Religion as a Public Good

*Jews and Other Americans on Religion in the Public Square*

*EDITED BY ALAN MITTLEMAN*
Introduction

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For modern Jews seeking their bearings in the vexed domain of how religion should relate to American public life The Origins of Republican Form of Government, by Oscar Straus, would be an instructive place to begin. Straus was a leading figure in nineteenth- and early-twentieth-century American Jewry. His book originated in a series of lectures that the young, thirty-five-year-old Columbia University educated lawyer delivered at the Brooklyn Historical Society in 1885. Straus’s task was to locate the intellectual impetus for republican government in the United States. He argued that almost nothing in the political experience and conceptual range of the American Founders predisposed them to democratic republicanism. From their study of history, the Founders were well aware of the weaknesses of the ancient Greek and Roman republics, as well as the Venetian republic. Furthermore, the British experience under Cromwell was hardly inspiring. The origin of republicanism, Straus argued, was to be found in the Puritan reading of the Hebrew scriptures. It was the Bible that taught the early Americans the paths and virtues of self-rule. As Straus marshals evidence for his thesis, he attempts to delineate incipiently republican forms of polity and political practice in the Bible and, indeed, in subsequent Jewish tradition. He argues that the Hebrew Commonwealth was, as he puts it, “the first Federal Republic.” Thus Straus insinuates the Jewish political tradition into the American Founding.

Straus also insinuated core American principles into his own life. Although an immigrant from the Rhineland, he became thoroughly
American. When appointed by Grover Cleveland to serve as ambassador to Turkey, his highest priority was to work for the religious liberties of American Protestant missionaries in the Ottoman Empire. Strauss was also the first American Jew to rise to a seat in a presidential cabinet; he was Theodore Roosevelt’s Secretary of Commerce and Labor. Perhaps nothing, however, attests to the depth of his embrace of American values than the name that he gave to his firstborn son—Roger Williams Strauss. Thus an immigrant of humble German-Jewish stock came to live an American-Jewish dream of profound affinity between the Jewish and the American traditions.

Straus’s book has fallen into almost complete neglect. The major historians of the American Founding, such as Gordon Wood, take no notice of it. Indeed, despite an enviable level of erudition, Straus’s work falls far short of credible, contemporary historiography. Although, in fairness to him, the problem with which he grappled—the role of religion in informing and stimulating republican thought in America—is once again on the front burner of the historiography of the Founding. He has fared no better among Jewish historians, who dismiss his book as apologetic literature. Naomi Cohen, who has written the authoritative biography of Strauss, passes over this youthful book without evaluating its worth. More recently, Jonathan Sarna treats the book as part of what he calls the American Jewish “cult of synthesis.” By cult of synthesis Sarna refers to a protracted effort by American Jews, beginning in the early nineteenth century and extending into the 1960s, to celebrate the alleged inner unity of Judaism and Americanism. In Sarna’s view, works such as Strauss’s are based on an abiding Jewish anxiety about fitting in, about being accepted. At the point where American Jews gain acceptance and their anxiety fades, their interest in the cult of synthesis subsides. On this analysis, the dearth of apologetic literature about Judaism and Americanism in our time attests to the maturity and normalcy of the American Jewish community.

Given the harsh judgment of history on The Origin of Republican Form of Government, what does Strauss have to offer a twenty-first-century reader? Although there is much truth in the critical judgment against him, I find it hard to believe that it is the last word to be said about works such as Strauss’s. Does a concept as negative as anxiety explain everything? Is the desire to know how Judaism, Jewishness, and American democracy fit together only a form of angst-ridden public relations? Dated as it is, Strauss’s work speaks to a perennial and compelling intellectual problem. How does Judaism, which is of ultimate importance for serious Jews, relate to the duties of American citizenship and to the consciousness of civic belonging? What is the nature of the covenant between American Jews and America? How should American Jews think about their obligations, duties, and dissent vis-à-vis their country? What contribution can Judaism make to a decent politics? To the virtues required by democratic citizens? To the moral discourse that impinges upon our more contentious public policy debates? To the ennobling of our much coarsened culture? These, it seems to me, are recurrent, foundational, and serious questions. They are ill served by facile sermonizing and shallow apologetics. Perhaps the earlier works in this genre, Strauss excepted, were marred by those faults. We can be more circumspect today, but we dare not be more afield. The urgency of these questions is not dissipated by either assimilation or acceptance. Nor is it well served by preformed political ideologies, either of the left or the right.

In an ever more diverse society, Americans grapple—especially after September 11, 2001—with the vexing question of what, if anything, does or should unite them. The great consensus historians of the 1950s, such as Louis Hartz, could confidently assert that liberal ideas, drawn from canonical figures such as John Locke, ran through the American experience like a red thread. Our nation was founded on a set of self-evident truths; our politics and common life, however dimly, expressed them. Those days are gone, perhaps forever. For decades we have had an open-ended contestation over whether any truths are normative for us. Does our polity need a consensus public philosophy or does proceduralism—a commitment to certain rules of the game—suffice? At either end of this spectrum, elite opinion often presumed that we could agree on at least one thing: religion was not a proper source for either a public philosophy or a canon of democratic rules of the road. Religion was properly a private matter, a source of comfort and guidance for those in need of such things. It was not in any sense a “public good.” Jews, as a small minority of distinctively liberal political orientation, were vigorous advocates for this view.

As with so much else in American life, the once regnant faith in secularism has come under constant and growing assault. As mentioned above, recent historiography of the American Founding gives new emphasis to the role of religion in shaping revolutionary, republican, and constitutional currents of thought. Public philosophy has hammered away at what, in retrospect, appear as naïve or wishful assumptions that only secular epistemological and moral claims
are fit expressions of "public reason." Public policy has come to a
belated awareness of the enormous role that faith-based organiza-
tions play in healing our distressed civil society. Political theory
looks to religious traditions, more so than at any time since the sev-
enteenth century, as sources of political teaching and perhaps even
even of political wisdom. For their part, religious thinkers, responding
to the new curiosity toward their traditions in American intellectual
circles, are renegotiating the boundaries between the spheres of the
once allegedly private and the public.

Jewish intellectuals such as Michael Walzer, Amitai Etzioni, and
Michael Sandel have had a great deal to do with revising liberalism,
advocating for a public philosophy, rediscovering the importance of
community, and calling for a renewal of civil society. With the ex-
ception of Walzer, they have done so, however, as thinkers who
happen to be Jews rather than as Jewish thinkers. Attempts to bring
Jewish religious texts and traditions into a fertile philosophical dia-
logue with American public life have been infrequent. Perhaps the
reflexive commitment of most of the Jewish community to secular
liberalism, and to a Judaism read through secular and liberal specta-
cles, has stunted or scanted the effort. Perhaps the absence of a
broad receptive audience for such an effort has relegated it to the
stratosphere of academic discourse. At any rate, American Jewry is
overdue for a renewal of Oscar Straus's project: a serious yet acces-
sible consideration of how Jews and Judaism, religion in America,
and the American public square interact.

This book is a contribution to that project. It originated in a
three-year program, initiated by the Pew Charitable Trusts and the
Center for Jewish Community Studies, which aimed to reintroduce a
dialogue about faith and public affairs into the American Jewish
community. The program, entitled "Jews and the American Public
Square," was to have culminated in a national conference in Wash-
ington, D.C., on September 12, 2001. As the extent of the catastro-
phe of September 11 was becoming clear, that conference was can-
celled. Most of the chapters in this book were originally prepared for
the conference which was to have addressed the theme "Religion as
a Public Good: Jews and Other Americans in the Public Square."
Although conceived as a dialogue that included Christian panelists
and audience members as well, the main thrust of the conference, as
of this volume, was on Jewish contributions to an intra-Jewish con-
versation.

Rather than see Straus's topic as passé, the organizers thought it
urgent, for both Jewish and general reasons. The Jewish reasons
have to do with the inward turn of the American Jewish community.
Over the past decade, the Jewish community has become painfully
aware of the mounting toll of unbridled assimilation. To combat this,
it has sought to increase Jewish commitment, learning, and
identification. Focused on its own survival (euphemistically dubbed
"continuity" and then "renaissance"), there has been a shift from a
 Civic or social activist Judaism to an interior, spiritualized Judaism.
Since the late 1960s, American Jews lived out their Judaism, as one
scholar put it, as a civil religion of "sacred survival." The focus was
activism on behalf of Soviet Jewry and Israel, as well as Holocaust
remembrance. The civic structures of the Jewish polity, such as the
federations and defense agencies, had higher salience in the minds
of many Jewish leaders than the synagogues. Little emphasis at-
tached to Hebrew and Jewish literacy or Jewish observance. That
situation changed dramatically by the early 1990s when, as a result of
new findings about a more than 50 percent intermarriage rate,
real concerns for American Jewish survival emerged. The resultant
shift in communal priorities has given the traditional foci of Jewish
religion a higher profile in American Jewish life than they have had
in a century. Yet what are the public consequences of this new
stress on religious observance, learning and tradition? Will the lar-
ger American public sphere be depleted of significance by an in-
ward turn? Will Jews retreat to their own spiritual gardens, follow-

The American pattern of weakening loyalty to civil (including religious

and political institutions. We have become, in Robert Wuthnow's phrase, a nation of "seekers" rather than "dwellers." Americans have become increasingly concerned about the decline in civil and political engagement—to use an older term, "civic virtue"—in American life. Talk of renewing civil society and of citizenship education is all the rage. Americans have begun to think anew about the necessary connections between social institutions, morals, common purposes, and the public sphere. The role of religious communities and traditions looms large in this reconsideration. For many observers, religion is an engine of civic engagement, a crucial source of moral orientation, and a generator of social capital. Religion, if surveys are to be believed, is for many Americans a "public good." Yet this kind of thinking remains threatening for many American Jews. American Jews have a well-developed discourse on the constitutional dimensions, the legal dimensions, of the problem of the relation of church and state. They are less adept, however, at doing what Oscar Straus did over a century ago: articulating the proper public role of religion in the ongoing democratic project. That is where this volume hopes to make a contribution.

The contributors to this book agree on little. Their diverse religious and political positions reflect the sturdy pluralism of the American Jewish community. This author cannot even say that they agree on the need to rethink the public role of religion in American society. Two of them offer powerful arguments, entirely typical of many American Jews, for why religion should remain out of the public sphere to the greatest practicable extent. Others show a tentative if greater openness to renegotiating the boundaries that liberals once thought fixed. Others enthusiastically subvert the "wall of separation between church and state" as Jews have heretofore understood it (that is, quite strictly). Nor do the contributors come from a single disciplinary perspective. They include historians, political scientists, legal scholars, political philosophers, and theologians. Some of the contributors have made their distinguished careers as Jewish thinkers, others as scholars who are Jews. In this volume, however, all of them, with three exceptions, try to situate themselves—some intensively, others less so—as American Jews. The three exceptions consist of sympathetic friends who were invited to join the dialogue: two American Christian scholars and one Jewish observer from abroad.

The volume begins with a philosophical essay by Professor Jean Bethke Elshtain, one of the nation's leading voices on the moral and religious dimensions of our politics. Elshtain describes the complex process by which nascent liberal politics, both European and American, came to marginalize religion and treat it as little better than a public nuisance rather than a public good. Her essay suggests that for liberalism to fulfill its promise it must become capacious rather than monistic, pluralist rather than fearful where religion is concerned.

Against this general background, the next two chapters describe the historical and philosophical context for American Jews today. Professor Marc Dollinger begins by exploring the paradoxes inherent in the American Jewish relationship with the federal government. Since colonial times, Jews have cherished the autonomy of their communities, particularly their institutions of mutual assistance. With the New Deal, however, Jews came to accept, at first tentatively then enthusiastically, an increasing government role in the provision of social welfare. Dollinger analyzes the conflicts within American Jewish political culture that resulted from this settlement. Jews want governmental involvement and autonomy, universalist liberalism and group survival, individual rights and collective identity. He discusses the possibility of a greater public role for religion and the complexity of the Jewish response to this possibility.

In chapter 3 I analyze the philosophical consequences of liberalism for primordial groups such as the Jews. By "liberalism" is meant that system of rights-oriented political thought reaching back to the seventeenth century that puts individuals at the center of the normative universe. I consider the appeal of liberal ideas of freedom for a formerly oppressed people, and analyze the tensions between Jewish and liberal convictions about the uses of freedom. I argue that the renewal of civil society can only come about through a new empowerment of religious and other communities. The implications of this view at the level of policy are that Jews will need to invest more trust in local rather than national solutions in cases where local solutions are appropriate.

The next section articulates what might be called the mainstream view within the Jewish community, as well as the dissent from that view. The mainstream view is pervasively liberal. As Professor Kenneth D. Wald puts it, "many American Jews regard liberalism as applied Judaism." Wald argues that the creedal element of a religious tradition, in this case Jewish beliefs, has less to do with social and political action than do communal experiences, memories, and self-interest. There is a vast gap between religious beliefs and their translation into meaningful political guidance. Affirming the wis-
dom of keeping religion private, Wald doubts whether there is anything to be gained by urging that religion take on a greater role in public life. Arguing in a legal key, Professor Erwin Chemerinsky studies and describes the weakening of the wall of separation between church and state. He analyzes the rise of the "equal treatment" theory of the establishment clause and decisively rejects it in favor of a strict version of neutrality, that is, of no aid to religion. Chemerinsky recounts the benefits of this position for American Jews offering, with great expertise, what might be called the normative American Jewish narrative of church-state relations. Finally, the distinguished historian Gertrude Himmelfarb weighs in with a critique of these typically liberal views. Himmelfarb argues that Jews underestimate both the extent to which a decent society requires moral underpinnings and the contribution of religion to that public morality. She argues for a remoralization of society, nurtured by the virtues that traditional religions promote. The three authors have very different appraisals of what the Jewish interest is and of what sort of society it most conducive to Jewish flourishing. That my sympathies lean more toward the view of Wald's and Chemerinsky's perspectives.

The third section focuses on how tradition-minded Jews ought to think about and act within the American public square. In chapter 7, leading political theorist Professor William Galston delineates and analyzes the tensions between the Jewish political tradition and the American constitutional tradition. He argues that the former tradition can affirm the latter because Judaism has a tradition of legitimizing secular authority. Given the legitimacy of secular authority, he argues in favor of religious participation in the secular sphere in such a way that both religious authenticity and secular legitimacy may be preserved. He evokes authoritative moral norms by means of which this balance can be effectuated. The next chapter, by the eminent Jewish public theologian David Novak, argues for a religiously informed Jewish public thought and practice based on a shared "Judeo-Christian ethic" and a natural law conception of the common good. Novak believes that humans share a moral commonality and that all members of American society have a duty to enhance that commonality. He proposes a sort of Jewish "Lemon test" with three prongs: Jewish public policy should satisfy the interests of Torah, of the common good, and of the Jewish people. He argues that policies such as state-funded tuition vouchers for use in religious schools, decried by liberals as subversive of a common culture, in fact enhance moral commonality properly understood. Finally, Michael J. Broyde, a professor of law and judge on the Orthodox Beth Din (Court) of America, uses the same concepts as Novak to reach a diametrically opposed conclusion. Utilizing the idea of the Noahide Laws, the "moral commonality" binding both Jews and non-Jews, Broyde finds no obligation for Jews to teach non-Jews Noahide law and morals. Consequently, Jews have no obligation to advocate that secular government enforce Noahide standards of behavior, for example, by proscribing polytheism, abortion, or homosexual acts. All of these matters are subject not to clear Torah duties but to a calculus of political gain or loss. Although Jews should rather live in a society where infractions of Jewish law principles do not occur, in our society this is unrealistic. Jews therefore should be on the side of maximum liberty so that their own practices—in their own enclaves—will be permitted. While Novak draws socially conservative lessons from his commitment to traditional Judaism, Broyde derives libertarian ones. The dilemma posed by Wald, of how religious teachings can be translated into effective public philosophy and action, returns. Fortunately, these authors, despite their considerable differences, believe that the dilemma is far from insuperable.

In the fourth section, the emphasis is on how religious views, including Jewish views, might be expressed in a society of marked social and religious pluralism. The well-known sociologist, Professor Alan Wolfe, analyzes the changes in the composition of American religion since the founding period. Given the shift from de facto Protestant establishment to "Judeo-Christian" civil religion to vast and incommensurable pluralism, Wolfe rejects the idea that America requires some shared religio-moral underpinnings. He claims that it is time to admit that founders such as George Washington were simply wrong. We have more freedom today than we did in the eighteenth century and, just as importantly, the habits of liberty are deeply engrained in Americans' souls. If we look to how Americans actually live rather than to the anxieties of public intellectuals, we come away with confidence that American morals and American religion are healthy. Michael Gottsegen, while not disputing that religion can serve as a public good, questions whether it actually does in the here and now. He asks whether religious groups educate Americans for an expansive conception of the common good, for placing the whole political community before the needs of their own religious circle. Gottsegen calls for religion to exercise its traditional "prophetic" role with a twist: to help renew American civic life within a religiously pluralistic public square. Professor Elliot
Dorff, a prominent social ethicist and leader of the Conservative movement in Judaism, recounting his years of service on government ethics commissions, rehearses the principles that he discovered for advocating religiously grounded views in a pluralistic setting. Dorff advocates a practical ethic of epistemological modesty and moral restraint by the religious. He develops guidelines for how religiously based views can be articulated in the public sphere. He attempts to draw lines between domains in which religion can serve the common good, such as in the burgeoning discussion about bioethical problems, and domains where religious expression is, in his view, divisive, for example, in public schools. Dorff captures the mood of some sectors of the Jewish community. Some have moved beyond the “strict separationist” position embraced by Wald and Chemerinsky and show greater openness to a role for religion in public discourse. They stop short, as does Dorff, of weakening the “wall of separation,” however. Professor Carl Raschke, a scholar whose range embraces both evangelicalism and postmodernism, argues that, in the wake of the September 11 catastrophe, Americans need to rethink their openness to religious pluralism. He suggests that the affirmation of boundless religious pluralism is paired with a presumption of secularity of the sort: because the modern world is basically secular religion doesn’t much matter and therefore religious differences are noninvidious. After September 11, however, religious differences appear highly consequential. Not all forms of religion are acceptable under the pluralist umbrella. Raschke, addressing American Jews, calls for a renewal of the “Judeo-Christian tradition” as a defining feature of American identity.

The last section features two “practitioners.” Congressman Mickey Edwards, an eight-term representative from Oklahoma and, after his retirement from the House, a lecturer at Harvard’s Kennedy School of Government, reflects on how Judaism, religion, and politics converged in his career as an elected official. Edwards, a conservative, is ambivalent about the public dimensions of religion. His ambivalence illustrates how even those Jews identified with the Republican Party and with a conservative political orientation remain cautious about the proper place of religion in the public square. Kevin “Seamus” Hasson is the founder and president of the Becket Fund for Religious Liberty, a law firm and research institute dedicated to advancing the cause of religious liberty at home and abroad. Hasson writes from a perspective informed by Catholic natural law theory, arguing that nothing short of a profound appreciation of human dignity can ground the right of religious liberty.

Notes

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's 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 homey examples. Every semester at least one of my students wants to write a research paper on intermarriage. Typically, this student has a good Jewish upbringing and active Jewish involvement. Most likely the student has told her friends that she will only date other Jews and hopes someday to marry a Jew. Her friends then chastise her, implying that she is guilty of prejudice or bigotry against non-Jews as potential dates or mates. The student is now confused and wants to work through her conflicted values, her theological-political predicament writ small, in a paper.

Although this predicament sometimes takes the form of adolescent peers asserting, in the name of personal freedom, their right to date whomever they wish, this is not always the case. What is at stake is not liberty or autonomy or expressive individualism, but a specific worry about discrimination. Choosing to date only Jews seems to violate a deep-seated taboo. It makes 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, 47 percent of American Jews answered that it was "racist" to insist that Jews marry only other Jews. This and other 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.

My second example is drawn from an interview in the Forward (November 2, 2001) with Playboy's Miss November, 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 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 this author refers here is not contemporary liberalism, in the sense of that set of ideas and values to which contemporary conservatism is opposed. Rather, the author refers 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. 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 nonliberal re-
The liberal tradition is about liberty. There were, as Quentin Skinner points out, traditions of liberty before liberalism. 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 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. This author believes 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. 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 predilection, Jews are dependent upon liberalism. This author argues that they must resist that dependence and that liberalism will become more encumbered and implicated member of a primordial group. Jews can draw on the resources of their own political tradition and perhaps enrich the liberal tradition in the process.

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positive rationality (Zweckrationalität, as Weber calls it). 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. 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 suzerain 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 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.

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."

Of less concern than Locke's anti-Judaism is his construction of religious community as a purely consensual association of like-minded 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, ebbing 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 (Jewish community)—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.

As Steven Cohen and Arnold Eisen have essayed in their recent book, The Jew Within, the emphasis on voluntarism, individual choice, personal as opposed to public standards of meaning has...
forms of group solidarity, such as tzedakah and prudence. Nonetheless, were it not for older countervailing autonomy, rights, and freedom of choice over community, obliga-

tion to 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 (charity, an inadequate but serviceable translation), 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. 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 of civic participation and social trust, as well as overreliance 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, 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 Con-
stitution. 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." 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 conviction 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 the 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 nonreligion. 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 2001, 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 sanction 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.

Senator Joseph Lieberman, during the election campaign of 2000, 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 political theorist Jean Bethke Elshaim's liberal monism. 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 idio- syncratic expression. A monistic approach to moral language re- duces all normative discourse to what Mary Ann Glendon calls rights talk, to claims and counterclaims of rights unmitigated by such frameworks as duty or aspiration. Monistic liberalism, on Elshtain's account, receives powerful support from the intellectuals and the media. It is also 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 (commandments 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 responsi- ble 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 will help rescue contemporary Judaism from the platitude 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 current example of how to assert a distinction, based on conscience, and resist monistic liberalism at the same time.

The Orthodox Jewish community of Tenafly, New Jersey was or- dered by the municipality and, on August 9, 2001, the U.S. District court, to remove an eruv (a symbolic boundary transforming a pub- lic space into a private one where carrying on the Sabbath is permis- sible) that it had erected with the help of Verizon and a local cable company. 10 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. As any rate, the Jewish members of the borough council who are Reform Jews were quite surprised when the Com- mission 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 sepa- rationist 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 redu- dancy. In advocating a position that honors religious liberty and af- firms that Shabbat observance, which is enhanced by an eruv, is a duty of Jewish conscience, the Reform movement resisted monistic liberalism. 11

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. 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 com- plex selves are formed. These are the so-called "seedbeds of virtue" where the habits of the heart, the habits of loyalty, respect for le- gitimate 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 citi- zens. American Jews need to ask themselves whether the laws and policies they advocate cultivate the virtues and strengthen the com- munities that nurture them. The Jewish community's recent per- formance during the debate on faith-based initiatives is not encour- aging in this regard.

The Jewish community first tacked in the strict separationist di- rection: 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, how- ever, the community began to back away from this strategy last win- ter. (The endorsement by both Gore and Lieberman of some version of charitable choice also complicated the mainstream Jewish ap- proach 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 orien- tation was thought to trump all other considerations. Additionally,
the fear that Jewish agencies might face increased 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. Throughout the long and at this point quite transformed debate, a clarifying moment for me occurred one evening on a news program where the anchor was interviewing David Saperstein and a black minister, who was—like many blacks—an advocate for charitable choice. At one point in their debate, the interviewer 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 often 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 tzedakah, or for its publicmindedness, 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 1960s. 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.

Notes

11. In late 2002, the Third Circuit Court issued an injunction barring Tenafly from removing the eruv. As of this writing, the constitutionality of the eruv has been upheld.