Jewish Americans to practice and learn about Judaism. For example, they created supplementary religious schools and modified ritual Jewish practices to more easily accommodate American life. In short, a disagreement existed over the importance of Jewish private day school versus the American public school. Reform and Orthodox Jews questioned what these types of schooling represented both for Judaism and for America. Walter Ackerman, a prominent Jewish educator, said:

The public school as one of the more evocative symbols of American democracy, together with the freedom a republican form of government grants its citizens to establish private, sectarian schools is the ground upon which American Jews have debated the merits of day schools or part time schools for over a century.⁹²

It is not surprising then that the debate in the Jewish community over private school vouchers was so intense. Daniel J. Elazar, founder and once President of the Jerusalem Center for Public Affairs, was concerned with analyzing and solving the key problems that faced American Jews and world Jewry. Elazar explained that “Nowhere in the United States has the school voucher idea aroused more controversy and opposition than in the Jewish

⁹¹ Ibid, 90

⁹² Walter I. Ackerman, “What We Know About...Schools,” in Dr. Stuart L. Kelman ed., *What We Know About Jewish Education: a Handbook of Today's Research for Tomorrow's Jewish Education* (Los Angeles, California: Torah Aura Productions, 1992), 24.

community.”⁹³ In order to understand this debate, we must look further into the reasoning provided directly by Reform and Orthodox Jews over the past twenty years. Newspaper articles, synagogue board resolutions and statements, Jewish law forums, and articles and comments from Rabbis and Presidents of Jewish organizations, all provide a clear representation and understanding of this debate.

The basic elements of the private school voucher debate centered on the contention between the public school and the Jewish day school. This conflict was illustrated in the opinions written by Isidor Busch and Rabbi Isaac Leeser, published in Jewish newspapers in 1844-55. During this time, Rabbi Isaac Leeser was the principal Jewish traditionalist leader in America. Leeser championed a modernized form of Orthodoxy that focused on education, preaching, and philosophies, but made no fundamental changes to Judaism itself.⁹⁴ Isidor Busch, an immigrant Jew who fled Europe and became a prominent figure in Jewish life, strongly encouraged Jews to attend public schools. Unequivocal in his beliefs, he would say to the minority of Jews who favored separate Jewish schools, “Should our children be educated as Jews only or even as foreigners in language and spirit or shall they be educated as Americans, as citizens of the same free country, to be with them a harmonious people...?”⁹⁵ Busch believed that the most effective setting for religious education was in Sunday or evening school. Rabbi Leeser, however, waged a determined struggle for the foundation and improvement of Jewish education in the United States. Leeser’s multi-leveled justification of Jewish education was strongest when he argued for “a separate

⁹³ Daniel J. Elazar, “The Many Faces of School Vouchers,” Jerusalem Center for Public Affairs (2006), <http://jcpa.org/dje/articles/vouchers.html>.

⁹⁴ Sarna, *American Judaism*, 95.

⁹⁵ Ackerman, “What We Know About...Schools,” 22.

Jewish school which offered a combined curriculum of Jewish and general studies.”⁹⁶ Furthermore, Leeser was convinced that Sunday Schools, afternoon and evening schools, and all other forms of Jewish supplementary education were inadequate for the task of transmitting a meaningful understanding of Judaism to American children. In reality the majority of Jews dedicated themselves to the public school, reducing Jewish education to a secondary role.⁹⁷ Busch and Leeser’s disagreements unknowingly foreshadowed the modern debate over private school vouchers in the Jewish community, where the contention manifested in very similar ways.

A case involving Hurricane Katrina relief plans stirred the school voucher issues and serves as a good starting point for understanding this debate in the Jewish community. At the end of 2005, the Bush administration planned to pay for the private school education of Hurricane Katrina evacuees. The government would offer grants to both religious and nonreligious private schools who took in children. This decision triggered the first major debate over church-state separation in the relief effort.⁹⁸

Orthodox Jewish organizations lined up in favor of the proposal while most other Jewish groups continued to oppose vouchers. President of Margolin Hebrew Academy, an Orthodox day school in Memphis, Tennessee, which took in 21 new students, visited Washington to testify in favor of the proposal. The Union of Orthodox Jewish Congregations of America (OU), the nation’s largest Orthodox Jewish umbrella organization representing nearly 1,000 synagogues, issued a statement saying that failing to fund private schools who took in evacuees would be discrimination against religious families who were

⁹⁶ Nathaniel Popper, “Hurricane Relief Plan Stirs School Vouchers Debate,” The Forward Online, <http://www.forward.com/articles/hurricane-relief-plan-stirs-school-vouchers-debate>.

⁹⁷ Ackerman, “What We Know About...Schools,” 23.

⁹⁸ Ibid.

forced to evacuate their homes.⁹⁹ In opposition to the proposal, many Reform Jews argued that private school vouchers undermined fundamental American values that included public education and a commitment to a strict interpretation of the Establishment Clause. In Houston, for example, The Emery/Weiner School, a pluralistic Jewish institution, took in 29 students, more than any Jewish school in the nation.¹⁰⁰ Nathaniel Popper reported that the school's headmaster, Stuart Dow, explained "It's not that we couldn't use the funds, but to be honest, it's a largesse that I don't think meets the scrutiny of how the government should dole out federal funds."¹⁰¹ The sides Reform and Orthodox Jews presumed in the Katrina debate were not new. Rather, they exemplified inherent values held by these two sectors of Judaism.

The Reform movement had multiple organizations that opposed vouchers and encouraged Jews to actively contest them. Reform Jews reasoned their opposition to private school vouchers by defending the public school system. Indeed, Reform Jews believed that Jewish education was important; however, they considered private school vouchers as destructive to the nation's education system.¹⁰² In their eyes, taking away any money from the public school system would undermine their duties as Americans. Voucher funding, Reform Jews argued, "is a small bandage over a large wound," meaning, that voucher programs diverted desperately needed resources away from the public school system, ultimately helping only a few of the nation's children.¹⁰³ The rising popularity of the voucher program, they believed, indicated a need for dramatic change and improvement in

⁹⁹ Popper, "Hurricane Relief Plan Stirs School Vouchers Debate."

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Members of the Religious Action Center of Reform Judaism, "School Vouchers," Religious Action Center of Reform Judaism (2001), <http://rac.org/advocacy/issues/issuevouch>.

¹⁰³ Ibid.

the public school system. Rather than investing its funds in private schools, the Religious Action Center of Reform Judaism (RAC), a group representative of the Reform Movement, suggested that the government invest its funds in programs that “reinvigorate the public school system and return the system to its role as the heart of American identity-formation.”¹⁰⁴ Revealingly, the RAC believed public schools were a significant unifying factor among the diverse range of ethnic and religious communities in American society.

It is evident that Reform Jews had distinct and strong views regarding the role public education should occupy in America. According to the RAC, public schools were the “ladder that American Jews and so many others used to climb from poverty to affluence in American life.”¹⁰⁵ Mark J. Pelavin, Associate Director of the RAC, spoke on behalf of the Reform community in June of 1998 and said, that as Jewish Americans, “we value our experiences in the public school system.”¹⁰⁶ According to Pelavin, the public school system was the most powerful force in integrating immigrants into American society. The public school attempted to instill a sense of American identity while forging a common history and collection of experiences among American children.¹⁰⁷ Reform Jews believed that Americans and the American government needed to do anything necessary to sustain and improve the public school system.

Similarly, Women of Reform Judaism opposed the voucher program. The Board of Directors Statement for Women of Reform Judaism adopted a resolution as early as 1981 that took a clear position on public education. The section on tuition tax credits states,

¹⁰⁴ “School Vouchers,” 2001.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Mark J. Pelavin, “Reform Jewish Movement Scores Wisconsin Supreme Court Decision on School Vouchers,” Religious Action of Reform Judaism, http://rac.org/Articles/index.cfm?id=663&pge_prg_id=4408.

We are concerned that efforts to obtain government funds for non-public schools continue...Recently those favoring such aid to private schools have succeeded in introducing in Congress bills that would grant federal tax-credit for tuition fees paid to non-public elementary and secondary schools both secular and religious. We believe such bills are indirect public financing of non-public schools and could ultimately weaken the public school system.¹⁰⁸

Decades later, in 1998, women of Reform Judaism had not changed their position on private school vouchers. Ultimately, they believed that vouchers weakened the public school system.¹⁰⁹

Reform Jews did not discount Jewish education, but rather believed that by attending public school, Jewish children could contribute to American society and keep their Jewish identity by learning about their faith in supplementary schools. The Union of American Hebrew Congregations, an associate of Reform congregations in Boston, illustrated this sentiment in their mission statement of 2000, as it reads:

Support for public education should never obscure our enthusiastic support for Jewish day schools. They are vital to Jewish religious life, will produce many of our leaders, and are entitled to a fair share of community resources. But we must not ask the government to do for our community what our community is unwilling to do for itself.¹¹⁰

Instead of creating Jewish all-day schools, starting in the mid-nineteenth century, Reform Jews traditionally sent their children to Jewish supplementary school and to public schools for their general education.¹¹¹ By the late 1990s, supplementary schools were the predominant form of Jewish education in the United States, with nearly two-thirds of the

¹⁰⁸ The Women of Reform Judaism, "Resolutions and Statements: Board of Directors Statement, 1999: School Vouchers," Women of Reform Judaism, <http://wrj.rj.org/reso/vouchers.html>.

¹⁰⁹ Ibid.

¹¹⁰ Union for Reform Judaism, "Public Education," Union of American Hebrew Congregations (2001), <http://urg.org/printitem/index.cfm?id=7164type=articles>.

¹¹¹ Ackerman, "What We Know About...Schools," 24.

students in Jewish schools in the U.S. enrolled there – most of whom were from non-Orthodox communities.¹¹²

Corresponding with their dedication to public schooling, Reform Jews questioned what private school vouchers meant for a pluralistic society. Public schooling represented a multicultural America. The RAC argued that regardless of these ideals, America has always struggled with creating such a society, where all citizens are equal.¹¹³ On these grounds, Reform Jews argued that vouchers did not provide school choice, which theoretically created an equal opportunity society. Rather, they explained that vouchers contributed to the monetary means of a family to send their child to a private school if that school accepted the child.¹¹⁴ They argued that vouchers only raised the hopes of a select few, leaving many students ineligible to attend many of the private schools. By indirectly providing government funds to religious institutions, they explained that vouchers threatened a pluralistic society.

Despite their disagreement with many Reform Jews, some Orthodox Jews understood the Reform opinion. Daniel J. Elazar, an Orthodox Jew, explains that he was also raised on the idea that one of the greatest achievements of American society was the American public school - a common school for all American people who educated their children to be Americans. The school,

taught them the skills they needed to survive and prosper in the American economy, the ways of democracy and patriotism, socialized them into patterns of American life, and if they were children of immigrants or other deviant populations, acculturated them to the American way of life.¹¹⁵

¹¹² “School Vouchers,” 2001.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Elazar, “The Many Faces of School Vouchers.”

As a Jewish child in the 1940s, Elazar's parents taught him that the Jewish community owed a special debt of gratitude to the United States' public school system. Eventually, though, many Orthodox Jews changed their position on public schooling.

From an Orthodox standpoint, beginning in the mid-twentieth century, the Americanizing functions of the public schools could be accessed in other places. The majority of Americans were native-born and the multicultural understanding of what was American no longer required all American citizens to be the same or share the same value system.¹¹⁶ They believed that public education was no longer essential for molding American identity. As Elazar writes, "the Americanizing tasks of the public schools have passed into other hands, in part because the overwhelming majority of Americans no longer need to be 'Americanized.'"¹¹⁷ As a consequence, over a century ago, an increasing number of groups - religious, cultural, ethnic, and ideological - developed their own schools to transmit the knowledge and attitudes which they wished to foster among students. Many Orthodox Jews believed that Jewish day school was essential for the survival of the Jewish people. They hoped to offer their children a more effective method of teaching a certain version of American society that included their ideology and religion.¹¹⁸

The allegiance to day schools stemmed from the crisis of continuity the American Jewish community confronted. Much was written and spoken about the need to break the wave of assimilation. Nathan Diament, a law professor and Orthodox Jew, argued in defense of the Wisconsin ruling, saying that Jewish day school education was the best guarantee of

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

Jewish affiliation and participation.¹¹⁹ On behalf of the OU, Diament expressed his opinion that the Jewish community was prepared to let their devotion to a misreading of the Constitution surpass their commitment to raising the next generation of Jewish children.¹²⁰ He explained that “There are many parents who would like to send their children to day schools, but cannot afford to do so. Moreover, our Jewish community schools (of all denominations) continue to operate under severe deficit conditions.”¹²¹ In other words, improving Jewish day school education was their primary concern.

Orthodox communities throughout America had a widespread commitment to private school vouchers. They believed that the Jewish community should accept support for Jewish education from all legitimate quarters, which included government provided vouchers. For example, on February 7, 2007, Orthodox Jewish organizations in Texas called for a rally in support of private school vouchers. Agudath Israel of America, an Orthodox Jewish communal institution, along with other lobbying groups, worked hard to bring school vouchers to the state of Texas. In political decisions such as this one, Orthodox communities often turned to the Rabbinical Council of America and the OU to help guide them in making decisions in the best interest of their communities and schools. In 2006, the OU Convention Resolution on the Availability and Affordability of Jewish Education stated: “We urge the Jewish community to rethink its long time, knee-jerk opposition to government funding for nonpublic, including parochial, education and to embrace and support school choice efforts such as vouchers, tax credits and direct aid.”¹²² Furthermore, the delegates of the United

¹¹⁹ As discussed in chapter two, in 1998 the Supreme Court ruled on the Wisconsin case that including religious schools in the voucher program was constitutional – the first decision by any state Supreme Court upholding school vouchers.

¹²⁰ Nathan J. Diament, “The Reality of School Vouchers,” Jewish Law Commentary (1998), <http://jlaw.com/Commentary/schoolvouc6hers.html>.

¹²¹ Ibid.

¹²² Rabbi@Uosh.Org. “Rally in Austin.” E-mail to Ras@Berenacademy. Org. February 6, 2007.

States Conference of Catholic Bishops and the Rabbinical Council of America/OU stated that they were committed to working in partnership with each other and any others who shared their common interest to secure greater educational opportunity for all of the nation's children. Their official statement reads:

The Supreme Court has recognized that government funds may flow to religious institutions as a result of the private and independent choices made by individuals upon the basis of their own beliefs. Thus, initiatives facilitating the flow of such funds and services can enhance the Constitution's promotion of the free exercise of religion while remaining mindful of neither establishing nor endorsing religion.¹²³

This statement exhibited the Orthodox Jewish view that vouchers promoted religious freedom. They believed that children of all faiths, especially those from underprivileged families, would have benefited greatly from the opportunity to choose the school most appropriate for them.¹²⁴

For many Orthodox Jews, a voucher system was consistent with the fundamental Jewish *and* American values of social justice and equality. Based on this belief, they disputed the need for the strong public school ideology that Reform Jews ardently expressed. In his Jewish Law Commentary in 1998, Diament explained that the Jewish community promoted government funding of the needs of the less fortunate in the forms of public housing, Medicaid and food stamps; yet, when it came to education, this principle was cast aside.¹²⁵ Wealthy parents could choose any school they wanted for their kids; middle class parents could manage to move to suburbs where better public schools existed; the poor, however, he says, were "left to fend for themselves and restricted to dysfunctional public schools in the name of an interpretation of the Constitution now explicitly rejected by our

¹²³ Ibid.

¹²⁴ Diament, "The Reality of School Vouchers."

¹²⁵ Ibid.

nation's courts."¹²⁶ This opinion requested that the Jewish community remain committed to real social justice, measured in terms of creating fair and equal opportunities for all Americans. Not only were these values written in the Torah, but Diament claims that they were similar to the beliefs and hopes of America's founders – who hoped for a pluralistic society, where members of all faiths as well as non-believers could live freely. Orthodox Jews thought this freedom should extend to the freedom of choosing an appropriate school for one's child. Representatives of Agudath Israel, who sat on the Committee of Nonpublic Officials of New York, have long been on record as “supporting public and private programs designed to maximize education choice.”¹²⁷ Their support stemmed from their belief that countless children of all faiths with financial constraints could benefit from public assistance.

Undoubtedly, the debate is about a difference in perception of American values versus Jewish values, where education, social justice and the First Amendment are inextricable. For this reason, while the private school voucher debate in the Jewish community was less about the separation of church and state and more about schooling options, the constitutional debate still took place on some level. The first argument Reform Jews raised as school voucher opponents was that the Establishment Clause insisted that government funds may never, even indirectly, benefit religious citizens or institutions. Orthodox proponents, however, believed this argument was flawed. Diament explained that this is “clearly not what was intended by America's founders, nor has it ever been adopted by the U.S. Supreme

¹²⁶ Ibid.

¹²⁷ Ira Kasdan, “Constitutionality of Mayor Giuliani's Proposal Voucher Plan,” *Jewish Law and Policy: Examining Halacha, Jewish Issues and Secular Law* (March 9, 1999), <http://www.jlaw.com/LawPolicy/AgudahVoucherConstitutionality.html>.

Court.”¹²⁸ Further, he explained that even a cursory study of constitutional history reveals that the founders of this nation sought to ensure a religiously pluralistic society.¹²⁹

The Orthodox and Reform communities expressed these diverging opinions on the 1998 Wisconsin Supreme Court Ruling. The OU hailed the decision of incorporating religious schools into the voucher program. Harvey Blitz, president of the OU stated that the OU and its constituency were thrilled with this court decision: “We are proud of the role we have played in the school choice movement over the last three decades.”¹³⁰ Blitz was pleased that the Supreme Court championed the principle that the Constitution demands neutrality toward religious liberty, “not hostility.” Similarly, Diament explained that, “The Jewish community should welcome the Wisconsin decision and the prospect of school choice programs being implemented around the nation, for it is truly consistent with principles American Jews have long been committed to.”¹³¹ According to Orthodox leaders like Diament, this decision and others like it were a step in the right direction in the fight for religious liberty and equality in America.

In response, Reform Jews argued that public funding to religious school did not further religious liberty, but in fact violated the separation of church and state. Mr. Pelavin expressed this belief on behalf of the Reform community. Denouncing the Wisconsin Supreme Court’s decision as one that undermined the American traditions of democracy and religious liberty that made America a unique country, he maintained that, “The Court lowered the time-honored wall of separation between church and state and abandoned the judiciary’s traditional interpretation of the First Amendment’s Establishment Clause as

¹²⁸ Diament, “The Reality of School Vouchers.”

¹²⁹ Ibid.

¹³⁰ Kasdan, “Constitutionality of Mayor Giuliani's Proposal Voucher Plan.”

¹³¹ Diament, “The Reality of School Vouchers.”

meaning that the government will not fund parochial education.”¹³² Mr. Pelavin and other Reform Jews believed that a central principle of the Establishment Clause was that members of particular faiths, and not the government, should fund religious institutions.

Many Reform Jews also maintained that government funding for religious schooling could actually harm religious liberty. The RAC maintained on its website that “any program that permitted religious schools to receive public funds was poor public policy and certainly invited legal challenges.”¹³³ Even though their support of Jewish day school was not as strong as that of Orthodox Jews, Reform Jews still worried that if the government indirectly funded religious institutions, they would be subject to governmental control. They believed that the government had a right and in fact an obligation to demand that the institutions which it funded met certain requirements or standards.¹³⁴ Control like this, they believed, would not benefit religious schools or the government. Moreover, in their view a greater role of religion in American life was dangerous to American Jewry and should have been resisted on any ostensible grounds.¹³⁵

We must not conclude that Reform or Orthodox Jews believed Jewish education was more or less important. In fact, both Reform and Orthodox Jews valued Jewish education, but what was important in these debates was that their interpretation of the law and their understandings of American and Jewish values differed greatly. While Orthodox Jews viewed vouchers as directly representing the intentions of America’s founders, Reform Jews argued that vouchers violated fundamental laws of the United States Constitution.

¹³² Pelavin, “Reform Jewish Movement Scores Wisconsin Supreme Court Decision on School Vouchers.”

¹³³ “School Vouchers,” 2001.

¹³⁴ Ibid.

¹³⁵ Elliott Abrams, *Faith or Fear: How Jews can Survive in a Christian America* (New York: The Free Press, 1997), 34.

Furthermore, Orthodox Jews held Jewish education in higher regard than public education, while Reform Jews valued public education as the symbol of American democracy.

On a deeper level, these differences represented the challenges of religious freedom in America. Living in a society that privileged individuals and recognized no official religion, American Jews faced the difficult task of maintaining Jewish unity.¹³⁶ Jews have confronted these questions from the very beginning of their American experience, but have not yet been able to resolve how to balance American culture and their religious teachings, or agree on when to compromise and when to remain resolute.¹³⁷ Revealingly, the private school voucher debate is neither an example of concurrence nor of total disagreement; but on each side, Reform and Orthodox Jews were forced to make stark choices, choices that impeded Jewish unity in America and revealed the uncertainty of what it means to be *American*.

¹³⁶ Sarna, *American Judaism*, 372.

¹³⁷ *Ibid*, 371.

Conclusion

Today, the private school voucher debate is at the forefront of the Jewish agenda where tensions and disagreements abound. Amid this debate is a principal question over the importance of religion in American society. On the Jewish communal front, prominent Orthodox leaders continue to argue that if Jews are truly committed to providing Jewish educational opportunity to all Jewish children, they must accept and endorse government support. Many of these same Jews have promoted Jewish education as a symbol of religious pluralism. They hope that religion will play an important role in American society, and believe that this is the essence of what it means to be an *American*. On the constitutional front, now, more than ever, the arguments deployed by voucher opponents are collapsing around them. Court decisions around the country have indicated that when properly implemented, voucher programs to parochial schools do not violate the Establishment Clause.¹³⁸ From the earliest debate in *Everson v. Board of Education* in 1947, the Court has permitted the use of public money in the arena of parochial schools. Yet in their arguments, Reform communities remain dedicated to the same ideologies that have motivated them for decades, continuing to back public education and the principle of absolutism in the separation of church and state. They remain committed to American democracy on the grounds that Jews have prospered in an increasingly secular America. In this regard, they believe that a secular America is the only safe America for Jews.¹³⁹

Alan Dershowitz, however, has argued that as a result of the secular environment, there is no group in America that has less knowledge about its traditions and religion than the

¹³⁸ Diament, "Want Social Justice? Try Vouchers."

¹³⁹ Abrams, *Faith or Fear*, 35.

Jews. As he has said, “We are the most ignorant, un-educated, illiterate Americans when it comes to knowledge of the Bible, the history of our people, Jewish philosophy, religious rituals, and traditions.”¹⁴⁰ Many Jewish scholars point to Jewish education as the instrument of Jewish survival and therefore attribute the divisiveness of American Jewry to the decline in Jewish education. Orthodox support of the private school voucher system, therefore, symbolizes a strong commitment to Jewish education. Moreover, its commitment to Jewish education symbolizes a major concern over the increasing divisions and secularization of Judaism in America. It remains uncertain, however, whether private school vouchers are the solution to this problem.

It is clear that historically the Jewish community is divided and in danger of further divisions. In fact, many scholars have assumed that American Judaism is destined at some point to disappear.¹⁴¹ Sarna explains that,

freedom, the same quality that made America so alluring for persecuted faiths, also brought with it the freedom to make religious choices: to modernize Judaism, to assimilate, to intermarry, to convert. American Jews, as a result, have never been able to assume that their future as Jews is guaranteed.¹⁴²

Jewish immigration has declined drastically, the American Jewish community suffers from a low birth rate, conversions to Judaism have plummeted, and intermarriage has cut into America’s Jewish population totals.¹⁴³ A long standing fear exists that Jews cannot survive in an environment of church-state separation and religious freedom.¹⁴⁴

America has given Jews the freedom to practice their religion but has also threatened the existence of their Jewish identity. In a country where religion is wholly voluntary and

¹⁴⁰ Dershowitz, *The Vanishing American Jew*, 292.

¹⁴¹ *Ibid*, 356.

¹⁴² *Ibid*.

¹⁴³ Sarna, *American Judaism*, 360.

¹⁴⁴ *Ibid*, xxi.

religious diversity is commonplace, Americans are free to practice the religion of their choice in whatever form they desire. Jews, therefore, may choose what type of Judaism they practice, their own rabbi or teacher, or indeed, to practice no Judaism at all. Incorporating American liberal values into an understanding of Jewish identity and a Jewish way of life has been a daunting task for Jewish Americans, as the divisiveness of the private school voucher debate demonstrates. Jonathan Sarna's wise description about the current status of the Jewish community reveals the core of the debate. He concludes that,

At one and the same time, American Judaism seems to be experiencing both revitalization and assimilation; it radiates optimism concerning the future of American Jewish life, as well as a bleak pessimism. Indeed, some scholars speak of a "bipolar community," with "certain parts of American Jewry...deepening their Jewishness" and "others...on an accelerated assimilatory course out of the Jewish community."¹⁴⁵

With so many questions and conflicts confronting them, it comes as no surprise that the future of American Judaism remains far from solidified. However, while Judaism faces a threat of dying out, history suggests the possibility that despite the divisions in the Jewish American community, American Judaism can survive. Statistics have proven that Jewish education maintains Jewish identity and enables Jews to pass their faith onto their children.¹⁴⁶ Yet, these analyses fall short. In fact, while scholars attribute Jewish education as the mechanism for survival of Judaism in the United States, the high numbers of intermarriage and the absolute separation of church and state have also contributed to the lack of prejudice in American society. Therefore, both of these religious and secular influences have kept American Judaism, while divided, still alive.

Because private school vouchers challenge a traditional understanding of the Constitution, the controversies they generate illuminate the radical discontinuity among

¹⁴⁵ Sarna, *American Judaism*, 366.

¹⁴⁶ Abrams, *Faith or Fear*, 196.

Americans regarding fundamental democratic values. As an American Jewish woman, I too, have questioned the meaning of these values as they contribute to the essence of my compound identity. Growing up, I had the opportunity to attend both a non-denominational Jewish school and an Orthodox Jewish high school. I am immeasurably indebted to my Jewish education as it undoubtedly strengthened my Jewish identity. While I fear the decline of Judaism in the United States, I cannot help but consider that Judaism has flourished here because the government has not interfered. As we have seen, our Founding Fathers drafted the United States Constitution with the intent of neither assisting nor hindering religious freedom in our country. The balanced system which they attempted to create has ultimately granted me, and generations of other Americans, the precious right to openly practice allegiance to both my religion and my country. However, just like most immigrant, ethnic, and religious people, it has been not been easy to balance these two identities.

We have seen that the private school voucher debate serves as a window into the greater *American* question concerning the role religion plays in the formation of American identity. What remains questionable is how a country founded on liberal principles and composed of diverse cultures can safeguard individuality and promote a religiously free environment. As the Jewish community continues to confront vexing social and political challenges, as a whole, they remain uncertain if they can both be Jewish *and* in every sense an American. As such, this thesis concludes on an appropriate note of uncertainty. “The Jewish dilemma, at its core, involves a conflict of loyalties,” Sarna has observed, “faith pulls in one direction, America in the other.”¹⁴⁷

¹⁴⁷ Sarna, *American Judaism*, 365.

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