

Alan Mittleman

### THE THEOLOGICAL-POLITICAL PREDICAMENT OF AMERICAN JEWRY

Leo Strauss, in an autobiographical aside, spoke of being in the grip of a “theological political predicament” as a young man. He meant by this something like the following. For modern Jews the constellation of religious beliefs that seems to them reasonable and compelling—the theological horizon, so to speak—is constrained by the political horizon. They are spiritually indebted, to the point of dependency, on the values of the political system, which, for the lucky ones at least, derive from the Enlightenment. Judaism therefore depends on the Enlightenment. But what happens when confidence in the Enlightenment begins to wobble and Judaism, now weakened by its dependency, lacks the strength to make up the difference?

In Strauss’ day, this predicament took a particular form. Jews were wedded to a liberal solution to the Jewish problem: equal citizenship under the law was to have solved the perennial problem of Jewish suffering. They turned in hope to the realization of this ideal not in messianic time, but in their time. They had accommodated their religion, their traditional way of life, to suit the requirements of a liberal era. Their theological imagination had become liberal to its core. In the process, they lost the ability and the readiness to endure suffering as their ancestors had done. Jewish suffering became an anomaly for liberal Jews, an aberration in a liberal era rather than a metaphysical constant. The beliefs of the ancestors had become implausible, but the beliefs of the moderns, of the liberals, were also becoming implausible, and more so every day. Hence the predicament: with weakened faith in both traditional Judaism and in the possibility of a liberal solution there was almost nowhere to turn.

For American Jews, the theological political predicament is much less dire but it does nonetheless involve their long-term viability as a community. For many American Jews, no less than for German Jews, liberal norms, hopes, and convictions have become the substance and limit of their theological imagination. Let me illustrate this with two concrete examples. For many years, when I taught at a liberal arts college, every semester at least one of my students wanted to write a research paper on intermarriage. Typically, this student had a good Jewish upbringing and active Jewish involvement. Most likely the student had told his friends that he would only date other Jews and hoped someday to marry a Jew. His friends then chastised him, implying that he was guilty of prejudice or bigotry for discriminating against non-Jews as potential dates or mates. The student became confused and wanted to work through his conflicted values, his theological-political predicament writ small, in a paper.

Although this predicament sometimes took the form of adolescent peers asserting, in the name of personal freedom, their right to date whomever they wish, this was not always the case. What was at stake was not liberty or autonomy or expressive individualism, but a specific worry about discrimination. Choosing to date only Jews seemed to violate a deep-seated taboo. It made a distinction, thought to be invidious, between persons on the basis of religion or ethnicity. One might ascribe this to adolescent zealotry or confusion, but adult Jews appear to be no less zealous or confused. In a 2000 American Jewish Committee survey, 50% of American Jews answered that it was “racist” to insist that Jews marry only other Jews. This and other more recent surveys show an erosion of resistance to the very idea of intermarriage. Not only has intermarriage lost its taboo quality but many American Jews seem to affirm it as a triumph of open-mindedness and liberty over a discredited tribalism. American Jews seamlessly transfer liberal norms of conduct, fully appropriate to law and to civil society, to the Jewish sphere without hesitation. The theological horizon is constrained by the political imagination.<sup>1</sup>

My second example is drawn from an interview in the *Forward* (November 2, 2001) with *Playboy*'s Miss November 2001, Lindsey Vuolo. Ms. Vuolo is a proud Reform Jew and chose to include a photo of her Bat Mitzvah in the montage of nude pictures. When asked about the compatibility of her *Playboy* exposure with her Judaism, she reflected: “Some people will look up to this as a positive thing. With all the Chandra Levy and Monica Lewinsky talk, it’s a bit weird. But I think what I’m doing is positive. I’m not doing anything religiously wrong. I’m not being exploited—it’s my choice.”

Although she began to have some qualms during Yom Kippur, she managed to quiet her conscience. As the *Forward* explains: “When she heard that her rabbi

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<sup>1</sup> It is noteworthy, however, that in the same survey, 69% of Jews believe that the Jewish community has an obligation to encourage Jews to marry other Jews. The contradiction between the ascription of racism and the promotion of in-marriage is striking. This heightens the sense that deeply felt values are in conflict. For the complete survey, see: [www.ajc.org/site/apps/nlnet/content3.aspx?c=ijIT12PHKoG&b=846741&ct=1042043](http://www.ajc.org/site/apps/nlnet/content3.aspx?c=ijIT12PHKoG&b=846741&ct=1042043).

knew about the [photo] shoot, [she said] “Watching him deliver the sermon, I almost felt wrong. I was there atoning for my sins, but I don’t feel like I’ve sinned [with *Playboy*]. I’m not hurting anyone.””

For Ms. Vuolo, what constitutes the categories of the “religiously wrong” or “sin”? It would be religiously wrong for someone to exploit—to use or take unfair advantage of—someone else. It would be a sin to hurt, which apparently means, to infringe on the freedom of action, of someone else. But since, on her account, she hasn’t done either of these things her moral conscience is clear. Perhaps her rabbi, whose sermons she watches rather than hears, never preached on *tzniyut* (modesty). Most likely the Judaism articulated in her temple makes no room for *tzniyut* because, in terms of the prevailing liberal paradigm, it would be a personal lifestyle choice rather than a feature of a Jewish public morality. The very idea of a public morality would appear to violate the liberal respect for the privacy and autonomy of persons. And so two millennia of Jewish law and custom drop from view, as religious rights and wrongs, sins and virtues are reconstituted along the moral lines of a competing, virtually hegemonic liberal culture.

We are now in a better position to get an idea of the American Jewish version of the theological-political predicament. Liberalism, deeply felt although perhaps poorly understood, has moved from the political sphere to the religious one. It has colonized the Jewish religious and moral imagination. The liberalism to which I refer is not contemporary liberalism, in the sense of that set of ideas and values to which contemporary conservatism is opposed. Rather, I refer to the ancestor of both contemporary liberalism and contemporary conservatism in all their variations—that stream of political thought that places individuals and their liberty, equality, and agency at the normative center.<sup>2</sup> There is much to celebrate in the liberal tradition. We are all its beneficiaries and almost no one, Jew or gentile, wishes to live under a non-liberal regime when he has a choice in the matter. Nonetheless, liberalism becomes a predicament or crisis for American Jews when its premises and cultural effects subvert or imperil the continued existence of the Jews themselves. Were the views of those Jews who believe that Jewish endogamy is racist or that Judaism is an afterthought of the principle of non-interference to become truly dominant, then it would be difficult to see what future American Jewry could have, or deserve.

The task then is to reconfigure the relationship between the liberal tradition and the Jewish tradition such that their respective spheres of influence achieve a proper relationship. In the past, this relationship has often been styled as one of universalism versus particularism. I believe that this is profoundly misleading. As if we were not already sufficiently aware of it, the events of September 11 remind us that the liberal tradition is also a particularism. Other streams of civilization, such as Islam, do not share its anthropological, political, and normative assumptions. Both liberalism and Judaism are particularisms with universal aspirations.

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<sup>2</sup> D. Johnston, *The Idea of a Liberal Theory*, Princeton 1994, p. 17.

As particularisms, they ought to be able to find a mutually enriching co-existence. It is only when the universal intention of liberalism seeks to overwhelm Jewish particularism that trouble—both for the Jews and for liberalism itself—ensues. Or, alternately, trouble ensues when Jews equate the universal intention of liberalism with the universal intention of Judaism.

In the following, I will attempt to analyze how that co-existence has gone awry and how it might be made to work. My assumption is that the theological-political nexus of Judaism and liberalism cannot be severed, nor should it be. We must work from within the connection. Given the theological-political predicament, Jews are dependent upon liberalism. I argue that they must resist that upon which they depend. I also claim that liberalism will become more capacious and less monistic—to use Jean Bethke Elshtain's terms—through the force of their resistance. In resisting monistic liberalism, Jews can draw on the resources of their own political tradition and perhaps enrich the liberal tradition in the process.

The liberal tradition is about liberty. There were, as Quentin Skinner points out, traditions of liberty before liberalism.<sup>3</sup> Liberty before liberalism was grounded in Roman republican thought and appropriated by Renaissance neo-Roman thinkers such as Machiavelli. Such British thinkers as Milton, Harrington, and Sidney were advocates of liberty without being in the precise sense liberals. A tradition of liberty is also found in the Jewish political tradition. The Israelites are liberated from Egypt to serve God and to govern themselves or, at least immediately, to be governed by Him through His prophet. In both traditions of liberty, the emphasis is positive: self-rule and shared forms of life orient persons toward a common good. In the liberal tradition as such, liberty extends to individuals who are perfectly free to separate themselves from shared forms of life, public ideas of the good, and thick bonds of solidarity and sentiment. The idea of negative liberty, always in some state of tension with earlier republican currents of positive liberty, infiltrates the liberal tradition.<sup>4</sup>

Although Judaism seems plighted to a positive conception of liberty such that it could be on a collision course with liberalism, there is nothing in the liberal tradition that is necessarily subversive of Judaism. The liberal tradition, at least in the United States, mitigates its own emphasis on individual autonomy by constitutional protections of freedom of association. That is, liberalism understands that human sociality is not incidental to human individuality. Humans are radically social. The Constitution takes the freedom to associate with one another, and by implication, with one's kind as a natural right. Nonetheless, the agents who are free to associate with one another are individuals. The Constitution does not take notice of primordial groups, of collectivities as the building blocks of political society. If there are such collectivities, they are, in the Constitution's universe, the states.

<sup>3</sup> Q. Skinner, *Liberty Before Liberalism*, Cambridge 1998, chapter 1 *passim*.

<sup>4</sup> I. Berlin, *Four Essays on Liberty*, New York 1969, chapter 3. For the best recent exposition of this often caricatured concept, see J. Gray, *Isaiah Berlin*, Princeton 1996, chapter 1.

But the states are also unions of individuals. Nor does the Constitution have regard for the civil society institutions such as schools, families, and churches that generate the virtues which a democratic citizenry requires. The Constitution does not consider those forms of spiritual cement that weld individuals into a democratic political community. Thus, despite a generous space that American liberalism gives to religious and other primordial communities there is an underlying bias built in to the system in favor of the individual, the free, reasonable moral agent over the encumbered and implicated member of a primordial group.

The liberal ontology, which places individuals at the center, animates one of the canonical texts of the liberal tradition, Locke's *Letter Concerning Toleration*. In this text, we can find that bias in favor of the individual, which eventually creates a problem for groups like the Jews. In the *Letter* Locke finds a parallel between the church and the state. The Church, he writes, is a "free and voluntary association of individuals."<sup>5</sup> Constituting a church is directly parallel to constituting a political community: it is an act of free and consenting adults. Both kinds of community are governed by a purposive rationality. The aim of the political community is civil peace; the aim of the religious community is the public worship of God for the end of the salvation of the individual soul. Individuals are free to judge whether the religious community suits their spiritual needs or not. If they remain within it, they are subject to its laws and discipline, although these have no positive or negative relevance to their civil status as citizens. The religious community is as easily entered as left. The free, rational person judges whether the community's reasonableness is compatible with his own.

Locke's construction of the religious community requires a sweeping de-emphasis on those bonds of sociality that are more primordial than rational assent alone. He is suspicious of loyalty and friendship; he sees them as potential allies of subservience.<sup>6</sup> The idea that religious community might claim us before we as conscious agents choose it provokes anxiety. Locke's treatment of Islam in the *Letter*—Muslims are not just men of faith but servants of the Ottoman sultan and therefore sources of sedition within the state—suggests that religious communities which do not fit his secularized Protestant model of gathered community need not be tolerated. The Jews, I would argue, resemble Locke's Muslims more than his Protestant sectaries. Although neither then nor now citizens or subjects of a foreign sovereign, Jews nonetheless participate in an older, more metaphysically encumbering form of theological-political community than Locke would allow for. Participation in the Jewish covenantal polity precedes the entry of individual Jews into civil society and carries its own set of obligations.

As an example of this claim, consider Locke's statement in *An Essay Concerning Human Understanding* (Book II, Chapter XXI, para. 56) regarding one's choice of diet.

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<sup>5</sup> J. Locke, *A Letter Concerning Toleration*, [in:] *Treatise of Civil Government*, New York 1939, p. 175.

<sup>6</sup> D. Kries, *Piety and Humanity*, Lanham 1997.

“All men seek happiness, but not of the same sort. The mind has a different relish, as well as the palate; and you will as fruitlessly endeavour to delight all men with riches or glory (which yet some men place their happiness in) as you would to satisfy all men’s hunger with cheese or lobsters; which, though very agreeable and delicious fare to some, are to others extremely nauseous and offensive: and many persons would with reason prefer the griping of an hungry belly to those dishes which are a feast to others.”

Locke writes about lobsters as if they were an illustration of the principle of “*de gustibus non est disputandum*.” It is merely a matter of taste in which reason has no share. The observation is part of a larger argument that deprives the classical, primarily Aristotelian, claim that there is a single standard of eudaemonia of its sense. There is no *summum bonum*, Locke assures us, no way of human flourishing common to us all. There are only particular goods or individual versions of happiness based on idiosyncratic choices. Some find lobsters and cheese tasty while others do not. The idea that God might prohibit us from tasting lobsters in the first place and that this prohibition binds us even before we were born, as it were, would strike him as bizarre. It is a “speculative opinion” about something that is at best “indifferent.” Jewish worship is, as he elsewhere puts it, “false” and “abominable.”<sup>7</sup>

Of less concern than Locke’s anti-Judaism is his construction of religious community as a purely consensual association of likeminded individuals. Since early modernity, Jews have attempted the transformation of the Jewish polity, with its covenantal dimensions of reciprocity, obligation and law, into a Lockean-liberal church. Beginning with Moses Mendelssohn, they have subtly replaced the language of covenant with its secular descendant, social contract, effacing although never quite obliterating the older political resonances of Jewish national solidarity. At the dawn of the liberal order, the choice was between remaining within an integral *kehillah*—the misnamed “state within a state”—or assuming the rights and duties of citizenship in a state that was supposed to transcend religious and ethnic particularities. That project is now complete, at least in the United States. Jews reconstituted their diaspora polity as a voluntary community, a free association of citizens of Jewish affiliation, with remarkable success. To the extent that pervasive anti-Semitism encompassed the liberal creation of a voluntaristic community, a certain continuity with older lines of group consciousness endured. With the welcome decline of anti-Semitism, however, the voluntarist project of Diaspora Jewry is left on its own to compete with other forms of private association in which persons may find satisfaction. It is not that Jewish life is a poor competitor—far from it. It is that Jewish life must continuously redefine itself in terms adopted from liberalism in order to appear intelligible and appealing to the denizens of a liberal order. The appearance of paid advertisements on the Op-Ed page of the New York Times in which prominent figures gave personal answers to the question “Why be Jewish?” is a sign of the times.

<sup>7</sup> J. Locke, *Letter Concerning Toleration*, p. 218.

As Stephen Cohen and Arnold Eisen have essayed in their 2001 book, *The Jew Within*, the emphasis on voluntarism, individual choice, personal as opposed to public standards of meaning has eroded loyalty to communal institutions, indeed, to Israel, the most powerful symbolic locus of Jewish national solidarity.<sup>8</sup> Contemporary Jews are increasingly drawn to an inward-looking, self-oriented search for meaning rather than to communal engagement and Jewish civic participation. The focus of their study is the private spiritual journey of what the authors call the “sovereign self.” The sovereign self is not animated by duties to other humans or to God, or by the aspiration to achieve what T.H. Green called the “best self.” It is merely an expressive self, in love with its own depths and fascinated by its own protean contours. The project of making this self is an end in itself. It signifies the ultimacy of freedom or, more precisely, the inability or unwillingness to posit a goal beyond freedom. Freedom is not to be ordered by higher goods. Rather, freedom, in the sense of the negative freedom to act without coercion, has become the highest good.

The Jewish tradition, as mentioned above, is no stranger to the value of freedom. Nonetheless, in the Jewish tradition there is a strong bias toward freedom as a positive and instrumental value. Freedom facilitates the pursuit of collective and individual holiness. Freedom allows for self-rule, for the project of creating a just and holy commonwealth. These ideas are resisted and—for the sake of civil peace in a pluralistic society—properly so by liberalism. Liberalism in its origins overcame both an aristocratic and a republican tradition that saw politics as a means to the achievement of public virtue. In the American version of liberal origins, the Puritan covenantal tradition was overcome in favor of an Enlightenment social contractarianism. American Jews, despite the bias of the Jewish political tradition in favor of positive liberty, came to share in the liberal disregard for aims allegedly higher than negative liberty. The bulk of their political engagement, advocacy for Israel excepted, has been devoted to projects of negative liberty, such as fighting discrimination and clearing the public square of the last vestiges of the Puritan covenantal tradition. American Jews have been piously devoted to what Richard John Neuhaus famously called the “naked public square.” By working to strip public discourse and civic life of older, republican and religious expressions of solidarity, Jews helped to advance a version of liberalism that valorizes individual autonomy, rights and freedom of choice over community, obligation, and prudence. Nonetheless, were it not for older countervailing forms of group solidarity, such as *tzedakah* (inadequately translated, charity), Jewish communities would not, most likely, have endured under the centrifugal forces of liberalism. *Tzedakah* is a project of positive liberty. It presupposes that individuals are encumbered rather than self-possessed; that they have duties to a collectivity that significantly impinge on their freedom of choice and their discretion over their possessions.

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<sup>8</sup> S. M. Cohen, A. Eisen, *The Jew Within*, Bloomington 2001.

The continued Jewish embrace of *tzedakah* is an example of how Jews resist assimilation to a purely liberal pattern of life without being aware of it.

The transformations that have given us Cohen and Eisen's impoverished "sovereign self" need not be seen as the simple outcome of a clash of cultures, of liberalism versus Judaism. On the contrary, they track a movement within liberalism itself, on which Judaism, caught in a theological-political predicament, depends. The transformation within liberalism has to do with the loss of liberalism's republican heritage, with an undue emphasis on individual rights and negative liberty, with a decline civic participation and social trust, as well as over-reliance on government and the courts to solve social problems. It also has to do with the increasing secularization of American society and the privatization of religion, processes which the Jewish community has done much to advance. These factors have had a leveling effect, which has diminished the moral authority of the liberal tradition and the Jewish tradition as well. The way back from this mutual diminution requires moral and spiritual renewal. It requires a new appreciation for the sources of moral and spiritual renewal, those local communities, especially religious ones, and the virtuous selves that they nurture. It requires a new appreciation of how the moral formation of citizens occurs in communities and in families, as well as for those thick traditions of moral life without which moral formation cannot occur.

For Jews this renewal will require a retrieval of older and more complex moral constitutions of selfhood and community than contemporary liberal doctrines of rights, agency and voluntarism allow for. Such concepts as covenantal liberty (as opposed to liberal natural liberty) and divine ownership of our persons (as opposed to liberal autonomy) will have to get a contemporary, morally cogent articulation. Politically, I would argue, Jews need to resist the leveling influence of liberal political culture by advocating those policies that strengthen communities and reverse the privatization of religion. This will cut against the grain of previous Jewish public policy advocacy.

Let us focus for the moment on a constitutional issue in which the Jewish community has been heavily invested, religious liberty and the separation of church and state. Michael Sandel calls our attention to the modern misreading of the religion clauses of the Constitution. On Sandel's account, the Founders based the right to religious liberty on the freedom of conscience while the moderns have transformed this into a freedom of choice. By "freedom of conscience" Sandel means the duty to worship God in a manner free from external coercion. In both Locke and Madison and Jefferson, religious liberty is necessary because conscience imposes duties on us that are prior to the claims of civil society. "Religious liberty," Sandel writes, "addressed the problem of encumbered selves, claimed by duties they cannot renounce, even in the face of civil obligations that may conflict."<sup>9</sup> To the greatest extent possible, a decent and liberal politics requires that persons not be forced to violate their deepest, most constitutive convictions. For many, the convic-

<sup>9</sup> M. Sandel, *Democracy's Discontent: America in Search of a Public Philosophy*, Cambridge 1996, p. 66.



tion of faith is not chosen or willed: it is given by grace or, in the normal Jewish case, given by birth. Religious liberty is the acknowledgment that duties to God must be accommodated. It grows, as in Locke's *Letter* or Madison's *Memorial and Remonstrance*, out of a consciousness still stirred by religion in which the advocate of toleration or of liberty understands that our duties to God are radical, real, and unique. The self is not sovereign; it is "encumbered." It does not fully possess itself. It is possessed by God, to whom it must give fealty.

By contrast, the modern, fully secularized approach to religious liberty treats it as a sign of respect for a species of personal choice. What religious liberty accommodates on the modern, voluntarist account is not duty but autonomy. What it preserves is not freedom of conscience, which can be the most demanding master, but freedom of choice, which seldom aspires to moral austerity. In Sandel's view, the transformation in our understanding of religious liberty is ultimately subversive of religious liberty. It is one thing for the state to have to accommodate the patterned duties of historic religious communities and their adherents. (The law, for example, eventually made room for conscientious objector status in order to accommodate Mennonites and other traditional pacifists.) It is another thing for the state to have to respect individual choices. On the former account, the state allows for religious exemptions precisely because they are religious. The state recognizes the importance of religious communities and their adherents for civil society. On the latter account, the state presumes a neutral stance between religion and non-religion. It forbears from recognizing religion as a public good. It aspires to a neutrality that respects persons irrespective of the content of their choices and beliefs. As such, it recasts the demands of religious conscience into mere personal choice. Since one person's choice is not necessarily more worthy of accommodation than another's, religion becomes just another lifestyle option, with no more compelling claim on the state for accommodation than trout fishing.

When the state of Connecticut sought to accommodate the religious beliefs of sabbatarians by allowing them, alone among all employees, to choose their day off, the Supreme Court overruled the statute on the grounds that Sabbath observers should not be given choices that others do not have. The law allowing Sabbath observers to choose Saturday as their day off unfairly discriminated against others who were not given the right to choose. So too, Captain Simcha Goldman was not allowed to wear distinctive headgear if all others lacked a similar right. Nor were Native Americans allowed to use peyote in defiance of otherwise valid drug laws. In every case, what was formerly thought a duty of conscience properly protected by the Free Exercise clause became a personal choice that can neither confer "special rights" on a few nor trump generally applicable law. The reduction of conscience to choice, of religious liberty to a species of freedom of expression erodes our cultural understanding of what religious liberty is for and imperils our support for it over the long term. The welcome reversal by the Court of some of these trends in *Good News Club v. Milford School District* was decided more on

free speech than free exercise grounds. Free exercise since Smith is an endangered right; free speech has more plausibility in contemporary jurisprudence. Indeed it has more of a “plausibility structure” beneath it than free exercise. The scanting and deformation of free exercise, abetted by a five decade long emphasis on unrealistically stringent establishment standards, serves neither the aims of liberalism nor of American Jews. The very existence of the Free Exercise clause and of the singular and distinctive position that religious liberty occupies in the Constitution should signal to us that religion does play a crucial role in civil society; that it must not be reduced to a lifestyle option or to the mere choice of private persons.

Sen. Joseph Lieberman, during the 2001 election campaign, called attention to this fact, quite controversially in the eyes of many Jewish leaders, when he said that the Constitution gives us freedom for religion rather than freedom from religion. Lieberman was, in his own way, resisting what the political theorist Jean Bethke Elshtain calls “liberal monism.”<sup>10</sup> By liberal monism, she refers to a drive within liberal societies to bring discrepant standards of authority, reason and moral language under a single norm. A monistic approach to authority, for example, would force the Catholic Church, perhaps through legal challenges, to accept women as priests. It would force an Orthodox institution, such as a college of Yeshiva University, to accommodate gay partners as a married couple. A monistic approach to reason reads religious moral reasoning out of the public conversation as a defective, regressive or merely idiosyncratic expression. A monistic approach to moral language reduces all normative discourse to what Mary Ann Glendon calls rights talk, to claims and counter-claims of rights unmitigated by such frameworks as virtue or aspiration. Monistic liberalism, on Elshtain’s account, receives powerful support from the intellectuals and the media. It is also, I think, the preference of American Jews. It is this preference that Jews must learn to discern and resist.

Taking a cue from Sandel, American Jews need to recover the original liberal concept of the duties of conscience, which is not far removed from the Jewish concept of *mitzvot bein adam l’makom* (duties between man and God). It is out of respect for the duties that man has toward God that the liberal, constitutional state first circumscribed its own power. To take such duties seriously, as duties that claim us rather than as choices that we elect, reveals our embeddedness in an order that is metaphysically prior to the liberal order in which we dwell. It qualifies and relativizes our belonging to the polity. Alternately, it makes us morally serious and responsible persons who can serve the liberal polity with our learned habits of both loyalty and criticism. To retrieve a doctrine of the duties of conscience or of the *mitzvot bein adam l’makom* would help rescue contemporary Judaism from the platitudes of liberalism on the one side and the temptations of otherworldly or Gnostic spiritualism on the other. It would rescue Judaism from becoming a distinction without a difference. Here is a relatively recent example of how to assert a distinction, based on conscience, and resist monistic liberalism at the same time.

<sup>10</sup> J. B. Elshtain, *Address Delivered at Radio Free Europe*, Prague 2000, [www.becketfund.org](http://www.becketfund.org).

The Orthodox Jewish community of Tenafly, NJ was ordered by the municipality and, on August 9, 2001, the U.S. District court, to remove an *eruv* that it had erected with the help of Verizon and a local cable company (*Forward*, November 16, 2001; www.becketfund.org). Needless to say, some of the members of the borough council were Jewish. They took the liberal monist view that for the state to endorse the *eruv* would be an impermissible violation of the Establishment clause. (Given the current state of Establishment clause jurisprudence, this may not be far-fetched.) Whether this constitutional quibble is a fig leaf for a darker bias against Orthodox Jews is unclear. At any rate, the Jewish members of the borough council who are Reform Jews were quite surprised when the Commission on Social Action of Reform Judaism filed a brief on the side of the *eruv* proponents, who have now brought the case to an appeals court. No one was surprised that the Orthodox Union or the Agudah filed amicus briefs but Reform's deviation from strict separationist dogmatism took the Jewish politicians off guard. This seems to me a salutary case of a religious movement almost wholly identified with contemporary liberalism stepping back from redundancy. In advocating a position that honors religious liberty and affirms that Shabbat observance, which is enhanced by an *eruv*, is a duty of Jewish conscience, the Reform movement resisted monistic liberalism.

The Jewish self, possessed by the mitzvot of Shabbat, is surely more complex and possibly more conflicted than the autonomous, expressive self of contemporary liberalism. I would argue that it is precisely such a self that liberalism needs if it is to become, in Elshtain's words, more capacious. Liberalism needs communities where such morally complex selves are formed. These are the so-called "seedbeds of virtue" where the habits of the heart, the habits of loyalty, respect for legitimate social authority, perseverance, altruism and independence are cultivated. Liberalism, as William Galston reminds us, needs its own virtues. A healthy liberal society cultivates virtues in its citizens. American Jews need to ask themselves whether the laws and policies they advocate cultivate the virtues and strengthen the communities that nurture them. The Jewish community's opposition to the faith-based initiative during the Bush years was not encouraging in this regard.

The Jewish community first tacked in the strict separationist direction: public funding to social services delivered by houses of worship would violate the Establishment clause. Insofar as there already were four years of experimentation under prior law, however, the community began to back away from this strategy by the end of 2000. (The endorsement by both Gore and Lieberman of some version of charitable choice also complicated the mainstream Jewish approach to the problem.) The next stratagem stressed the potential for discrimination against religious, ethnic or sexual minorities. The Title VII exemption permitting religious bodies to hire only their own members, if extended under charitable choice, would amount to state-sponsored discrimination. The prospect of religious ministries refusing to hire persons of other faiths or disapproved sexual orientation was thought to trump all other considerations. Additionally, the fear that Jewish agencies might face in-

creased competition for funds also played a role. In sum, Jewish groups, with the exception of the Orthodox, opposed charitable choice out of a mix of high principle and interest politics. Two full election cycles later, the Jewish community's attitude remains the same. The continued embrace of faith based solutions by some Democratic elites, including President Obama, poses a challenge for American Jews.

At the beginning of the debate, during the early Bush presidency, a clarifying moment for me occurred one evening on national television. A commentator was interviewing a rabbi and a black minister, who was—like most blacks—an advocate for charitable choice. At one point in their debate, the commentator interrupted and observed that there was a striking asymmetry in their positions. The minister was talking about urgent and debilitating human need and what could be done to alleviate it while the rabbi was talking about abstract constitutional principles. Even she felt a jarring disjunction between the worlds that the two sides represented.

This disjunction is emblematic of how the Jewish community treats such matters. It is so wedded to the liberal monist imperative of keeping religion private that it is unwilling to experiment with promising new possibilities for alleviating the misery of our most neglected citizens. While I would never fault the Jewish community for its philanthropy, its covenantal habits of *zedakah*, or for its public-mindedness, I do think that it is wrong on charitable choice and on a kindred idea, tuition vouchers. In both of these cases, community serving ministries and community enhancing schools might well be strengthened by an infusion of public funds. The long-term interest of the Jewish community as well as that of American liberalism lies in strengthening the institutions of civil society, both general and Jewish. Jews should seek alternatives to state monopolies; they should be on the side of local control and participatory democracy. There were, of course, good reasons for turning to the state and the courts, particularly in the 1960's. But do we not face a different set of problems today?

The way out of the theological-political predicament of American Jews lies in a double movement of retrieval. Not only Jews but all Americans must retrieve a fuller range of liberal possibilities than contemporary, anemic liberalism provides. For their part, Jews must also retrieve older ideas of Jewish selfhood, virtue, and polity; of the liberty that Judaism celebrated long before liberalism.

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