

When Is A Holiday Not A Holiday?

The state legislature scheduled an important special session for last Wednesday, then adjourned before sundown on account of Yom Kippur. It did not reconvene on Thursday — again, because of Yom Kippur.

That raises some interesting and practical questions on how government can accommodate to religious needs without becoming unconstitutionally entangled with them. In this case, the organized Jewish community made sure that the key legislators *knew* about Yom Kippur, but it was not suggested that Yom Kippur be made an official legal holiday.



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The point is that we do not want the state to decide what is and what is not a legitimate religious Holy Day. That would really give the state the power to "establish" religion, and that is exactly what the First Amendment forbids. It would be even worse if the state decided to "neutrally" accept as legal holidays those Holy Days designated by the various religious groups. Then, the state would be in the position of establishing religious groups as well as religious Holy Days.

If the state has the power to validate religious events or religious groups, then the state has the power to invalidate them. The authors of the Constitution felt that would be a dangerous power for the state to have. Neither freedom nor religion can flourish in this country unless religious observance is essentially voluntary.

On the other hand, if the state is completely "religion-blind" and does not accommodate to some of the religious needs of its citizenry, then it can obstruct the free and voluntary practice of religion. For example: the federal government has ruled that its agencies must normally allow Jewish employees to be absent on Jewish Holy Days of their choice. These are not legal holidays and therefore not paid holidays, but these absences are condoned. If this accommodation were not made, Jews would be effectively barred from government employment.

The Federal Equal Employment Opportunity Commission has ruled that private employers must abide by the same principle. (Of course, the matter of pay is up to the private employers. In one San Francisco bank, for example, the practice is to authorize one paid religious holiday, to authorize the others without pay).

There is one problem in this balancing act: there is some disability in not getting paid for a religious holiday. Most public employees simply take off in the official name of "sick leave" in order not to lose pay. There may be something a bit humiliating about invoking sick leave pay on religious holidays. But the alternatives, at the present, are to have the state establish religion, or to go without a day's pay — which some have suggested is not too great a penalty to pay in order to practice one's religion.

There is a fourth alternative, which the San Francisco JCRC has promoted at every opportunity: one or several "floating holidays," which employees can take off without designating a reason. Some private employers have adopted this practice, as have some school districts. The JCRC helped to initiate a legislative proposal to have at least one floating holiday for all state employees. So far, budgetary considerations have kept such a bill from being passed.

Another kind of "accommodation" to religious needs was indicated in a letter which was just sent by the JCRC to almost a thousand public schools in San Francisco, Marin and the Peninsula. The letter enclosed a calendar, prepared with the Board of Rabbis of Northern California. The calendar listed "Jewish holidays on which it is likely that children of the Jewish faith will be absent from school." The suggestion was not that schools be closed on those dates, but that teachers and administrators would want to take these dates into account in scheduling major activities, such as graduations, examinations, registrations and special events.

It was just this sensitive kind of accommodation which the state legislature made last week.